

5 Further Readings



Implementing Guidelines of the Anti-Sexual Harassment Act of 1995

2017 Revised Edition

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Implementing Guidelines of the Anti-Sexual Harassment Act of 1995 (RA 7877)

2017 Revised Edition

Pursuant to the provision of Section 4, of Republic Act No. 7877 entitled “Anti-Sexual Harassment Act of 1995,” the following rules and regulations are hereby promulgated for the purpose of prescribing the proper decorum for administrators, faculty, staff, formators and students of Xavier University (XU) and for the resolution, settlement and disposition of cases of sexual harassment.

Part I General Provisions

Rule I Preliminary Matters

Section 1. **Title.** This body of rules and regulations shall be known as the Rules and Regulations for the Implementation of the Anti-Sexual Harassment Act of 1995 in XU or “Rules” for short.

Section 2. **Definition of Terms.** As used in the Rules and Regulations, the following terms shall mean and be understood as indicated below:

1. Administrator - refers to the Vice Presidents, Deans, Assistant/Associate Deans, Directors of Administrative Services/Offices, Department Chairs and Program Directors.
2. Faculty - refers to the teaching personnel of XU, whether on full-time or part-time basis, entrusted with the supervision or training of students.
3. Formators - refer to non-teaching personnel who are responsible for the formation of students.
4. Staff - refers to non-teaching personnel belonging to the administrative staff of the University.
5. Student - refers to any person officially enrolled in the University either as a student in the regular/special course, whether on a credit or audit basis, part-time or full-time or thesis writer.
6. Others - refer to those who are indirectly hired by the University (e.g. maintenance, security and other outsourced personnel).
7. Victim - refers to any University personnel or student against whom an act of sexual harassment has been committed.
8. Committee - refers to the Committee on Decorum and Investigation for cases of Sexual Harassment.

Rule II Coverage

Section 1. **Officials and Employees.** These Rules and Regulations shall apply to any administrator, faculty, formator, staff, including maintenance, security and other outsourced personnel directly or indirectly hired by the University against whom a complaint for sexual harassment is filed.

Section 2. **Students.** These Rules and Regulations shall also apply to any student of the University who complains of sexual harassment.

Section 3. **Others.** These Rules and Regulations shall also apply to those who are indirectly hired by the University and have complaints for sexual harassment against any University personnel.

Rule III Policies

Section 1. **State Policy.** The State shall value the dignity of every individual; enhance the development of its human resources, guarantee full respect for human rights and uphold the dignity of workers, employees, applicants for employment, students or those undergoing training, instruction or education. Towards this end, all forms of sexual harassment in the employment, education or training environment are hereby declared unlawful.

It is therefore the duty of the employer or the head of the work-related, educational or training environment or institution, to prescribe the guidelines on proper decorum in the workplace and educational or training institutions, prevent or deter the commission of acts of sexual harassment and provide the procedures for the resolution, settlement or prosecution of said acts.

Section 2. **School Policy and Objectives.** The mission of Xavier University is to engage in the authentic search for the truth through teaching, formation, research and social outreach; it is dedicated to the renewal, discovery, safeguarding and communication of knowledge and human values; and it trains men and women to think rigorously, so as to act rightly and serve humanity justly. The ethical obligation of the school is to provide an environment that is free from sexual harassment and from fear of its occurrence. The entire educational community suffers when sexual harassment occurs in the academic and work atmosphere. It is therefore, the declared policy of the University that sexual harassment is unacceptable behavior and a violation of the laws of the Philippines and the Rules and Regulations of the University and shall not be tolerated and condoned.

Violations of this policy shall result to disciplinary action up to and including expulsion or termination as the case may be.

All members of the educational community affected by a sexual harassment incident shall be treated with respect and given full opportunity to present their side of the incident.

Rule IV Sexual Harassment

Section 1. **Work, Education or Training-Related Sexual Harassment Defined.** Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, students or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, implicitly or explicitly, regardless of whether the demand, request or requirement for submission is accepted by the object of said act. It can also be committed by a student against another, by way of actions or comments laced with sexual innuendoes. These acts may be

committed by a person against another of the same sex or of the opposite sex.

