WHITTIER LAW SCHOOL
SEXUAL HARASSMENT POLICY

Effective June 1, 1993 Last revised August 2, 1999

School Statement of Philosophy

Whittier Law School is proud of its tradition of a collegial working and educational environment in which all individuals are treated with respect and dignity. Each individual has the right to work and learn in a professional atmosphere which promotes equal opportunities and prohibits discriminatory practices, including sexual harassment. At Whittier Law School sexual harassment, whether verbal, physical or environmental, is unacceptable and will not be tolerated.

Definition of Sexual Harassment

For purposes of this policy, sexual harassment is defined as unwelcome or unwanted conduct of a sexual nature (verbal or physical) when: 1) submission to or rejection of this conduct by an individual is used as a factor in decisions affecting grading, hiring, evaluation, promotion or other aspects of employment or education; or 2) this conduct substantially interferes with an individual's employment or education or creates an intimidating, hostile or offensive work or educational environment.

Examples of sexual harassment may include, but are not limited to: unwanted sexual advances; demands for sexual favors in exchange for favorable treatment or continued employment; verbal abuses of a sexual nature; graphic, verbal commentary of a sexual nature about an individual's body, sexual prowess or sexual deficiencies; leering, whistling, touching, pinching, assault, coerced sexual acts or sexually suggestive or sexually insulting, obscene comments or gestures; display in the workplace of sexually suggestive objects or pictures. However, nothing in this paragraph shall be construed to expand the definitions contained in the previous paragraph of this section.
This behavior is unacceptable in the workplace and in the academic environment itself and in other work-related or school-related settings such as business trips, school-sponsored and business-related social events.

This policy is not intended to reach comments made during the course of classroom discussions where the comments do not constitute clear, pervasive and severe harassment, unless those comments are clearly outside of the realm of the classroom discussion.

**Individuals Covered Under the Policy**

This policy covers all employees (administrators, support staff, staff members, adjunct professors and instructors) faculty members and students. Whittier Law School will not tolerate, condone or allow sexual harassment, whether engaged in by fellow employees, supervisors, faculty, students or by non-employees who conduct business with this school. The school encourages reporting of all incidents of sexual harassment, regardless of who the offender may be.

**Reporting a Complaint**

While Whittier Law School encourages individuals who believe they are being harassed to firmly and promptly notify the offender that his or her behavior is unwelcome, the school also recognizes that power and status disparities between an alleged harasser and a victim may make such a confrontation impossible. In the event that such informal, direct communication between individuals is either ineffective or impossible, the following steps should be followed in reporting a sexual harassment complaint:

1. **Notification of the Title IX Coordinator and Appropriate Staff**

   Individuals who believe they have been subjected to sexual harassment should report the incident to one of the following: the Associate Dean of Academic Affairs, the Associate Dean of Student Services, who is the Title IX Coordinator, responsible for contacting the Dean, or they may report the incident to the person specifically designated by the Dean, the Assistant Dean of Business & Support Services (the "Dean's designate"). The purpose of having several persons to whom complaints may be made is to avoid a situation where an employee or student is faced with complaining to the person, or a close associate of the person who would be the subject of the complaint.

   A staff member also may choose to report the complaint to his/her supervisor. The supervisor may attempt to resolve the complaint in an informal manner; however, no record will be kept of informal resolutions of complaints. A supervisor who has not had special training in dealing with sexual harassment complaints is strongly encouraged to consult one of the three persons listed in the previous paragraph before taking action. If
the complaint cannot be resolved informally, the supervisor shall refer the matter to the Associate Dean, the Title IX Coordinator or the Dean's designate for appropriate investigation under this policy. Except as provided in subsection 2, "Obligation to Report", any complaint not made to one of these three individuals shall not be considered a formal complaint (unless a complaint has been referred to an alternative investigator by the Dean, as provided below).

The Title IX Coordinator may be contacted as follows:

Associate Dean of Student Services
WHITTIER LAW SCHOOL
3333 Harbor Boulevard
Costa Mesa, California 92626-1501
(714) 444-4141, X278

Any complaint made to or referred to the Associate Dean, the Title IX Coordinator or to the Dean's designate shall be considered a formal complaint and shall be investigated pursuant to this policy. A complaint made to any other school employee shall be considered an informal complaint.

