

THE GEORGE WASHINGTON UNIVERSITY
Washington, D.C.

The Faculty Senate

May 2, 2013

The Faculty Senate will meet on Friday, May 10, 2013, at 2:10 p.m. in the State Room, 1957 E Street, N.W., 7th Floor

AGENDA

1. Call to order
2. Introduction of newly-elected and re-elected Senate members
3. Approval of the minutes of the regular meeting held on April 12, 2013
(minutes to be distributed)
4. **A RESOLUTION TO RECOMMEND ADOPTION OF THE SEXUAL HARASSMENT AND SEXUAL VIOLENCE POLICY AND PROCEDURES (13/1)**
Charles A. Garris, Jr., Chair, Committee on Professional Ethics and Academic Freedom (The Resolution and five attachments are included with this agenda)
5. Introduction of Resolutions
6. Update on the University Budget
Executive Vice President and Treasurer Louis Katz
7. General Business
 - (a) Approval of dates for regular Senate meetings in the 2013-14 Session recommended by the Executive Committee as follows:

September 13, 2013	January 10, 2014
October 11, 2013	February 14, 2014
November 8, 2013	March 14, 2014
December 13, 2013	April 11, 2014
	May 9, 2014
 - (b) Nominations for election of Chairs and members of Faculty Senate Standing Committees for the 2013-14 Session (list to be distributed)
 - (c) Nominations for appointment by the President of the following faculty members to Administrative Committees:

Joint Committee of Faculty and Students: Faculty Co-Chair: Jennifer Frey;
Members: Michael Castleberry, Hartmut Doebel, Vivek Jain,
Megan Leftwich, Kim Roddis, and Alan Wade

Marvin Center Governing Board: Dana Tai Soon Burgess, Carl Gudenius, Leonard Friedman, and Cory Jorgensen

Marvin Center Program Board: Robert Shepherd

Student Grievance Review Committee: Kenneth Harwood, Rebecca Katz, Susan LeLacheur, Megan C. Leftwich, Blaine Parrish, Amira Roess, Richard Ruth, Julie Ryan, Edward Robinson, and Beverly Westerman

University Hearing Board: Roger Fairfax and Jane Thorpe

- (d) Nominations for appointment of faculty members by the Board of Trustees to the following Trustees' Committees:

Committee on Advancement: Joseph J. Cordes

Committee on Academic Affairs: Scheherazade S. Rehman

Committee on External Affairs: Kathryn Newcomer

Committee on Student Affairs: Jennifer Frey

- (e) Annual Reports of Senate Standing Committees
(The Physical Facilities Committee Report is attached)
- (f) Report of the Executive Committee: Scheherazade S. Rehman, Chair
- (g) Provost's Remarks
- (h) Chair's Remarks
8. Brief Statements (and questions)
9. Adjournment

Elizabeth A. Amundson

Elizabeth A. Amundson

Secretary

Attachments:

1. 2013-14 Faculty Senate Membership List
2. Physical Facilities Annual Report
3. Resolution 13/1 and five attachments

**THE GEORGE WASHINGTON UNIVERSITY
THE FACULTY SENATE – 2013-14 SESSION**

Senate meetings for the 2013-14 Session will be held on the second Friday of each month, September through May. Following the May 10, 2013 Senate meeting, the full calendar can be found at this link:

http://www.gwu.edu/%7Efacsen/faculty_senate/Calendar.html

<u>Phone</u>	<u>Ex Officio Member (stated by the Faculty Organization Plan)</u>	
6500	Knapp, Steven* *	President
<u>Phone</u>	<u>Administrative Members (stated by the Faculty Organization Plan)</u>	
6510	Lerman, Steven	Provost & Executive Vice President for Academic Affairs
8393	Amundson, Elizabeth A.	Registrar
	<i>(Appointed by the President):</i>	
741-2880	Akman, Jeffrey S.	Dean, School of Medicine & Health Sciences
6130	Barratt, Marguerite E. (Peg)	Dean, Columbian College of Arts & Sciences
6241	Brown, Michael E.	Dean, Elliott School of International Affairs
6080	Dolling, David S.	Dean, School of Engineering & Applied Science
2083	Eskandarian, Ali	Dean, College of Professional Studies
6161	Feuer, Michael J.	Dean, Graduate School of Education & Human Development
7270	Goldman, Lynn R.	Dean, School of Public Health & Health Services
6380	Guthrie, Doug	Dean, GW School of Business
3725	Johnson, Jean E.	Dean, School of Nursing
6288	Maggs, Gregory E.	Interim Dean, GW Law School
7808	Charnovitz, Steve	Parliamentarian

