

Attachment 1
Revisions to PPM 3010/Appendix J Workgroup
A Workgroup of FSLC

Report to the Faculty Senate

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Charge to the Work Group:

- Review PPM 3010 to propose refinements and modifications based on input from faculty, staff, and students.
- Consider if a revised PPM 3010 should be included in Appendix J.
- Propose how we might continue to educate the KSU community about the new policy.

History

Our Policy Prohibiting Sexual Harassment, Policy Prohibiting Racial/Ethnic Harassment and Discrimination, Policy on Gender, and Policy Prohibiting Sexual Violence were drafted by separate groups consisting of faculty, classified and unclassified staff, students, and administrators at different times during the 1980s and 1990s. The first three policies were placed in the *Faculty Handbook* (now *University Handbook*) in Appendix J. The Policy Prohibiting Sexual Violence was in the *Student Handbook* that was included in the annual campus telephone directory for many years. In 2003, the Policy Prohibiting Sexual Harassment and the Policy Prohibiting Racial/Ethnic Harassment and Discrimination were merged into the Policy and Procedure for Harassment Complaints in Appendix J. The Policy on Gender was always a separate policy in Appendix J.

In April 2011, the US Department of Education's Office of Civil rights issued its "Dear Colleague" letter in which it advised schools, colleges, and universities that the requirements of Title IX of the Education Amendments of 1972 pertaining to sexual harassment also cover sexual violence. The letter included recommendations for how to respond to complaints of sexual harassment and sexual violence, many of which have already been part of our policies and procedures.

Beginning in May 2011, Clyde Howard, Director of the Office of Affirmative Action, along with people in the Office of Student Life and Mary Todd, Director of the Women's Center, began to meet to discuss how to address the advice in the "Dear Colleague" letter. Attorneys in the Office of General Counsel made a broader recommendation that included applying our Policy

Prohibiting Sexual Violence to all faculty, staff, and visitors, in addition to students, and to incorporate the rewritten sexual violence policy into the current discrimination and sexual harassment policy. They drafted the new policy now titled “Policy Prohibiting Discrimination, Harassment, and Sexual Violence, and Procedure for Reviewing Complaints,” and President Schultz signed it in late August 2011. The Policy and Procedure for Harassment Complaints and the Policy on Gender were removed from Appendix J of the *University Handbook*. Because the expanded policy applies to the whole university, it was placed in the *Policy and Procedure Manual (PPM)*, as Chapter 3010. Appendix J of the University Handbook now contains the link to PPM Chapter 3010.

The first communication with Faculty Senate about these actions was a brief report to the Executive Committee at its August 29, 2011 meeting by Roberta Maldonado-Franzen, the Director of the Office of Affirmative Action, and Cheryl Strecker, Office of General Counsel. Concerns about the policy and its implementation were voiced at the September 26, 2011 Executive Committee meeting and again at the October 11, 2011 Faculty Senate meeting. This Work Group was appointed in February 2012. We met five times.

The Policy on Gender has been restored to Appendix J, which still contains the link to PPM 3010.

Recommendations:

1. Additions to the policy to clarify who is a supervisor and therefore a mandatory reporter.

The third paragraph under PPM Section .020, Policy Prohibiting Discrimination, Harassment, and Sexual Violence contains the following sentence:

“Supervisors and administrators must report complaints to the Office of Affirmative Action (“OAA”), keep complaints confidential, protect the privacy of all parties involved in a complaint, and prevent or eliminate discrimination, harassment or retaliation; failure to do so is a violation of this Policy.”

The reference to administrators and supervisors in our policy comes from the Code of Federal Regulations, Title 29 - Labor, Part 1604.11 (d) “With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.”

The “Dear Colleague” letter points to a broader definition of who is responsible for reporting knowledge of possible sexual harassment under Title IX: “A school has notice if a responsible employee ‘knew, or in the exercise of reasonable care should have known,’ about the harassment. A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.”

Concern was raised at the September 26, 2011 Executive Committee meeting and again at

the October 11, 2011 Faculty Senate meeting about the responsibilities of faculty under our policy because there are many situations where faculty supervise students.