1. In a work – related or employment environment, sexual harassment is committed when:
 - a) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual or in granting said individual favorable compensation, terms, conditions, promotions or privileges or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;
 - b) The above acts would impair the employee's rights or privileges under existing labor laws; or
 - c) The above acts would result in an intimidating, hostile or offensive environment for the employee.
2. In an education or training environment, sexual harassment is committed:
 - a) Against one who is under the care, custody or supervision of the offender;
 - b) Against one whose education, training, apprenticeship or tutorship is entrusted to the offender;
 - c) When a sexual favor is made as a condition to the giving of a passing grade or the granting of honors and scholarships or the payment of a stipend, allowance or other benefits, privileges or considerations; or
 - d) When the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice.
3. Sexual harassment can be verbal, visual or physical. It can be overt, as in the suggestion that a person could get a higher grade or a raise by submission to the sexual advances.
4. The suggestion or advance need not be direct or explicit. It can be implied from the conduct, circumstances and relationship of the individuals involved.

Section 2. The Educational or Training Institution's Dual Role. The educational or training institution shall, under these Rules, be considered as both a place of study and a place of work.

Section 3. Forms of Sexual Harassment. Sexual harassment may consist and may be classified according to physical, visual, verbal and other forms. These acts may be committed by a male to another male or a female to another female.

Section 4. Basic Types of Sexual Harassment. The following are considered basic types of sexual harassment:

1. *Quid pro quo* sexual harassment occurs when submission to or rejection of unwelcome sexual advances, requests to engage in sexual conduct and other physical and expressive behavior of a sexual nature is used as the basis for employment decisions, giving of passing grades, granting of honors and scholarships or the payment of a stipend, allowance or other benefits, privileges or considerations.

Quid pro quo sexual harassment cases are hereby classified as grave.

2. “Hostile or offensive” sexual harassment occurs when unwelcome sexual conduct unreasonably interferes with an individual’s job performance or creates an intimidating hostile or offensive working or educational environment.

Hostile or offensive sexual harassment cases are hereby classified as grave or less grave depending on the reasonable man/woman standards adopted by the Committee.

Section 5. Reasonable Man/Woman Standard. In view of the fact that the perceptions of men and women may differ as to what constitutes harmless fun and what constitutes offensive conduct, the Committee shall adopt a “reasonable man/woman” rather than a “reasonable person” standard to determine whether or not conduct is unwelcome and sufficiently pervasive to amount to sexual harassment. Under this standard, the proper focus is on the victim’s perspective of the given conduct and thus, in the typical case, a sexual harassment claim is proven if a reasonable man or woman would consider the harassment hostile or offensive.

Section 6. Other Persons Liable. Any person who directs or induces another to commit any act of sexual harassment as herein defined or who cooperates in the commission thereof by another without which it would not have been committed, shall also be held liable under these Rules.

Section 7. Commission of Sexual Harassment outside the Campus. The University and the Committee shall take cognizance of sexual harassment cases committed by the members of its community outside the school campus and beyond classroom hours in any of the following cases:

1. The violation of the act or these rules occurred in connection with an activity sponsored by the institution outside the campus.
2. The violation involves the status of the erring member of the educational community or affects the good name or reputation of the institution.

Rule V Offenses and Corresponding Administrative Sanctions

Section 1. Sexual harassment offenses shall be classified as grave or less grave.

1. **Less Grave Offenses.** Less grave sexual harassment cases are those to which these Rules attach the penalty of suspension. Less Grave Offenses shall include, but are not limited to:
 - a) Visual
 - 1) Malicious leering or ogling; Maliciously looking or staring at a person’s private part or worn undergarments
 - 2) Making offensive hand or body gestures
 - 3) Persistent display of objects, picture, publications or graffiti which are lewd in nature in the workplace or classroom

- 4) Sending sexist/smUTty jokes through text, electronic mail or other similar means causing embarrassment or offense and carried after the offender has been advised that they are offensive or embarrassing or, even without such advice, when they are by nature clearly embarrassing, offensive or vulgar
 - 5) Sending pornographic materials
- b) Verbal
 - 1) Telling sexist/smUTty jokes causing discomfort, embarrassment, offense or insult to the receiver
 - 2) Offensive comments about an individual's body or intimate questions on his/her sexual activities
 - c) Other analogous cases
2. **Grave Offenses.** Grave sexual harassment cases are those to which these rules attach the penalty of either suspension or dismissal. Grave Offenses shall include, but are not limited to:
- a) Physical
 - 1) Unwanted touching of private parts of the body (genitalia, buttocks and breast)
 - 2) Malicious touching; Unnecessarily touching or brushing up against a person's body
 - b) Visual
Intentional exposure of one's private part
 - c) Verbal
Unwelcome sexual flirtation, advances, propositions
 - d) Other Forms
 - 1) Requesting for sexual favor in exchange for employment, promotion, local or foreign travels, favourable working conditions or assignments, a passing grade, the granting of honors or scholarship or the granting of benefits or payment of a stipend or allowance
 - 2) Directing or inducing another to commit any act of sexual harassment as herein defined, or who cooperates in the commission thereof by another without which it would not have been committed
 - e) Other analogous cases

Section 2. The following administrative sanctions shall be imposed on sexual harassment cases:

1. For Less Grave Offenses

- a) First Offense – 15 days suspension without pay; warning for dismissal
- b) Second Offense – Dismissal

2. For Grave Offenses – Dismissal

The counting of offenses shall not reset regardless of time and offended person excluding those which have been dismissed.

