

The Open University of Israel (OUI)

Regulations for Prevention of Sexual Harassment at The Open University of Israel

Sexual harassment and inappropriate conduct on sexual premises are offensive to the individual's human dignity, to liberty, privacy and equality between the sexes. These are also criminal acts and cause for filing suit for damages, since ratification of the Law for the Prevention of Sexual Harassment, 5758/1998, as of 28 Elul 5758 – September 20, 1998.

Sexual harassment and annoyance interfere with labor relations, and are contrary to the policy of the Open University of Israel (hereafter, the employer) which finds them unacceptable.

This Regulation is intended to clarify the principles of the instructions of the Law and the Regulations for Prevention of Sexual Harassment (Open University of Israel obligations) 5758/1998. In the event of a contradiction between these Regulations and the Law and regulations according to it, the Law and its regulations rule, and they can be perused as stated in clause 11 of these Regulations.

These Regulations are also intended to clarify that the conduct of intimate relations by agreement, whether temporary or continuous, between individuals between whom there are relations of academic and/or administrative authority and subordination, constitutes a conflict of interests, endangering the educational and training process, creating an inappropriate atmosphere for learning and/or inappropriate work environment, and might result in exploitation of authority.

The Regulations were updated in May 2015.

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Section A: What is sexual harassment and inappropriate conduct?

1. What is sexual harassment?

(a) Although in most cases sexual harassment is enacted by a man towards a woman, sexual harassment can be an act by a man or a woman, towards a man or a woman, and the law covers all of these options.

(b) According to the Law for the Prevention of Sexual Harassment, 5758/1998, sexual harassment is one of five forms of forbidden behavior, as follows:

(1) Extortion in order to perform an act of sexual character

For example: A male supervisor threatening to discharge a female employee if she refuses to have sexual relations with him, or a lecturer threatening to fail a student on exams if he refuses to have sexual relations with him.

(2) An act of indecency.

For example: A male student or lecturer touches a female employee for the sake of sexual stimulation or exposes himself in front of her without her consent.

(3) Repeated offers of a sexual character despite the fact that the person to whom they have been directed has shown that he is not interested in them.

However, in the following cases, it is not necessary to show lack of consent:

(I) Abuse of authority-subordination relations in the workplace.

For example: A director abusing relations of authority-subordination in relation to his secretary.

(II) Abuse of authority-subordination relations, dependency, education or treatment of a minor, one who is helpless or a patient.

For example: An employee abusing authority-subordination relations or education in relation to a student.

(4) Repeated references to the sexuality of a person despite the fact that the person to whom they have been directed has shown that he is not interested in them.

For example: Repeatedly relating to the sexual aspect of the person's appearance, despite his clarifying that this disturbs him.

However, it is not necessary to see lack of consent in cases classified in clause (3) above.

(5) Relating in a disparaging or humiliating manner to the sex or sexual inclination of another whether he has shown that this bothers him or not.

(c) Lack of consent

- (1) As a rule, one must show lack of consent to an act of sexual harassment; this requirement does not hold for the following:
 - (I) Extortion (clause (b) (1) above);
 - (II) Relating in a disparaging or humiliating manner (clause (b) (5) above);
 - (III) Abuse of authority relations in the work place between the harasser and the harassed (regarding the act in clauses (b) (3) and (4) above);
 - (IV) Abuse of authority, educational dependence or treatment relations of a minor, helpless person (regarding acts in clauses (b) (3) and (4) above).
 - (V) Abuse of dependency, in the framework of emotional or medical treatment of the patient by the caregiver (regarding acts in clauses (b) (3) and (4) above).
- (2) Lack of consent is shown verbally or by behavior understood unequivocally.

2. What is not harassment?

Despite the attempt of the legislator to define specifically what sexual harassment is, by nature definitions leave a gray area. For example, it is difficult to define in advance everything that will be considered as derogatory or humiliating in relation to the sex or sexuality of an individual. Nonetheless, the prohibition of sexual harassment is not a prohibition of flirtation in good spirit and by mutual consent.