<u>Phone</u>	<u>Faculty Members</u>	<u>Term Expires</u>	<u>School</u>
7735	Acquaviva, Kimberly**	2014	Nursing
6911	Brand-Ballard, Jeffrey	2015	Columbian College of Arts & Sciences
0987	Brazinsky, Gregg A.**	2014	International Affairs
6788	Briscoe, William	2014	Columbian College of Arts & Sciences
1510	Castleberry, Michael S.	2015	Education & Human Development
5826	Cordes, Joseph J.	2014	Columbian College of Arts & Sciences
0056	Costello, Ellen	2015	Medicine & Health Sciences
7859	Downes, Alexander	2015	International Affairs
0376	Dickinson, Laura	2014	GW Law School
1150	Fairfax, Roger	2015	GW Law School
6781	Galston, Miriam	2015	GW Law School
3646	Garris Jr., Charles A.	2015	Engineering & Applied Science
3158	Harrington, Robert J.**	2014	Engineering & Applied Science
2763	Hawley, Robert	2015	Medicine & Health Sciences
6208	Helgert, Hermann J.	2014	Engineering & Applied Science
7072	Jacobson, Leslie	2015	Columbian College of Arts & Sciences
4179	Katz, Rebecca	2015	Public Health & Health Services
6568	Lantz, Paula**	2014	Public Health & Health Services
5639	Lindahl, Frederick W.	2015	Business
6642	Marotta-Walters, Sylvia**	2014	Education & Human Development
6515	McAleavey, David * *	2014	Columbian College of Arts & Sciences
6823	McDonnell, Karen	2015	Public Health & Health Services
7259	Miller, Barbara	2015	International Affairs

*Executive Committee Chair

** Member of the Executive Committee

THE GEORGE WASHINGTON UNIVERSITY
THE FACULTY SENATE – 2013-14 SESSION

8563	Montague, Eugene	2015	Columbian College of Arts & Sciences
3959	Newcomer, Kathryn	2015	Columbian College of Arts & Sciences
3954	Parsons, Donald O.	2015	Columbian College of Arts & Sciences
6187	Price, Marie	2015	Columbian College of Arts & Sciences
9536	Pulcini, Joyce	2015	Nursing
6813	Rehman, Scheherazade S. *	2015	Business
8515	Roddis, Kim	2015	Engineering & Applied Science
741-2911	Shesser, Robert M.	2014	Medicine & Health Sciences
741-3225	Sidawy, Anton**	2014	Medicine & Health Sciences
741-2234	Simon, Gary L.	2015	Medicine & Health Sciences
2078	Srinivas, Prasad	2015	Business
8154	Stott, Richard	2014	Columbian College of Arts & Sciences
0608	Swaine, Edward T.**	2014	GW Law School
0399	Swiercz, Paul M.	2014	Business
5981	Weiner, Robert	2015	Business
0831	Williams, James H.	2015	Education & Human Development
6755	Yezer, Anthony M.	2014	Columbian College of Arts & Sciences

Updated April 30, 2013

*Executive Committee Chair

** Member of the Executive Committee

The George Washington University
Faculty Senate Committee on Physical Facilities
Final Report

April 22, 2013

During the academic year 2012/13 the Senate Committee on Physical Facilities met on three occasions. In the main it concerned itself with the physical facilities on the main campus, specifically the status of University classrooms, the plans for Audio-Visual and Information Technology and the status of current and planned construction and renovation projects.

At its first meeting Craig Linebaugh, Senior Associate Provost for Academic Operations, provided a summary of currently available classrooms and their capacities. SAVP Linebaugh expressed the urgent need of increasing the number of classrooms of small to medium size and offered several possible plans for reconfiguring existing office space into classrooms in the wake of the SEH coming online and the rededication of parts of several existing buildings. He also pointed out the desirability of improving the efficiency of classroom utilization by the implementation of intelligent scheduling systems.

SAVP Linebaugh also provided a summary of the status of audiovisual and information technology in main campus classrooms and the implementation of SCALE-UP and Colonial Cast classrooms. He pointed out the challenges faced by the staff of Academic Technologies in maintaining obsolete equipment in reasonable working order.

At its second meeting the Committee concerned itself with the status of various construction projects on the main campus and the Virginia Science and Technology Campus, including the SEH, the Public Health Building for the School of Public Health and Health

Services, and the GW Museum. It received a detailed report from Senior Associate Vice President Alicia O'Neil Knight on the current state of various other projects planned or underway.