In the event that a complaint of sexual harassment is made directly to the Dean, and if the Dean is not the immediate supervisor of the complainant, the Dean should refer the matter to the complainant's supervisor (or the victim's supervisor, if the complainant is not the victim and the alleged harasser is not the supervisor). If the complainant prefers, the complaint shall be referred to the Associate Dean, the Title IX Coordinator or the Dean's designate. If good cause is shown why the complaint should not be referred to one of the three individuals named above, the Dean may, with the consent of the complainant, designate an investigator for the complaint. This procedure is intended to preserve the Dean's role in the appeals process.

Anyone who has observed sexual harassment or retaliation should report it to one of the individuals designated above. A complaint need not be limited to someone who was the target of harassment or retaliation.

2. Obligation to Report

If an individual reports an incident of alleged sexual harassment to a member of the faculty or staff, the latter may have an obligation under law to report the matter to the school administration. In particular, if the faculty or staff member believes that the report constitutes a serious incident of sexual harassment, then the incident must be reported to an appropriate member of the school administration, notwithstanding the refusal of the alleged victim to report the incident.

3. Description of Misconduct
An accurate record of objectionable behavior or misconduct is needed to resolve a formal complaint of sexual harassment. Informal complaints, not reduced to writing, may be resolved informally but no record of such informal resolution shall be kept.

Verbal reports of sexual harassment must be reduced to writing by either the complainant or the individual(s) designated to receive complaints, and be signed by the complainant. Individuals who believe they have been or currently are being harassed should maintain a record of objectionable conduct in order to effectively prepare and corroborate their allegations.

While Whittier Law School encourages individuals to keep written notes in order to accurately record offensive conduct or behavior, the school hereby notifies all people covered by this policy that, in the event that a lawsuit develops from the reported incident, the complainant's written notes may not be considered privileged information, and therefore, may not be confidential.

4. Timeframe for Reporting and Investigating Complaints

Whittier Law School encourages a prompt reporting of complaints so that rapid response and appropriate action may be taken. However, due to the sensitivity of these problems and because of the emotional toll such misconduct may have on the individual, no limited timeframe will be instituted for reporting sexual harassment complaints. Late reporting of complaints will not in and of itself preclude this school from taking remedial action.

When a formal complaint has been made, the person to whom the complaint has been made shall notify the complainant and the victim (if the complainant is not the victim) in writing of the preliminary findings as soon as possible, but in no event later than 20 academic days after the filing of the complaint. If a hearing is to be held, the accused will also receive a copy of the complaint. The hearing will be scheduled no less than five nor more than 20 academic days after notification of the preliminary findings. Written notification of the results of the hearing shall be made to the accused, the victim and the complainant within five academic days after the hearing.

5. Protection Against Retaliation

The school will not in any way retaliate against an individual who makes a report of sexual harassment nor permit any faculty member, administrator, employee or student to do so. Retaliation is a serious violation of this sexual harassment policy and should be reported immediately. Any person found to have retaliated against another individual for reporting sexual harassment will be subject to the same disciplinary action provided for sexual harassment offenders (see "Resolving the Complaint" below).

Investigating the Complaint
Formal investigations will only be made of formal complaints.

1. Confidentiality

Only those who have an immediate need to know, including the individual to whom the report is made, the alleged target of harassment or retaliation, the alleged harasser(s) or retaliator(s) and any witnesses will or may find out the identity of the complainant. All parties contacted in the course of an investigation will be advised that all parties involved in a charge are entitled to respect and that any retaliation or reprisal against an individual who is an alleged target of harassment or retaliation, who has made a complaint or who has provided evidence in connection with a complaint is a separate actionable offense as provided below. Confidentiality will be maintained throughout the investigatory process to the extend practical and appropriate under the circumstances. This applies whether the complaint is formal or informal.

2. Identification of Investigators

Formal complaints will be investigated promptly by the person to whom they are reported. If the person to whom a formal complaint has been reported believes it is more likely than not that sexual harassment or retaliation has occurred, he/she will refer the matter to the appropriate review committee.