We recommend that PPM 3010 include the following information that is on the Office of General Counsel website under the FAQ “Who is required to make a report to the Office of Affirmative Action if s/he becomes aware of possible discrimination, harassment, or sexual violence in violation of the University’s anti-discrimination policy?”:

Generally, all persons on campus should make a report to the Office of Affirmative Action if they know or have reason to believe that discrimination, harassment, or sexual violence has occurred in violation of the University’s anti-discrimination policy.

For the purposes of this reporting requirement, “administrators” are management level personnel. At Kansas State University, that typically includes department and unit heads, directors, and equal or higher ranking administrators. Administrators must report whenever they have knowledge of any potential discrimination, harassment, or sexual violence in violation of the University’s policy.

“Supervisors” are personnel with authority over other employees (such as day-to-day management of employee tasks, or hiring and firing responsibility) or with authority over a particular University environment (such as responsibility for the floor of a residence hall). Supervisors must report whenever they have knowledge of possible discrimination, harassment, or sexual violence within their area of supervisory responsibility. Supervisors who are also administrators must report whenever they have knowledge of any potential discrimination, harassment, or sexual violence in violation of the University’s policy, whether or not it relates to their area of supervisory responsibility.

Any employee who is unclear about whether s/he is an “administrator” or “supervisor,” or who has other questions about the reporting requirements, is welcome to contact this office and/or the Office of Affirmative Action for further clarification.

We also recommend that the following statement be added to the policy:

“For the purposes of these policies, faculty are supervisors, and their areas of responsibility include their research space and in the classroom when they are teaching.”

Similar statements can be drafted for unclassified professionals and classified employees who are not administrators and do not have supervisor in their position title.

These statements should be included in all training programs on preventing sexual harassment and sexual violence.

2. Annual mandatory training for everyone.

The “Dear Colleague” letter also recommends that “schools need to ensure that their employees are trained so that they know to report harassment to appropriate school officials, and so that employees with the authority to address harassment know how to respond properly.” We already have mandatory training requirements for IT Security, for our Export Control Policy, and for individuals engaged in research with humans (under IRB) and animals (under IACUC). These mandates are for our protection.

All other Big 12 schools have mandatory training on preventing sexual harassment. Some training is in person and some is on-line. **We recommend that all members of the KSU community be required to complete on-line training on preventing sexual harassment and sexual violence. We further recommend separate training modules for students, classified and unclassified staff, and faculty; this training take approximately 30 minutes to complete and be done every year the person is connected to our University; and the Office of Affirmative Action be given the resources to either purchase or develop these training materials.**

3. Clarify the role of the Director of the Women’s Center with respect to reports of sexual violence.

The first paragraph of Step 1 in Section .040 ends with the following sentence: “Persons may [emphasis added] submit complaints regarding sexual violence to the director of the Women's Center.”

The policy further states: “In the event of a sexual violence complaint, the director of the Women's Center should interview the complainant, with the understanding that the University is obligated to investigate if it has enough information to do so. The director of the Women's Center should explain to the complainant that the University may not be able to ensure confidentiality. If the director of the Women's Center determines that there is enough information to investigate, then the director immediately notifies the Office of Student Life or the Associate Vice-President of Human Resources, so that the Critical Incident Response Team or Threat Management Team process can begin. Additionally, the director immediately notifies OAA, so that the ART process can begin. The director should also encourage the complainant to file a complaint with the police.

“If the director of the Women's Center determines there is not sufficient information for an investigation, the director submits a written report to OAA explaining why the information was insufficient, and should document whether the complainant refused to provide information that would be necessary for a University investigation.”

Concern was raised at the September 26, 2011, Executive Committee meeting and again at the October 11, 2011, Faculty Senate meeting about the role of the Director of the Women’s Center with respect to reports of Sexual Violence under PPM 3010, Section .040 Procedure for Reviewing Complaints, Step 1, specifically, whether men would go to the Women’s Center to report that they had been sexually assaulted.