Section 3. Sanctions Not a Bar to Court Action. Administrative sanctions shall not be a bar to prosecution in proper courts of unlawful acts of sexual harassment.

Rule VI. Administrative Liabilities

Section 1. Any person who is found guilty of sexual harassment shall, after the investigation, be meted the penalty corresponding to the gravity and seriousness of the offense.

Section 2. If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the higher penalty or count and the rest shall be considered as aggravating circumstances.

Part II Grievance Procedures

Rule I Committee on Decorum and Investigation

Section 1. Committee on Decorum and Investigation. A Committee on Decorum and Investigation is hereby created.

The Committee shall be the sole authorized body who will conduct the investigation of alleged cases constituting sexual harassment.

The Committee shall conduct meetings, as the case may be, with faculty, staff, formators, coaches, trainers, outsourced personnel (e.g. maintenance, security, contractuels) and students to increase understanding and prevent incidents of sexual harassment.

Section 2. Composition. The Committee shall be composed of the following:

- 1. The Director of Student Affairs (Chairman)
- 2. One representative from the Administration
- 3. One representative from the Faculty
- 4. One representative from the Formators
- 5. One representative from the Non-Teaching Staff
- 6. One representative from XUNTELU
- 7. One representative from XUTELFA

8. One representative from High School
9. One representative from Grade School
10. Two representatives from the students

Section 3. **Functions.** The Chair shall receive any complaint of sexual harassment. The Committee shall investigate and hear sexual harassment cases, prepare and submit reports with corresponding recommendations for the decision of the University President.

Section 4. **Other Functions.** The Committee shall develop and implement programs to increase understanding and awareness about sexual harassment. In addition, the Committee shall develop rules in the settlement and disposition of sexual harassment complaints, taking into consideration confidentiality and respect for privacy. The Committee shall also ensure that no complainant shall be subjected to further harassment or retaliation by the respondent.

Rule II Mediation and Resolution Process

It is often the case that a student or any University personnel, believing that he or she may be experiencing a form of sexual harassment will attempt to resolve the situation on one's own or consult with another individual within the University community such as a colleague, supervisor, department or Unit Head, faculty or student advisor, counsellor or a member of the Office of Student Affairs. With the requested aid of an advisor, the individual may attempt to resolve the situation in an informal and unofficial manner. The advisor, acting with discretion and in confidence may assist the individual in reviewing the situation in the context in which it occurred, aid the individual in identifying the problem and review the options for resolution that are available. Such cases may at times be resolved without recourse to the official/formal process.

Rule III Due Process

The University has established mediation and resolution procedures in order to respond immediately to a sexual harassment complaint and to investigate it fully. The procedure is designed to mediate and resolve such complaints promptly and fairly.

Similarly, a formal grievance structure for handling complaints that cannot be resolved through mediation is also available. In general, any individual with supervisory authority who obtains knowledge of an incident of sexual harassment occurring within his or her area is expected to take proper steps immediately to address the situation.

Section 1. **Right to Due Process.** No disciplinary sanction shall be applied upon any erring member of the educational community except for cause and after due process have been observed. In sexual harassment cases, the alleged offender must be afforded due process and as much confidentiality during the process.

Section 2. **Procedural Due Process Standards.** The following procedure must be followed in sexual harassment cases:

1. The alleged offender must be informed in writing of the cause of accusation against him/her. A copy of the complaint is attached to the notice.
2. S/he shall have the right to answer the charges against him/her.
3. S/he shall be informed of the evidence against him/her.
4. S/he shall have right to present evidence in his/her own behalf.
5. The evidence must be considered by the investigating committee in hearing the case.

Rule IV Complaint and Reporting System

Section 1. Who May File. Victim (student, administrator, faculty, staff, formator or others who are directly or indirectly hired by the University) may report or file complaint of sexual harassment. In the case where the victim is a minor, the parent, older siblings or legal guardian may file in his/her stead.

Section 2. Complaint. The complaint must be in writing. It must contain the following:

1. The full name of the complainant
2. The full name of the respondent
3. A specification of the charge or charges
4. A brief statement of the relevant and material facts

If the complaint does not comply with the foregoing, the Chair shall require the complainant to comply in writing within five days from the receipt of notice; otherwise, the complaint shall not be acted upon.

