

Sexual Harassment: Suggested Policy and Procedures for Handling Complaints

The report that follows, a further revision of a report adopted initially in 1984 and first revised in 1990, was approved by the Association's Committee on Women in the Academic Profession, adopted by the Association's Council in June 1995, and endorsed by the Eighty-first Annual Meeting.

The American Association of University Professors has traditionally opposed every kind of practice that interferes with academic freedom. In recognition of the profession's own responsibility to protect that freedom, moreover, the Association has frequently spoken to the need for colleges and universities to provide appropriate ethical standards and to provide suitable internal procedures to secure their observance.

Recently, national attention has focused on complaints of sexual harassment in higher education. These particular complaints invoke the Association's more general commitment to the maintenance of ethical standards and the academic freedom concerns these standards reflect. In its *Statement on Professional Ethics*, the Association reiterates the ethical responsibility of faculty members to avoid "any exploitation of students for . . . private advantage." The applicability of this general norm to a faculty member's use of institutional position to seek unwanted sexual relations with students (or anyone else vulnerable to the faculty member's authority) is clear.

Similarly, the Association's *Statement on Freedom and Responsibility* states that "intimidation and harassment" are inconsistent with the maintenance of academic freedom on campus. This statement is no less germane if one is being made unwelcome because of sex, rather than because of race, religion, politics, or professional interests. The unprofessional treatment of students and colleagues assuredly extends to sexual discrimination and sexual harassment, as well as to other forms of intimidation.

It is incumbent upon a university or college to make plain the general policy we have just described, with an established procedure for its implementation. Educational programs about sexual harassment may be very useful in preventing its occurrence.¹

The institution should also make clear that sexual harassment and attempted sexual duress are included under the heading of unprofessional conduct threatening to the academic freedom of others. At the same time, it is incumbent upon a university or college to provide due process for those accused of harassment.²

Not all institutions find it sufficient to treat sexual harassment under existing policy and procedures. Some have developed definitions of exceptional detail. Whatever policy is adopted, it should be made clear that the institution does not condone abuses by faculty members of the academic freedom of others, whether in respect to sexual harassment or otherwise, and that genuine internal recourse is available against such misconduct. It should also be made clear that these procedures will provide due process for those accused. As advice to colleges and universities desiring a separate statement of policy on sexual harassment, the Association proposes the following.

Statement of Policy

It is the policy of this institution that no member of the academic community may sexually harass another.³ Sexual advances, requests for sexual favors, and other conduct of a sexual nature constitute sexual harassment when:

1. such advances or requests are made under circumstances implying that one's response might affect educational or personnel decisions that are subject to the influence of the person making the proposal;⁴ or
2. such speech or conduct is directed against another and is either abusive or severely humiliating, or persists despite the objection of the person targeted by the speech or conduct; or
3. such speech or conduct is reasonably regarded as offensive and substantially impairs the academic or work opportunity of students, colleagues, or co-workers. If it takes place in the teaching context, it must also be persistent, pervasive, and not germane to the subject matter. The academic setting is distinct from the workplace in that wide latitude is required for professional judgment in determining the appropriate content and presentation of academic material.⁵

Applicable Procedures

1. *Bringing a Complaint*

- a. Any member of the college or university community who believes that he or she has been the victim of sexual harassment as defined above (the complainant) may bring the matter to the attention of the individual(s) designated to handle complaints of discrimination (such as the grievance officer or another officer on campus sensitive to the issues involved).⁶
- b. The complainant should present the complaint as promptly as possible after the alleged harassment occurs. One consequence of the failure to present a complaint promptly is that it may preclude recourse to legal procedures should the complainant decide to pursue them at a later date.
- c. The initial discussion between the complainant and the grievance officer should be kept confidential, with no written record.
- d. If the complainant, after an initial meeting with the grievance officer, decides to proceed, the complainant should submit a written statement to the grievance officer. Cases involving sexual harassment are particularly sensitive and demand special attention to issues of confidentiality. Dissemination of information relating to the case should be limited, in order that the privacy of all individuals involved is safeguarded as fully as possible.
- e. The grievance officer should inform the alleged offender of the allegation and of the identity of the complainant. A written statement of the complaint should be given to both parties. Every effort should be made to protect the complainant from retaliatory action by those named in the complaint.

2. *Resolution of a Complaint*

- a. Promptly after a complaint is submitted, the grievance officer should initiate whatever steps he or she deems appropriate to effect an informal resolution of the complaint acceptable to both parties.
- b. The complainant, if unsatisfied with the resolution proposed by the grievance officer, should have access to the grievance procedures at the institution upon prompt submission of a written request to the grievance officer.
- c. *Review by a faculty committee of a complaint against a faculty member.*⁷ Members of the faculty review committee should meet to discuss the complaint. Unless the committee concludes that the complaint is without merit, the parties to the dispute should be invited to appear before the committee and to confront any adverse witnesses. The committee may conduct its own informal inquiry, call witnesses, and gather whatever information it deems necessary to assist it in reaching a determination as to the merits of the allegations. Once such a determination has been reached, it should be communicated in writing to both parties and to the grievance officer. A summary of the basis for the determination should be provided to either party upon request.

- d. *Corrective action and/or disciplinary measures.* If the review committee's findings do not lead to a mutually acceptable resolution, and if the committee believes that reasonable cause exists for seeking sanctions against a faculty offender, the grievance officer should forward the recommendation immediately to the chief administrative officer or his or her designate. The chief administrative officer shall then proceed in the manner set forth in Regulations 5 and 7 of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*,⁸ except that the need for a preliminary review will be precluded.

Well-publicized procedures such as these will help to create an atmosphere in which individuals who believe that they are the victims of harassment are assured that their complaints will be dealt with fairly and effectively. It is more important still to create an atmosphere in which instances of sexual harassment are discouraged. Toward this end, all members of the academic community should support the principle that sexual harassment represents a failure in ethical behavior and that sexual exploitation of professional relationships will not be condoned.

Notes

1. The United States Supreme Court has established strong incentives for colleges and universities to create and disseminate policies on sexual harassment. See *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).

2. *Federal Register* 62 (13 March 1997): 12034, at 12045.

3. For the state of the law as it pertains to sexual harassment in the employment context, see the cases cited in n. 1, as well as *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998).

4. See the Association's 1995 "Consensual Relations between Faculty and Students," *AAUP, Policy Documents and Reports*, 10th ed. (Washington, D.C., 2006), 247.

5. See the Association's statement, "On Freedom of Expression and Campus Speech Codes," *ibid.*, 37–38.

6. The grievance officer should counsel the complainant about other avenues for pursuing the complaint, such as state or local government human-rights agencies, the federal Equal Employment Opportunity Commission, or the Office of Civil Rights of the U.S. Department of Education. Deadlines for filing complaints with these agencies should be explained. The grievance officer might also suggest that the complainant seek legal advice.

7. The Association seeks through these guidelines to urge the adoption by colleges and universities of adequate due-process provisions for all members of the academic community—students, faculty, and staff—where there has been an allegation of sexual harassment. It has developed specific review procedures to handle complaints involving faculty members. See "Due Process in Sexual-Harassment Complaints," *Policy Documents and Reports*, 248.

8. *Ibid.*, 26–28.