3. Investigation Process

In pursuing the investigation, the investigator will try to take the wishes of the complainant, and the victim, if the victim is not the complainant ("complainant/victim") under consideration, but should thoroughly investigate the matter as he/she sees fit, keeping the complainant informed as to the status of the investigation. Steps to be taken in the investigation include:

• Confirm name and position of the complainant/victim.

• Identify the alleged harasser.

• Thoroughly ascertain all facts that explain what happened. Questions should be asked in a non-judgmental manner.

• Determine frequency/type of alleged harassment and, if possible, the dates and locations where alleged harassment occurred.

• Find out if there were witnesses who observed the alleged harassment.

• Ask the individual how he/she responded to the alleged harassment.
• Determine whether the harassed individual consulted anyone else about the alleged harassment and take note of who else knows and their response to the disclosure.

• Develop a thorough understanding of the professional relationship, degree of control and amount of interaction between the alleged harasser and complainant/victim. (Was the person the alleged victim's professor? Does the person control compensation, terms of employment, grades or promotions? Do these individuals work in close proximity to one another and/or on the same projects?).

• Determine whether the alleged harasser has carried out any threats or promises directed at the complainant/victim.

• Ask the complainant/victim if he/she knows of or suspects that there are other individuals who have been harassed by alleged harasser.

• Determine whether the complainant/victim has informed a supervisor of the situation. What response, if any, did complainant/victim receive from these individuals?

• Ask complainant/victim what action he/she would like the school to take as a consequence of the harassment.

• When first interviewing the alleged harasser, remind him/her of the school's policy against retaliation for making a complaint of sexual harassment.

**Resolving the Complaint**

1. **Findings of the Investigator and Informal Resolutions**

   After due investigation, the investigator may attempt to resolve the matter by mutual consent of the accused and the accuser. If the accused is a student, then the disposition may include any sanction provided in Article VII of the Code of Student Conduct.

   Upon completing the investigation of a sexual harassment complaint, the school will communicate its preliminary findings and intended actions to the complainant and alleged harasser.

   If the investigator finds that no harassment occurred, the complainant may appeal this decision to another named investigator. The appeal must be in writing and must be submitted within five academic days of the notification of the finding. The decision of the second investigator will be final.
If the investigator finds that it is probable that harassment occurred, the investigator shall refer the matter to the appropriate review committee. If the investigator determines that it is not probable that harassment occurred, this finding shall be communicated to the complainant in an appropriately sensitive manner, and to the alleged harasser. A confidential record of the complaint and the finding of no probable harassment shall be kept in a confidential file separate from any personnel or student files kept for any other purpose. Unless there is another allegation of harassment against the same accused within six months, all such records concerning the accused shall be destroyed. (Destruction shall be by the person with custody of the records.) No revelation of these records shall be made except as required by law.

Failure to cooperate with a school-sponsored investigation of a sexual harassment charge may be immediately and severely sanctioned.

2. Review Committees

Upon a finding by the investigator that harassment probably occurred, the matter shall be turned over to the appropriate review committee for a hearing. If the allegation is against a student, the appropriate committee shall be the Code of Student Conduct Hearing Board ("Hearing Board"). If the allegation is against a faculty member who is not an adjunct, the appropriate committee shall be a committee appointed for this purpose by the law school Faculty Governance Committee and shall be composed of three members of the tenure track faculty of the law school or two members of the tenure track law faculty and one member of the tenure track faculty of Whittier College. In all other cases, the review committee shall consist of the Associate Dean of Academic Affairs, the Title IX Coordinator (Associate Dean of Student Services) and a faculty member appointed by the Governance Committee. In the event of a recusal, the remaining two members shall choose the third member from the faculty or staff of the law school or Whittier College.

If the review committee is the Hearing Board, it shall conduct its proceedings in accordance with the Code of Student Conduct, except as otherwise provided in this policy. Other review committees shall conform their procedures as nearly as possible to those specified in Article V of the Code of Student Conduct, except as otherwise specified in this policy.

In cases involving faculty members or employees, the Faculty Governance Committee shall make its appointments as soon as feasible.