At its third meeting the committee focused on the development of a plan for improving the audiovisual and information technology infrastructure in main campus classrooms. It solicited comments from affected faculty members and compiled a list of desirable initiatives. Among the major suggested developments are the following:

All classrooms should be equipped with display systems for visual information, including white boards, smart boards and walls painted so as to be usable as whiteboards.

All classrooms should contain projection equipment for computer, iPad or smart phone based presentations.

All classrooms should have high speed access to the Internet, preferably with wireless connectivity.

All classrooms should be equipped with display cameras to replace the overhead projectors.

At the Faculty Senate Meeting on November 9, 2012 Professor Helgert offered the Senate a report on the status of the University construction projects and the plans for improving the audiovisual and information technology infrastructure in the classrooms.

Members: Philippe Bardet, Linda Gallo, Hermann Helgert (Chair), Hugo Junghenn, Michael King, Diana Lipscomb, Randall Packer, Catherine Anderson,

Ex-Officio, non-voting: Elizabeth Amundson, Melia Beheler Alan Greenberg (Senate Executive Committee Liaison), Louis Katz, Alicia O'Neil Knight, Craig Linebaugh.

A RESOLUTION TO RECOMMEND ADOPTION OF THE _SEXUAL HARASSMENT AND SEXUAL VIOLENCE POLICY AND PROCEDURES (13/1)

WHEREAS, the members of the George Washington University Faculty Senate believe that students, faculty, and staff have a right to work and study in an atmosphere free from sexual harassment and sexual violence; and

WHEREAS, the members of the George Washington University Faculty Senate recognize the importance of fostering a campus climate in which sexual harassment and sexual violence is prevented, reported, and adjudicated appropriately and fairly; and

WHEREAS, in Resolution 05/1, adopted on May 13, 2005, The Faculty Senate endorsed the Policy and Procedures for Sexual harassment which was proposed by the *Ad Hoc* University Committee on the Sexual Harassment Policy and Procedures; and,

WHEREAS, in Resolution 05/1, the Faculty Senate determined that the endorsed Sexual Harassment Policy and Procedures satisfied the following objectives: (i) prohibiting sexual harassment by any student, staff member, faculty member, or other persons in the University community; (ii) encouraging reporting of sexual harassment before it becomes severe or pervasive; (iii) identifying persons in the University Administration to whom incidents of sexual harassment may be reported; (iv) prohibiting retaliation against persons who bring sexual harassment complaints; (v) assuring confidentiality to the full extent consistent with the need to resolve complaints of sexual harassment appropriately and fairly; (vi) assuring that allegations of sexual harassment will be properly, thoroughly, and impartially addressed with appropriate regard for the interests of the persons involved and principles of fairness and due process; and, (vii) providing for appropriate corrective action to be taken against persons who have engaged in sexual harassment; and,

WHEREAS, from May 2005 to May 2012, while the Policy and Procedures for Sexual Harassment endorsed by Resolution 05/1 continued in operation, the University Administration did not inform the Faculty Senate of any incidents where the Policy and Procedures were found to have been inadequate

WHEREAS, the Obama administration, under the leadership of Vice President Biden, has taken a very proactive position on Violence Against Women¹ and has instructed the Department of Education, Office for Civil Rights, to provide further guidance to Universities through a “Dear Colleague Letter” under Title IX of the Civil Rights Act of 1964 and its amendments.

WHEREAS, the Dear Colleague Letter states:

“Education has long been recognized as the great equalizer in America. The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students’ right to receive an education free from discrimination and, in the case of sexual violence, is a crime.”

WHEREAS, the “Dear Colleague Letter” further states:

“The statistics on sexual violence are both deeply troubling and a call to action for the nation. A report prepared for the National Institute of Justice found that about 1 in 5 women are victims of completed or attempted sexual assault while in college.³ The report also found that approximately 6.1 percent of males were victims of completed or attempted sexual assault during college.⁴ According to data collected under the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), in 2009, college campuses reported nearly 3,300 forcible sex offenses as defined by the Clery Act.⁵ This problem is not limited to college. During the 2007-2008 school year, there were 800 reported incidents of rape and attempted rape and 3,800 reported incidents of other sexual batteries at public high schools.⁶ Additionally, the likelihood that a woman with intellectual disabilities will be sexually assaulted is estimated to be significantly higher than the general population.⁷ The Department is deeply concerned about this problem and is committed to ensuring that all students feel safe in their school, so that they have the opportunity to benefit fully from the school’s programs and activities.”