Although the word “may” in the first paragraph addresses the concern that reporting to the Director of the Women’s Center is required, **we recommend changing that first paragraph to read: “Persons can submit complaints regarding sexual violence to the director of the Women’s Center,” the Office of Affirmative Action, or the Campus Police.”**

The perception of the role of the Director of the Women’s Center has changed from purely an advocate to that of primary reporter *under certain circumstances* under the current policy because she is an administrator and therefore must report complaints of sexual violence and sexual harassment to the Office of Affirmative Action, hence the statement about not being able to ensure confidentiality in the second paragraph above. Those circumstances include sexual assaults that occur on campus, assaults that occur off campus at official university sponsored events, and assaults that occur off campus but which have significant "spillover" effect on campus. Any investigation of the complaint is carried out under the procedures outlined in the remaining steps in PPM 3010, section .040. Under any circumstances, the Director of the Women’s Center discusses the options to the complainant including available services and how to file a complaint with the police. She will accompany anyone to the police station should they desire it.

The Critical Incident Response Team or Threat Management Team is called in when the alleged perpetrator is identified and there is a perception the alleged perpetrator poses an eminent danger or immediate threat, and that person lives on campus or has certain on-campus connections.

Currently, there are discussions about whether the name of the Women’s Center should be changed. The purpose of our Women’s Center is and has been to help women develop a positive view of themselves and have successful academic careers in the face of obstacles ranging from dealing with stereotypes of women to violence. Men also come to the Women’s Center for help when they are assaulted and to learn how to help women in their lives (wives, daughters, sisters, girlfriends and close friends) who have been hurt. **Our recommendation is that the name, whatever is decided, should reflect the functions of the office.**

4. Make the policy more user-friendly.

We recommend making the following changes to make it easier for readers to find the information they are seeking in the policy:

Expand the table of contents at the beginning of the policy to include links to specific sections within the definitions (discrimination, harassment, sexual harassment, sexual violence, retaliation).

Provide links within the policy so people can navigate from the definitions to the Procedure for Reviewing Complaints.

Consider putting back in the policy some of the information about what constitutes sexual violence that was in the original Policy Prohibiting Sexual Violence or a link to examples of what constitutes sexual violence.

5. **Identifying our Title IX Coordinator.**

The “Dear Colleague” Letter indicates that the name or title, office address, telephone number, and e-mail address for the university’s designated Title IX coordinator be prominently posted on school Web sites. That is not the case now. Our Director of Affirmative Action is our Title IX Coordinator. The only place that information appears is in the middle of the Notice of Nondiscrimination posted under policies on the Office of Affirmative Action web site. The Director of the Women’s Center is a Deputy Title IX coordinator; however, that is not identified on her websites. **We recommend that the identification of who are our Title IX Coordinator and Deputy Coordinator be prominently displayed on appropriate university home pages.**

6. **Whether PPM 3010 should be included in Appendix J.**

Our Policy Prohibiting Discrimination, Harassment, and Sexual Violence, and Procedure for Reviewing Complaints is a critical policy. It should be as accessible as possible, but there should be only one version of the current policy. To avoid having conflicting versions of the policy, **we recommend that the only version be in PPM 3010 with links to it from Appendix J, the Office of Affirmative Action web site, the Women’s Center web site, and other web sites where people might go to find it. We also recommend Appendix J contain a link to our Workplace Violence Policy (PPM 4060).**

7. **Implementing our recommendations.**

PPM 3010 is scheduled to be reviewed this summer. In the spirit of shared governance, **we recommend that another small group, similar to this workgroup, consisting of faculty, students, classified and unclassified staff, the Director of the Office of Affirmative Action, the Director of the Office of Student Life, and the Director of the Women’s Center be appointed to carry out that review and recommend changes in the policy to the President. The Faculty Senate, Student Senate, and Classified Senate should be consulted to recommend people for this group.**

That process worked well in our group. It was also used when our original policies prohibiting sexual harassment and sexual violence were drafted, and was used in 1992 when the original Policy Prohibiting Sexual Harassment was modified to deal with concerns that were raised by faculty about some of the administrative review procedures in the original policy. The result of those discussions was an improved policy.