

Sexual Harassment & Discrimination Prevention 2007



Rita E Walker
Title IX /Sexual Harassment Officer



Why are we here?

New CA state law, AB 1825

--2 hours of sexual harassment training for all supervisors by January 1, 2006

--2 hours of sexual harassment training for all new supervisors within 6 months of their becoming a supervisor

--2 hours of sexual harassment training for all supervisors every 2 years

So, what's your e-mail address?

www.getthehellawayfrommeyou
bigcreeporI'llcallthecops.com.

Hold on... WWW dot
get the ...



Dan wasn't used to subtle hints.

Who is a supervisor?

- All staff supervisors and those staff that only supervise student employees
- All academic appointees (excluding post-docs and academic student appointees) *including all faculty*

Presentation Topics

- Definition of sexual harassment
- examples of harassment, discrimination and retaliation
- The rights of both the harassed and the accused
- the issue of intent
- issues of liability
- consensual relations

The Title IX/sexual harassment office

- **Sexual Harassment and Sexual Assault Policies**
 - Formal Complaint Investigation
 - Early Resolution-Consultations-Assistance
- **Educational Programs**
 - Sexual Harassment
 - Sexual Assault

[ucsc home](#) | [where are we located?](#) | [online training](#) | [ucsc policies](#) | [annual reports](#) | [related links](#) | [legal updates](#)

UC Santa Cruz Title IX / Sexual Harassment Office

- [what is sexual assault?](#)
- [Information for the target of a sexual assault](#)
- [what is sexual harassment?](#)
- [what to do if you are being harassed](#)
- [what is sex discrimination?](#)
- [a word about confidentiality](#)
- [retaliation - FAQs](#)
- [responsibilities of administrators, supervisors & managers](#)
- [especially for graduate students](#)
- [tips for TAs to prevent sexual harassment](#)
- [what is title ix?](#)
- [no harassment/ no discrimination brochure translations](#)
- [FAQs](#)

w e l c o m e



Our office provides assistance in investigating and resolving complaints of sexual assault and harassment. Emphasis is on prevention and early resolution. Our office serves the entire UCSC community.

- [UCSC Policy on Sexual Assault](#)
- [UC Policy on Sexual Harassment](#)
- [Procedures for Reports of Sexual Assault \(s\) and Sexual Harassment](#)
- [click here for printable version !\[\]\(e7a5b2ecc7ab80b32b565dd7dfa9a5a9_img.jpg\)](#)

[sexual harassment prevention training](#)

@ThomasDog.com & UCSC Title IX Office 2003

To contact UCSC's Title IX / Sexual Harassment Officer
 Rita Walker
 119 Kerr Hall
 email rew@ucsc.edu
 phone 831.459.2462

Protected Classes

- Race
- Religion
- Ancestry
- Marital status
- Color
- Sex
- Age
- Disability
- Citizenship
- National origin
- Sexual orientation
- Medical condition
- Status as a covered veteran
- Pregnancy
- Gender Identity

Disability Discrimination

“Regarded as disabled”

Employer has to engage in the IP “aimed at affecting a reasonable accommodation and provide a necessary and reasonable accommodation to an applicant or employee whom it inaccurately perceived as physically disabled” (*Gelfo v. Lockheed*, 140 Cal. App. 4th 34).



Reasonable Accommodation

Interactive Process

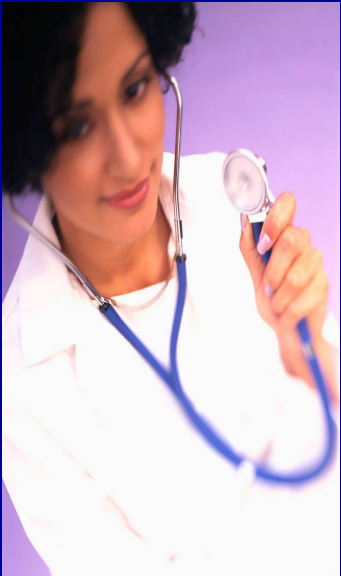
- Reassignment to a vacant position” is considered a reasonable accommodation. The employer must make an active effort, not just give the employee a list of vacant positions and tell the employee to apply.



Reasonable Accommodation

Interactive Process

- An employer's good faith consideration of an employee's requested accommodation requires more than an uninformed rejection. The employer may not merely speculate that the employee's suggested accommodation is not feasible, but must gather sufficient information from qualified experts to determine the accommodation's effectiveness (*Hughes v. U. S. Foodservice*, 2006 U.S. App Lexis 4554 (Unpublished).)