3. What is inappropriate conduct?

- (a) According to the Law for the Prevention of Sexual Harassment (5758/1998) and the Law for Equal Opportunities in the Workplace (5748/1988), inappropriate conduct is all of the following if the act is conducted in the framework of studies or in the framework of labor relations:
 - (1) A lecturer or someone from the teaching faculty or administrative staff offends a student/employee, when the source of the offense is sexual harassment.
 - (2) A lecturer or someone from the teaching faculty or administrative staff offends a student/employee, when the source of the offense is a complaint about sexual harassment or a legal suit due to inappropriate conduct as stated.
 - (3) A lecturer or someone from the teaching faculty or administrative staff offends a student/employee, when the source of the offense is assistance by the student to another student or assistance by an employee to another employee in relation to the complaint or legal suit regarding inappropriate conduct as stated in this clause.

For example: A female student testified regarding inappropriate conduct towards another student and as a result the lecturer or some other member of the teaching faculty damages her studying conditions or her grades.

- (b) Defending a false complaint/a false claim
In a legal suit as stated in clause (a) (2) or (3) in this clause, the student/employee or the person appointed by the teaching faculty/administrative staff can claim in their defense that the student/employee knew that the suit or complaint were submitted based on incorrect information.

4. What is "the framework of studies?"

According to the Law for the Prevention of Sexual Harassment, sexual harassment or inappropriate conduct in "the framework of studies" holds for each of the following five circumstances:

- (a) At the site of studies
- (b) At another place where activity is conducted by the employer
For example: In an auditorium where the employer and his employees are presenting an exhibit of the employer's products.
- (c) In the course of one's studies
For example: During a trip made in the framework of studies, such as a study trip outside of the study center.
- (d) While taking advantage of authority in the study relations anywhere (such as in the home of the teaching faculty member).
- (e) By one of the online means of communication.

Section B: The results of sexual harassment and annoyance

5. Sexual harassment and inappropriate conduct are not legal

- (a) Sexual harassment and inappropriate conduct of a sexual nature are illegal behaviors, offending human dignity and liberty, privacy and equality among the sexes.
- (b) Sexual harassment and annoyance, according to the Law for the Prevention of Sexual Harassment (5758/1998), and with respect to the matter of inappropriate conduct are also, according to the Law for Equal Opportunities in the Workplace (5748/1988):
 - (1) A criminal offense, which can result in the imprisonment of the harasser or annoyer, or in the imposition of a fine upon him.
 - (2) A civil offense, as a result of which a legal suit may be filed; in such a case, one may sue for financial compensation and other remedies, fixed or temporary, from the harasser or the annoyer, and in some cases from their employer.

6. Sexual harassment and inappropriate conduct are a disciplinary offense

Sexual harassment and annoyance, as per their meaning by the Law for the Prevention of Sexual Harassment are serious disciplinary offenses in every way and manner for which the harasser or annoyer can be punished.

It is hereby emphasized that in the disciplinary regulations for students, it is clarified that sexual harassment will be considered as a serious disciplinary offense and that the student who commits such an offense

or an offense of this sort should expect to be subject to punishments set by the regulations for a disciplinary offense, and this is without diminishing from responsibility in accord with any law.

Section C: The policy and responsibility of the Open University

7. Sexual harassment and inappropriate conduct violate the policy of the Open University of Israel

Sexual harassment and inappropriate conduct of a sexual nature are damaging to study relations and are a violation of the Open University policy which will not accept them.

8. The responsibility of the Open University

(a) In addition to the prohibition holding for the employer, as for any individual, harassment or annoyance, by the law, special responsibility is imposed upon the Open University of Israel for the deeds of its employees and for those appointed by it. The Open University is committed to its employees and its students, as an institution of academic education for adults, as specified in these regulations, to take reasonable measures of three kinds:

- (1) Prevention of sexual harassment and inappropriate conduct (Section D below);
- (2) Effective treatment of sexual harassment or inappropriate conduct that was known to the Open University (Section E below);
- (3) Redressing the offense following sexual harassment or annoyance, or following the submitting of a complaint or suit regarding them (Section F below).

(b) According to the law, an institution for academic education for adults which has not taken measures as stated in this clause with respect to its students will be responsible for the civil offense according to clause 6 of the law.