The complainant may submit any evidence s/he possesses, including affidavits of witnesses and pertinent documents. A withdrawal of the complaint made or filed at any stage of the proceedings shall not preclude the Committee from proceeding with the investigation of the case.

Section 3. Respondent's Answer

1. The respondent shall submit his/her reply personally within ten days from the receipt of the complaint.
2. The answer shall be in writing, a copy of which shall be furnished to the complainant. No particular form is required but it is sufficient that the answer contains a specific admission or denial of the charge or charges and a statement of the relevant facts constituting the defense of the respondent.
3. The respondent may submit any evidence s/he possesses, including statements of witnesses and pertinent documents.

Section 4. Complainant's Reply. The complainant may file a reply within five days from the receipt of the respondent's answer.

Section 5. Notification

1. **Of Parents.** The parents and/or guardians of a student filing a complaint for sexual harassment are to be immediately notified. Such parents or guardians may attend the hearings.

2. **Of Parties Concerned.** The Committee Chair is responsible for giving due notice and pertinent materials to the respondent/complainant and parents, as may be required.

Section 6.

Initial Investigation and Preventive Suspension

1. During the initial investigation, when the written statements are supported by strong evidence and the DSA and HRD are morally convinced that the continued stay of the accused during the period of investigation constitutes a distraction to the normal operations of the University or poses a risk or danger to the life or property of other members of the community, the DSA and HRD shall recommend the preventive suspension to the President.
2. The respondent may be placed under preventive suspension for a maximum of 30 days (without pay) during investigation of the charge of grave sexual harassment against him/her.
3. When the case against the respondent who is under preventive suspension has not been decided within 30 days after the date of suspension, s/he may be reinstated or the preventive suspension may be extended subject to the payment of salaries during such extension. If the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of the delay shall not be counted in computing the period of suspension.
4. If the respondent is a Union member, the union shall be informed of the complaint.

Section 7.

Hearing

1. After all the pleas have been submitted, the DSA shall forward the case to the President who shall convene the Committee on Decorum and Investigation (CDI) to conduct further inquiry.
2. The Committee shall conduct a hearing not earlier than five days or later than ten days from the date of receipt of the answer or reply, if any and shall have a 30-day timeline from the filing of the complaint to complete the inquiry. However, the Committee may extend the period of hearing if it deems necessary. Any member of the Committee may propound questions to the parties and their witnesses for clarification.
3. Any party may avail himself/herself of assistance in drafting his/her complaint/response if s/he so desires.
4. A lawyer cannot take part in the proceedings nor represent his/her client during the hearing.
5. No postponement shall be granted except in meritorious cases.

Section 8.

Waiver

1. If the respondent fails to file his/her answer and pertinent documents within the period specified or fails to appear during the hearing, the committee shall deem the respondent to have waived his/her right to be heard and present his/her evidence and the case shall be heard *ex parte*.
2. If the respondent fails to attend the hearing the first time, s/he shall be given a second chance only. If s/he still fails to attend the second time, the committee shall proceed with the investigation and ascertain the liability or innocence of the respondent.

3. Similarly, if the complainant fails to attend the hearing, s/he shall be given a second chance only. Failure to appear the second time shall mean automatic dismissal of the case.

Section 9. Report and Recommendations. The Committee shall submit its report and recommendation to the President through the Human Resource Office. The President's decision shall be executory if no motion for reconsideration is filed within ten days.

Section 10. Motion for Reconsideration. Either party may file a motion for reconsideration to the President within ten days from receipt of the copy of the decision on the basis that new evidence has been discovered which materially affects the decision.

Should any party appeal the decision, the President shall forward the case back to the Committee for reassessment within 30 calendar days. After which, the President's decision shall be final and executory.

Section 11. Confidentiality of Proceedings. The proceedings of all sexual harassment cases shall be private and confidential.

Section 12. Prescriptive Period. Any action on any sexual harassment shall prescribe in three years.

Rule V Final Provisions

Section 1. The Policy. All students and University personnel are held responsible for knowing the policies and regulations contained herein.

Section 2. Separability Clause. If any provision herein is declared invalid, the remainder thereof shall be in full force or effect.

Section 3. Effectivity. These rules and regulations implementing the Anti-Sexual Harassment Act of 1995 in Xavier University shall take effect only after this document is duly approved by the University President.

Section 4. Repealing Clause. The previously promulgated Implementing Guidelines of the Anti-Sexual Harassment Act is hereby repealed and revised accordingly.

Section 5. Amendments. This act may be amended every two years after its effectivity.