All proceedings of the review committees shall be closed to the public, except by consent of all parties and the chair of the review committee. The review committee shall consider the facts of each case de novo and is not bound by any findings of the investigator. If the review committee decides in favor of the accused, it shall communicate that fact to the investigator, and a record shall be kept of the matter. Such records shall be destroyed in six months if no new allegations are made against the accused. These records
shall be kept confidential in the manner provided in subsection 1. above. If the review committee finds that harassment occurred, a record shall be kept of the matter as described in "Maintaining a Written Record of the Complaint" below.

3. Sanctions

Individuals found to have engaged in misconduct constituting sexual harassment will be disciplined, up to and including discharge. Appropriate sanctions will be determined by the appropriate hearing body. In addressing incidents of sexual harassment, the school's response, at a minimum, will include reprimanding the offender and preparing a written record. If the harasser is an employee, action may include: referral to counseling, withholding of a promotion, reassignment, temporary suspension without pay, financial penalties or termination. If the harasser is a student, sanctions may include any appropriate sanction enumerated in the Code of Student Conduct including suspension or disqualification from the school. If the harasser is a faculty member, the committee appointed by the Governance Committee will report its findings and recommendations for sanction to the Personnel Committee and the Dean. Sanctions may include any of the sanctions listed for employees above and may also, if appropriate, include a recommendation for revocation of tenure.

Although the school's ability to discipline a non-student or non-employee harasser is limited by the degree of control, if any, that the school has over the alleged harasser, any employee, faculty member or student who has been subjected to sexual harassment should file a complaint and be assured that action will be taken.

4. False Accusations

If an investigation results in a finding that the complainant falsely accused another of sexual harassment knowingly or in a malicious manner, the complainant will be subject to appropriate sanctions, including the possibility of termination, if an employee or faculty member or suspension or disqualification if a student.

5. Appeals Process

If either party directly involved in a sexual harassment investigation is dissatisfied with the outcome or resolution, that individual has the right to appeal the decision. The dissatisfied party should submit his/her written comments in a timely manner to the Dean of the law school, but in no case more than two weeks after communication of the review committee's decision to him/her, unless substantial new evidence, not reasonably available at the time of the hearing, is the basis of the appeal. If the appeal is based on new evidence, the Dean may request that the review committee hold a new hearing upon a finding that (i) the evidence was not reasonably available to the party at the time of the hearing and (ii) the new evidence would be likely to materially affect the outcome of the hearing. If the Dean reverses the decision of the review committee on the grounds of
procedural error, then the review committee shall conduct a new hearing on the matter. If the Dean reverses on the grounds of substantive error, that ruling must be made on the basis of the record before the review committee, except in cases of new evidence not reasonably available at the time of the hearing. In cases of substantive error, the Dean may request that a new hearing be conducted and, if the accused is a staff member or employee, may request that the Governance Committee make new appointments to the review committee for the hearing. If the Dean reverses a finding of no harassment but does not request a new hearing, he/she shall direct the review committee to conduct a hearing on the issue of appropriate sanctions. The new sanctions decision shall be appealable to the Dean. The Dean's decision shall be communicated in writing to the parties and the chair of the review committee. It shall specify the grounds for the decision.

Maintaining a Written Record of the Complaint

Except as otherwise provided in this policy, the school shall maintain a complete written record of each complaint and how it was investigated and resolved; provided, however, that if a review committee or the investigator decides that this policy was not violated then the accused shall have the option to make the decision public. Written records shall be maintained in a confidential manner in the office of the Associate Dean.

Written records in cases where harassment was found will be maintained for five years from the date of the resolution unless new circumstances dictate that the file should be kept for a longer period of time.

Education and Training

All persons charged with investigating or hearing cases of alleged sexual harassment shall receive training about prevention and detection of sexual harassment. A copy of this Sexual Harassment Policy will be distributed to all Whittier Law School faculty, employees and students. A copy of the policy will also be posted in the student lounge and on the faculty and employee bulletin boards. In addition, each new employee, faculty member and student will receive a copy of the policy as part of their orientation materials.

Conclusion

Whittier Law School has developed this policy to ensure that all its employees and students can work and learn in an environment free from sexual harassment. The school will make every effort to ensure that all its students and personnel are familiar with the policy and know that any complaint received will be thoroughly investigated and appropriately resolved.
Effective Date

This policy shall be effective as of June 1, 1993.