(c) Appointment of persons responsible for clarifying the matter of the complaint and appointment of person to supervise implementation of the Regulations:

- (1) The president of the Open University will appoint at least two individuals to be responsible for clarifying the matter of a complaint, who will be from a different category of employees, which would include the category of a faculty member who has retired upon reaching pension age.
The role of the responsible individual and his authority will be in accordance with the Regulations, and he will operate independently.
- (2) The president of the Open University will appoint one of those appointed responsible individuals as the supervisor for implementation of these Regulations (hereafter: **"the supervisor"**)

- (3) The appointment of the person responsible or the supervisor will be for a defined period of time which will not be less than three years with the option of extending the appointment for unlimited additional defined periods of time.
- (d) Responsibility of deans, heads of units and academic and administrative departments at The Open University of Israel:
 - (1) Deans and heads of units and departments are responsible for reporting to one of the people appointed responsible immediately should there be suspicion of conduct of sexual harassment and/or inappropriate conduct of which they have become aware, and to extend any assistance that might be needed to the person responsible for handling the matter in order to attend to the information.
 - (2) Deans and heads of units and departments, including those holding offices and/or bearing a position, will not themselves handle cases of suspicion of sexual harassment and/or annoyance, unless requested to take action by the person responsible for handling the matter.
 - (3) Deans and heads of units and departments will update the subunits with respect to the instructions of this clause.

Section D: Preventing sexual harassment and annoyance

9. Preventive steps

- (a) The Open University requires its students and every employee and/or supervisor on its behalf to refrain from acts of sexual harassment and inappropriate conduct in the framework of study relations and to do everything in his/her power in order to prevent such acts, all in order to create a learning environment without sexual harassment and annoyance.
- (b) The Open University requires that every supervisor on its behalf take an active and leading role in preventing sexual harassment and inappropriate conduct in the framework of work relations or studies relations.
- (c) For the information of the students, the Open University requires that every supervisor on its behalf and all of its employees participate in training and explanation programs conducted by it regarding the prohibition of sexual harassment and annoyance, and their prevention. Likewise, the Open University will allow its employees, during working hours, to participate in such programs, organized in reasonable time frames by different parties, such as relevant Workers' Committees or women's organizations, as long as it does not interfere with the proper course of their work.

10. Cooperation with Workers' Committees

It is hereby declared that the Open University will cooperate with Workers' Committees in explanatory and training programs for its employees

regarding the prohibition of sexual harassment and inappropriate conduct and their prevention.

11. Receiving information

(a) An eligible student

(1) In accord with the regulations – to look at every one of the documents specified below:

- Law for Prevention of Sexual Harassment, 5758-1998;
- Regulations for Prevention of Sexual Harassment (The Employer's Obligations), 5758-1998.

These documents can be found in the library, in the department offices and in the offices of the study centers throughout the country.

(2) To get information on information and training activities regarding the prohibition of sexual harassment and annoyance, and their prevention.

(b) An employee may demand to receive material and information of this kind from those responsible who have been appointed for this purpose and whose names appear in clause 14 (a).

Section E: What to do if you have been sexually harassed or annoyed

12. Options for treatment according to the law

(a) If an individual believes that he has been sexually harassed or annoyed, he has three options:

(1) **Handling the matter under the responsibility of the Open University:** If the harassment or the inappropriate conduct occurred in the framework of studies at the Open University, the offended party can submit a complaint to the Open University; the procedure for this matter is specified in Section F.

(2) **Handling the matter under the responsibility of the employer:** If the harassment or the inappropriate conduct occurred in the framework of "work relations," the offended party can submit a complaint to the employer; the procedure for this matter is specified in Section F.

(3) **Criminal procedure:** The offended party can submit a complaint to the Police.

(4) **Civil procedure:** Within three years, the offended party can submit a claim to the court (generally to the regional Labor Court) against:

- The harasser or annoyer himself
- The Open University, if he claims that the Open University is responsible (regarding the responsibility of the Open University – see clause 8 above).