Religious Discrimination



9th Cir. Holds that Contra Costa County Library can exclude a church from using its meeting rooms for religious worship. (*Faith Center Church Evangelistic Ministries v. Glover*, 462 F.3d 1194 (9th Cir. 2006).

- **Not viewpoint discrimination if ban on all religious services**
- **Workshop about how to communicate with god, bible discussion, teaching, praying, singing, sharing testimony, sharing meals and discussions re: social and political issues must be permitted.**

Harassment



- **Court upholds \$1.55 million sexual orientation discrimination verdict.** (*Jones v. The Lodge at Torrey Pines P'ship*, 147 Cal. App 4th 475 (2007)).
- **UC manager protected by anti-SLAPP Law for denying employee grievance** (*Vergos v. McNeal* (146 Cal. App. 4th 1387 (2007)).

Harassment



Title IX

- **4th Cir. Overturns SJ against UNC, soccer coach and University counsel by woman soccer player who alleged that couch made outrageous sexual comments and inquiries amounting to sexual harassment (*Jennings v. UNC*, 2007 LEXIS 8216 (April 9, 2007).)**
- **6th Cir. Upholds grant of SJ, reasoning that threats and demands of soccer coach did not involve sexual innuendo or sexual communication (*Henderson v. Walled Lake Comm. Schs.*, 469 F. 3d 479 (2006).)**

Retaliation

Municipal employer and supervisor were liable for retaliation and failure to prevent retaliation in violation of FEHA for stripping a supervisor of his authority when he did not support the firing of an African American subordinate employee (*Taylor v. City of Los Angeles Dept. of Water and Power*, 144 Cal. App 4th 1216).



The Complaint Resolution Process

- **Formal Complaints**
 - Written complaint
 - Due process protections
 - Names provided
 - Can result in discipline
 - Written Fact-finding report
- **Informal Complaint (early resolution)**
 - Wide range of options, including
 - Mediation, education, notice conversation

Do you know . . .

- There must be witnesses present in order to prove sexual harassment – otherwise, it's just “he said, she said.”
 - True
 - False

Credibility issues

- Consistency
- Corroboration
- Details
- Change in behavior
- Timing
- Bias
- Non verbal behavior

Investigation of Sexual Assault Complaints

Issue: SJA investigations do not always produce a report as required under SH formal investigation procedures.



ATTORNEY-CLIENT PRIVILEGED

Redaction of Witness Names in Investigation Reports

Issue: IPA conflicts with sexual harassment caselaw requirement to maintain confidentiality to extent possible

impact: Public and private employers may have different obligations when it comes to ability to maintain confidentiality

Process: Redact witness names; call OGC if pressed to release or if atty involved

Is sexual harassment really an issue on campus?

- “University of California Law Dean resigns after harassment complaint”
- “U of Colorado fires long time professor for sexually harassing students”
- “Ohio U professor quits under pressure”
- “Former U of Michigan student awarded \$250,000 in Sexual Harassment Case”
- “Chapel Hill settles lawsuit accusing women’s soccer coach of Sexual Harassment”
- “Indiana University Chancellor fired for harassment of staff member”
- “Iowa jury awards \$3 million to former student for harassment”

UCSC Statistics

- Over 300 sex discrimination reports & complaints in last 3 years.

75% sexual harassment

12% rape

8% sex/gender discrimination

4% other sexual assault

1% retaliation

Who brings these complaints?

- 25% brought by staff
- 60% brought by undergraduate students
- 9% brought by faculty/lecturers/TA's
- 6% graduate students

Against?

- 27% brought against staff
- 10% brought against faculty
- 50% brought against students-grad & undergrad
- 13% brought against other/unknown

Who Has to Pay?

- The Institution if –
 - One of its supervisors sexually harassed someone they supervise
 - One of its employees sexually harassed a co-worker,
 - The institution knew or should have known about this, and
 - The institution failed to take prompt remedial action
 - One of its students sexually harassed another student and the institution was “deliberately indifferent”



UC Employment Claims Costs

- Average Cost: \$121,000
- 70% of costs are primarily legal expenses
- 30% of costs are paid to claimants

UCSC Policy on Sexual
Assault

&

UC Policy on Sexual
Harassment

Sexual Assault

- Where the act is accomplished against person's will by means of force, violence, duress, menace, or fear of immediate or unlawful bodily injury on the person or another.
- Where the person is prevented from resisting by any intoxicating or anesthetic/controlled substance, administered by or with the privity (knowledge) of the accused.