And,

1

“Under the leadership of then-Senator Joe Biden, Congress recognized the severity of violence against women and our need for a national strategy with the enactment of the Violence Against Women Act in 1994. This landmark federal legislation’s comprehensive approach to violence against women combined tough new provisions to hold offenders accountable with programs to provide services for the victims of such violence.” [White House Fact Sheet]

WHEREAS, the GWU policy adopted through resolution 05/1 has been determined by attorneys from the U. S. Department of Education, Office for Civil Rights, to be deficient under TITLE IX. Specifically, the policy is required to: (i) convey the kinds of conduct that constitutes sexual harassment, including sexual assault and other forms of sexual violence; (ii) clarify that requiring the parties to mediate is not an option for resolving sexual assault complaints; (iii) provide equitable processes for both parties, including similar and timely access to any information used at a hearing; and, (d) designate reasonable but specific time frames for the major stages of the complaint; and,

WHEREAS, The penalty for failure to comply with Title IX in the most extreme circumstances can include the termination of all or part of an institution's federal funding, including grants, subsidies, Pell grants, scholarships and other program funds from the federal government; and,

WHEREAS, in addition to the loss of federal funds, universities may be sued by those seeking redress for violations of Title IX; and,

WHEREAS, GWU administrators and counsel have expressed very strong concern about jeopardizing all GWU federal funding by deviating from the spirit of the "Dear Colleague Letter" and making the university vulnerable to lawsuits under violations of Title IX; and,

WHEREAS, the Faculty Senate Committee on Professional Ethics and Academic Freedom (PEAF) sent a proposed revision of the policy which was agreeable to the Department of Education to a wide spectrum of the GWU community requesting input which resulted in an excellent and substantive response;

WHEREAS, based on the response from the university community, PEAFF recommended 21 modifications of the policy, from which the administration accepted most of the recommendation and provided satisfactory explanations for others; and,

WHEREAS, the members of the George Washington University Faculty Senate acknowledge the efforts made by the Office of the Vice Provost for Diversity and Inclusion to revise the interim policy based on recommendations provided to them by the Professional Ethics and Academic Freedom Subcommittee on the Interim Policy on Sexual Harassment and Sexual Violence; and

WHEREAS, members of the PEAFF Committee requested four additional changes from the Office of the Vice Provost for Diversity and Inclusion, but those changes were not accepted by that Office:

WHEREAS, the PEAFC Committee has concluded that those four requested changes, as described in the second resolving clause of this Resolution, are essential to guarantee fundamental fairness in the operation of the proposed SEXUAL HARASSMENT AND SEXUAL VIOLENCE POLICY AND PROCEDURES while allowing the University to comply fully with the "Dear Colleague Letter";

WHEREAS, the Faculty Senate recognizes that, as provided in Article IX.A. of the *Faculty Code*, the Faculty Senate plays an essential role in the governance of the University by participating with the Administration and the Board of Trustees in "the formulation of policy and planning decisions affecting the quality of education and life at the University," including policies such as the proposed SEXUAL HARASSMENT AND SEXUAL VIOLENCE POLICY AND PROCEDURES

NOW, THEREFORE, BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY:

1. Recommends that the "SEXUAL HARASSMENT AND SEXUAL VIOLENCE POLICY AND PROCEDURES" should be adopted as University policy; and,
2. The Faculty express concern that the following elements are lacking in the policy:
 - a. The policy does not contain a provision requiring the University to send written notices of the Policy and Procedures at least annually to all University stakeholders (including faculty, staff, students and parents of undergraduate students), including information relevant to the issue of consent and personal responsibility for acts committed while under the influence of alcohol or drugs;
 - b. The policy does not include a provision defining the "preponderance of the evidence" burden of proof as requiring "substantial evidence showing that it is more likely than not that a fact is true or an event occurred."
 - c. The policy does not include a provision requiring that, in hearings for sexual violence cases, the University shall make arrangements so that either (i) the parties, testifying witnesses and hearing panel members can see and hear each other through the use of live videoconferencing facilities, or (b) the parties, testifying witnesses and hearing panel members are present in the same room and can hear each other, with the Complainant having the right to testify behind a screen; and

d. The policy does not include a provision requiring the Administration to provide to the Respondent known exculpatory evidence that is in the Administration's possession.