(b) **The connection between the different procedures specified above:**

(1) The party offended by sexual harassment or inappropriate conduct can choose whether or not to initiate one or more of the said procedures.

- (2) The Open University can decide how the criminal or civil procedures will affect the manner of the handling of the matter under its responsibility.

Section F: Complaint procedure at the Open University and handling of the matter under the responsibility of the Open University

13. Who can submit a complaint and under what circumstances?

The complaint may be submitted by one of the following:

- (a) An employee or a student who claims that a supervisor or another employer harassed him sexually or annoyed him, in the framework of labor relations or study relations respectively;
- (b) Another person who claims that an employee of the Open University or a supervisor on its behalf, or a student, harassed him sexually or annoyed him, in the framework of study relations or labor relations respectively.
- (c) Another person on behalf of the person, as stated in clause (a) or (b). In such a case, it is suggested that evidence be brought that the said person agrees to the submitting of the complaint (for example, a letter signed by that same person).

14. To whom does one complain?

- (a) A complaint is to be submitted to the person appointed responsible for handling the matter, for this purpose.

Following are the names of those responsible for inquiring into students' and employees' complaints:

- Prof. Judith Gal-Ezer, senior faculty member, tel: 097782244, Email: galez@openu.ac.il
- Ms. Dina Bracha, Director of Ramat Aviv Campus, tel: 03-7455577/052-3412846, Email: dinab@openu.ac.il
- Dr. Roni Be'er-Marx, member of teaching staff, tel: 09-7781363, Email: ronibe@openu.ac.il

Following are the names of those responsible for inquiring into an employee's complaint:

- Ms. Yona Leshed-Rubinstein, Head of the Publishing House, tel: 09-7781837, Email: yonale@openu.ac.il
- Ms. Miri Levi, Director of Human Resources, tel: 09-7781565, Email: mirilev@openu.ac.il

- (b) If the person appointed responsible for handling the matter is the defendant (the person about whom the complaint is submitted) or has a personal connection to the defendant or to those involved in it, the complaint will be submitted to the substitute for the person appointed responsible for handling the matter (see clause 17 (c) below), or to another person appointed responsible for handling the matter, and in their absence to another director at the Open University (if he submitted the complaint to the director as stated, this director will proceed in accord with

the instructions in this Section as the person appointed responsible for handling the matter is supposed to proceed).

15. Content of the complaint

The complaint will include a description of the incident, including:

- (a) Details of the identities of those involved in the incident, and of witnesses if there were such;
- (b) Details of the location where the incident occurred;
- (c) In the event that it is claimed that an act of sexual harassment was committed, one of the following must be specified;
 - (1) If the person harassed showed the harasser that he was disturbed by the behavior of the latter;
 - (2) If there are dependency, authority or similar relations between the harasser and the harassed.

16. The manner of submitting the complaint

- (a) The complaint may be submitted in writing or orally.
- (b) For a complaint submitted orally,
 - (1) the person appointed responsible for handling the matter will record the content of the complaint;
 - (2) the complainant or whoever submits the complaint on his behalf will sign the content recorded by the person appointed responsible for handling the matter in order to approve it;
 - (3) the person appointed responsible for handling the matter will deliver a copy of the signed recorded report to the complainant.

17. Inquiry into the complaint

- (a) Once a complaint has been received, the person appointed responsible for handling the matter will proceed as follows:
 - (1) will notify the complainant regarding the means of handling of cases of sexual harassment or inappropriate conduct according to the law (E, Clause 12 above);
 - (2) will proceed to inquire into the complaint, and towards that end, among other things, will hear the complainant, the defendant and witnesses if there are any, and will examine all information that reaches him regarding the complaint. The person appointed responsible will write minutes of the discussions he conducts.
- (b) For the purpose of clarification of the complaint, the person responsible will be authorized to require an employee or student of the Open University to deliver any document and/or information regarding the complaint.
- (c) The person appointed responsible for handling the matter will not handle the complaint when he has a personal connection to the matter of the complaint or those involved in it.