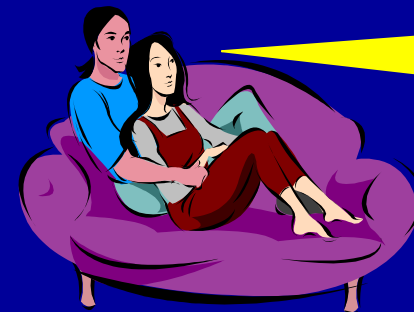
Sexual Assault

Consent:

- Positive cooperation in the act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the act...A current or previous dating relationship shall not be sufficient to constitute consent.

Quid Pro Quo

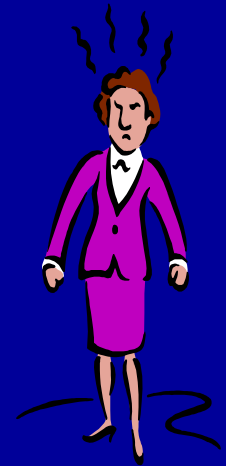
- Submission to the conduct is made either explicitly or implicitly a term or condition of instruction, employment, or participation in other University activity,
- Submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions, or



You got
the
job!

Hostile Environment

Such conduct has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile, or offensive University environment.



Sexual Harassment Definition

- Unwelcome conduct
- Of a sexual nature
- That is “severe” or “pervasive”
- That causes a hostile environment
- That would cause a hostile environment for a reasonable person in the complainant’s position
- Intent v. Impact

Is this sexual harassment?

- An employee accessing pornography on UCSC computers
- Male employees making fun of the sexual orientation of another male employee
- Staring
- Female employees spreading rumors about a female co-worker's sex life

University Officials

- **Policy states:**

“ A report of sexual harassment shall be defined as any meeting or discussion with a University Official, in order to inform the University that sexual harassment may have occurred...”

Responsibilities to Complainant

Provide a Complaint Form (appendix. G)

Tell About Support Services (appendix F)

Tell about Title IX office and outside agencies (see Options Outside University-Procedures)

Report/Consult with the Title IX Officer (do not take any action that would expose the complainant unless he/she explicitly asks you to tell someone to leave them alone before calling Title IX.)

What to Report

- What you have been told by the person-who- what- when- where-and how
- Neither you nor complainant must be identified
- Respondent must be identified

Supervisor Responsibilities

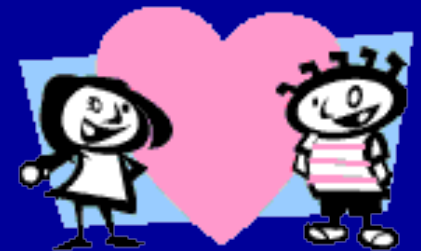
Exercise “reasonable care”

- Take all reasonable steps to prevent sexual harassment from occurring or re-occurring (retaliation)
- Take “prompt remedial action”
- Report action to Title IX office
- When in doubt, consult!

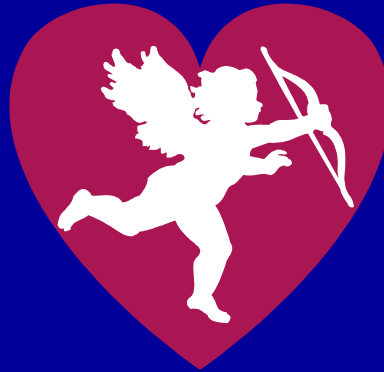


What about mutually welcome sexual advances?

- A genuinely welcome sexual relationship is not sexual harassment.
- The law does not forbid mutually welcome sex.



The Risks of Romance

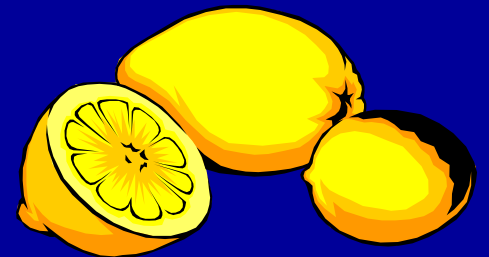


Can I date a student or someone
that I supervise?

It's a bad idea

No UCSC rule or policy forbids dating a coworker,
BUT...

- UC Consensual Relations policy is on the way and in final draft form...it says that you may not date someone that you supervise
- Claims of harassment may also be made by others who believe they that they have been subjected to a hostile environment if they witness sexual conduct or if they are treated unfairly because of the relationship
- What if the relationship sours?



Faculty/student Consensual Relations

It is a violation of the Faculty Code of Conduct for a faculty member to engage “in a romantic or sexual relationship with a student for whom he or she has or should expect to have in the future, academic instructional, evaluative or supervisory responsibility.”