The person appointed responsible for handling the matter, when having a personal connection, as stated, will transfer the handling of the matter to another person appointed responsible for handling the matter or to whomever the Open University has appointed to substitute for him, and in the absence of any such persons, to another director at the Open University. If the person appointed responsible

for handling the matter transfers the handling of the matter to another director as stated, this director will proceed as stated that the person appointed responsible for handling the matter should proceed in inquiring into a complaint, in accord with this clause.

- (d) Inquiry into the complaint will be done efficiently and without delay.
- (e) Inquiry into the complaint will be done while taking maximum measures to protect the dignity and privacy of the complainant, the defendant and other witnesses; and among other things-
 - (1) The person appointed responsible for handling the matter will not reveal information which reached him in the course of the inquiry into the complaint, unless he must do so for the purpose of the inquiry itself, according to the law;
 - (2) The person appointed responsible for handling the matter will not ask questions regarding the sexual past of the complainant, a past that is not related to the defendant, and will not relate to information about the sexual past of the complainant, as stated; that stated in this clause will not hold if the person appointed responsible for handling the matter believes that if he does not ask questions or relate as stated, an irreparable injustice will be caused to the defendant.
- (f) The Open University will protect the complainant, in the course of the inquiry into the complaint, from any damages to his terms of employment or studies and the accompanying circumstances as a result of submitting a complaint or from any other damage in the framework of work or studies at the Open University which can disrupt the inquiry process; among other things, the Open University will proceed to distance the defendant from the complainant, to the extent possible, and to the extent that he considers appropriate under the circumstances.
- (g) At the conclusion of the inquiry, without delay, a written summary of the inquiry into the complaint, with accompanying recommendations stating reasons for them, with respect to the following stages, including the matter of each of the issues specified below in clause 18 (a) and (d), will be submitted by the person appointed responsible for handling the matter to the employer.
- (h) In the event that the defendant is employed by a personnel contractor and in effect was employed by the Open University, or the defendant is employed by a contractor providing service to the Open University, the person appointed responsible for handling the matter will submit his summary to the contractor and to the employer.
- (i) When it becomes known to the Open University that there has been an incident of sexual harassment or inappropriate conduct in the framework of studies and/or work at the Open University, and a complaint was not submitted or the complainant withdraws his complaint, the matter will be transferred to the person appointed responsible for handling the matter for inquiry; the incident has been transferred to the person appointed responsible for handling the matter or the incident became known or was reported to the person appointed responsible for handling the matter as stated, the person appointed responsible for handling the matter, to the extent possible,

will conduct an inquiry regarding the incident in accord with this clause, taking the necessary changes into account, and if the complainant has withdrawn his complaint, an inquiry will also be made into the reason for that.

18. The employer's handling of an incident of sexual harassment or annoyance

- (a) Upon receiving the summary and recommendations by the person appointed responsible for handling the matter in accord with clause 17 (g), the Open University will decide without delay and within a period that will not exceed 7 working days, regarding exercising its authority in relation each of the following:
 - (1) Providing instructions to those involved in the incident, including appropriate rules of behavior in the framework of labor or study relations and the accompanying terms, and all in order to prevent the recurrence of the act of sexual harassment or annoyance, or in order to redress the injury caused to the complainant as a result of the harassment or annoyance.
 - (2) Initiating disciplinary procedures as specified in the Disciplinary Regulations and in accord with the relevant disciplinary procedures regarding workers and students at the Open University.
 - (3) Exhausting the disciplinary procedures with the president of the university by agreement of the parties.
 - (4) Not taking any step whatsoever.
- (b) The Open University will proceed without delay to implement the decision in accord with sub-clause (a) and will transfer a notice in writing, specifying reasons for its decision, to the complainant, to the defendant, and to the person appointed responsible for handling the matter; the Open University will allow the complainant and the defendant to view the conclusions by the person appointed responsible for handling the matter and his recommendations.
- (c) The Open University is authorized, following changes in circumstances, to change its decision according to sub-clause (a) or to delay its implementation and transfer the notice specifying reasons for it, in writing, to the complainant, the defendant and the person appointed responsible for handling the matter.
- (d) Despite that stated in this clause, the Open University is authorized to postpone the decision, delay its implementation or to change it, due to disciplinary or legal procedures related to the incident; if it has done so, then:
 - (1) A notice specifying reasons will be transferred to the complainant, to the defendant and to the person appointed responsible for handling the matter;
 - (2) As long as the procedures as stated have not been completed, the Open University will proceed according to the instructions of clause 17 (f);
 - (3) Upon conclusion of the procedures, the Open University will make a decision according to sub-clause (a).