The same prohibitions exist for instructors covered by UC/AFT MOU.

This could be the start of something stupid.



What rights do I have if I am sexually harassed?

The right to confront the harasser and inform him/her that his/her conduct is unwelcome with or without the help of the Title IX/SHO.

The right to file a report or file a formal complaint (Title IX/Sexual Harassment Office (831-459-2462, www2.ucsc.edu/title9-sh/).

The right to information about the investigation and resolution process (Title IX Office or any University Official)

What rights do I have if I am sexually harassed?

The right to obtain confidential counseling through Counseling & Psychological Services (831-459-2628 or the Faculty & Staff Employee Assistance Program (1-866-808-6205).

The right to have the complaint and related information shared only with those who "need to know" for the campus to take your desired action.

The right to be free from retaliation.

What rights do I have if I am accused of sexual harassment?

- You have the right to be free from defamation and invasion of privacy.
- You have the right to due process -- notice and an opportunity to be heard
- You have the right to all protections afforded by University policy and/or collective bargaining agreements.
- The right to obtain confidential counseling through Counseling & Psychological Services (831-459-2628) or the Faculty & Staff Employee Assistance Program (1-866-808-6205)

A few words about retaliation

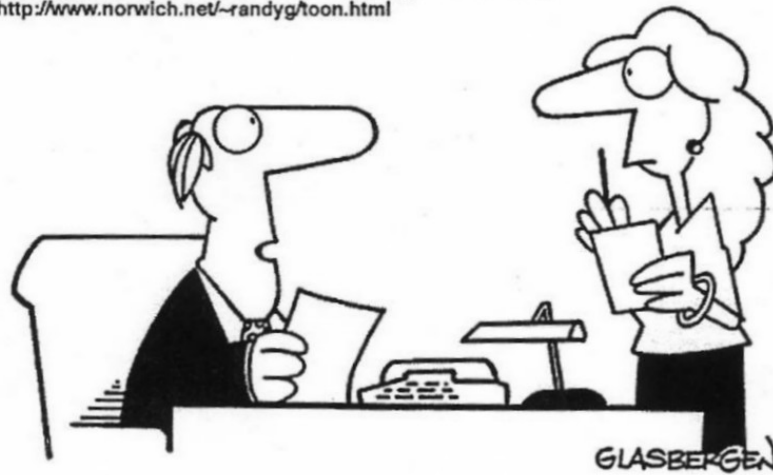
- Protected Activity
 - Complaining about harassment
 - Participating in an investigation
 - Assisting someone in reporting harassment
- Adverse Action
 - Negative evaluation or grade
 - Undesirable schedule or assignment
 - Increased level of supervision or scrutiny
 - Denial of professional development opportunity
 - Ostracism from others
 - Lack of feedback on performance
 - Termination

Retaliation – the link

- Protected activity
- Adverse Action
- Causal link
 - Timing

Be a good example

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<http://www.norwich.net/~randyg/toon.html>



**"I'd like you to keep your ears open,
make sure our office is safe from any
charges of sexual harassment.
Thanks, babe."**

Laura, a student employee comments to Anthony the employee who supervises her work, that she thinks his greatest contribution to the workplace is his sexy smile. On another occasion, she tells Anthony how much she enjoys watching him walk away.

Anthony comes to you for help. He feels confused.

Jose, an undergraduate student, complains to you about racist and inappropriate material presented and discussed in his class on immigration.

Jose asks you to help him figure out what he can say in class and wonders if you would talk to the professor.

Janelle is a senior student athlete. Jimmy Buffet is an assistant coach from another team. He has watched Janelle's games and has asked her out to coffee telling her that he can assist her in her sport after she graduates. She has had coffee with him twice but always turns the conversation to athletic related topics. He has called her at home and asks a lot of personal questions. She has not told Jimmy not to ask so many personal questions but she has come to you because she is uncomfortable and isn't sure what to do.

Devon works for you. Many of his coworkers, men and women, including student employees enjoy engaging in horseplay and playfully call each other “bitch”.

Devon is upset and offended by this conduct, however, he does not communicate this to anyone, and at times, joins in the conduct in order to be seen as “part of the team” by his co-workers. Devon asks you for help.

Rita asks to speak privately with you. She is upset and crying. She tells you that a woman on her residence floor, Susie, frequently brings up Jesus and says that she is trying to “save” the other students on the floor. Rita tells you that she has heard from another person that Susie has posted comments about Rita on her Facebook page. The message says that Rita is going to hell because she had an abortion. And for people to please pray for Rita. Rita wants to know what to do.