- (e) If the defendant was an employee of a contractor for human resources and was employed in effect by the Open University, or if the defendant was an employee of a service contractor and he was positioned in the university facilities, the Open University and the contractor are authorized to agree among themselves which of them will carry out the instructions of this clause, all of them or in part.

Section G: Miscellaneous

19. The essence of the disciplinary instructions regarding sexual harassment and annoyance

Disciplinary offenses in the context of sexual harassment and inappropriate conduct regarding students and/or employees will be considered severe disciplinary offenses in every way. These offenses are likely to be cause for dismissal of an Open University employee who has carried them out and cause for distancing him from the university permanently in the case of students carrying out such an offense.

Section H: Prohibition of intimate relations among individuals between whom there are authority-subordinate relations

20.

- a. An employee of the Open University who has the authority (hereafter: "**the person with the authority**") will refrain from any intimate relations with a subordinate of his, as long as the academic or administrative authority-subordinate relations between them are in effect.

For the matters of this clause:

"Subordinate" – a student at the university, an employee of the university, including a temporary employee, an employee with a personal contract, an employee of a human resources contractor or any contractor providing services to the Open University.

"Authority relations" – whoever takes part in any activity in which there is any determination, direct or indirect, regarding subordination, whether academic or financial.

- b. Intimate relations as stated were established, then, it is the responsibility of the person with the authority to immediately sever all authority relations with the individual subordinate to him, or to immediately report to the academic/administrative party (as per the matter) who supervises him regarding the matter of these intimate relations, in order that he will proceed to sever the authority relations between them in any reasonable manner while strictly avoiding any damage to the subordinate to the degree possible.

- c. After the aforementioned report has been conveyed to the supervisor, the parties related to the matter will cooperate with him and with the management of the Open University for the purpose of severing the authority relations, while taking into consideration the needs of the subordinate and in coordination with him.
- d. Violation of the instructions of clause 20 a-b above constitute a grave disciplinary offense on the part of the person with the authority and violation of the instructions of clause 20 c constitute a grave disciplinary offense of the supervisor and/or the subordinate in accord with the matter, and that stated in clause 19 of the Regulations will hold for this clause too.
- e. The instructions of this clause hold for married couples and common-law partners, subject to the procedures of the university in matters of employment of family members.

Section I: The Supervisor over implementation of the Regulations

- 21.
- a. In addition to the roles of the supervisor for clarifying a complaint, as specified in these Regulations, the supervisor will be responsible, among other things, for the following:
 - 1) To conduct instructional and explanatory activities dealing with prevention of sexual harassment and annoyance, at least once a year. Activities, as stated, may be done by technological means, such as computerized learning software.
 - 2) To bring to the attention of every new pupil, student and employee, the instructions of the law, regulations and the Regulations (herein), as well as information regarding the manner of submitting a complaint regarding sexual harassment or annoyance.
 - 3) To attend to every individual appointed as responsible for handling matters according to these Regulations participating in an in-service training program of no less than 18 hours, shortly following his appointment.
 - 4) To advise the university's bodies of authority, office holders and heads of units on issues of prevention and handling of sexual harassment at the university.
 - 5) Once a year, to submit a report to the president, the Executive Committee, the Senate, the Authority for Promotion of the Status of Women, and the Commission for Promoting the Status of Women and Gender Equality in the Knesset, with a copy to the Council for Higher Education specifying the various actions taken by the university to prevent sexual harassment in its domain, as well as the number of complaints submitted to the parties responsible for handling them at the university and the manner in which they were handled. The said report will not include bits of information which will allow for identifying the complainant, the defendant, and other persons involved in the complaint.

- 6) Any action required for implementing these Regulations and preventing sexual harassment and inappropriate conduct at The Open University of Israel.

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