ATTACHMENTS:

- i. "SEXUAL HARASSMENT AND SEXUAL VIOLENCE POLICY AND PROCEDURES" .
- ii. "Dear Colleague Letter" of Office for Civil Rights, Department of Education, April 4, 2011.
- iii. Comments of Professor Theodore Barnhill, SB
- iv. Comments of Professor Nicholas Kyriakopoulos, SEAS
- v. Comments of Professor Arthur Wilmarth, Law

Faculty Senate Committee on Professional Ethics and Academic Freedom

Charles A. Garris, Jr., Chair

May 2, 2013



THE GEORGE
WASHINGTON
UNIVERSITY
WASHINGTON DC

Responsible University Official:

Responsible Office:

Origination Date: April 1999

SEXUAL HARASSMENT AND SEXUAL VIOLENCE POLICY AND PROCEDURES

Policy Statement

The George Washington University is committed to maintaining a positive climate for study and work, in which individuals are judged solely on relevant factors, such as ability and performance, and can pursue their activities in an atmosphere that is free from coercion, intimidation and violence. The university mission statement provides that the university "values a dynamic, student-focused community stimulated by cultural and intellectual diversity and built upon a foundation of integrity, creativity, and openness to exploration of new ideas." The university is committed to free inquiry, free expression, and the vigorous discussion and debate on which advancement of its mission depends. Sexual harassment is destructive of such a climate and will not be tolerated in the university community.

Reason for Policy

This policy document informs members of the university community about sexual harassment, including sexual violence, and explains what they can do if they encounter or observe it in connection with any university program or activity.

Who Needs to Know This Policy

Faculty, staff, students, visitors to GW campuses, and participants in university programs and activities, both on campus and in other locations.

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Policy/Procedures

This policy document is intended to inform members of the university community, including guests and visitors, about sexual harassment, including sexual violence, and the procedures they should follow if they encounter or observe it. The university prohibits sexual harassment by any student, staff member, faculty member, and others in the university community; encourages reporting of sexual harassment before it becomes severe or pervasive; identifies persons to whom sexual harassment may be reported; prohibits retaliation against persons who bring sexual harassment complaints; assures confidentiality to the extent possible consistent with the need to address and resolve harassment appropriately; assures all members of the university community that each complaint of sexual harassment will receive an adequate, reliable, and impartial investigation; and provides for appropriate corrective action.

The ultimate goal is to prevent sexual harassment through education and the development of a sense of community. However, if sexual harassment occurs, the university will respond firmly and fairly, and in a timely manner. As befits an academic community, the university's approach is to consider problems within an informal framework when appropriate, but to make formal procedures available for use when necessary.

What Sexual Harassment Is

The university has adopted the following definition of sexual harassment based on guidance from the Equal Employment Opportunity Commission and Department of Education:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) Submission to such conduct is explicitly or implicitly made a term or condition of academic participation or activity, educational advancement, or employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions that affect the individual; (3) such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance or limiting participation in university programs or activities; or (4) the intent or effect of such conduct is to create an intimidating, hostile, or offensive academic or work environment. Whether conduct is sexual harassment does not depend on the biological gender of either the victim or the harasser. Sexual harassment also includes sexual violence, which consists of physical sexual acts (including, for example, sexual assault) that are perpetrated against a person's will or without a person's consent, or when a person is incapable of giving consent due to the ingestion of drugs or alcohol, or due to the person's intellectual or other disability.

Depending on the particular circumstances, sexual harassment may include, but is not limited to, the following:

1. Actual or attempted rape, sexual assault, sexual battery or molestation, without consent or against another's will, whether achieved through force, threat or intimidation, or advantage gained by the aggrieved party's mental or physical incapacity or impairment.
2. Non-consensual or forcible sexual touching.
3. Offering or implying an employment-related reward (such as a promotion, raise, or different work assignment) or an education-related reward (such as a better grade, a letter of recommendation, favorable treatment in the classroom, assistance in obtaining employment, grants or fellowships, or admission to any education program or activity) in exchange for sexual favors or submission to sexual conduct.
4. Threatening or taking a negative employment action (such as termination, demotion, denial of an employee benefit or privilege, or change in working conditions) or negative educational action (such as giving an unfair grade, withholding a letter of recommendation, or withholding assistance with any educational activity) or intentionally making the individual's job or academic work more difficult because submission to sexual conduct is rejected.
5. Unwelcome sexual advances, repeated propositions or requests for a sexual relationship to an individual who has previously indicated that such conduct is not wanted, unwelcome physical contact of a sexual nature, or sexual gestures, noises, remarks, jokes, questions, or comments about a person's sexuality that are so severe, persistent or pervasive that they would reasonably be perceived as creating a hostile or abusive work or educational environment. A single incident involving severe misconduct may rise to the level of harassment.

This policy addresses only sexual harassment, including sexual violence, and does not address other forms of gender discrimination. For other university policies dealing with gender discrimination, contact the university's Office of Equal Employment Opportunity and Affirmative Action, Suite 320, 2033 K Street, NW, Washington, DC 20052.

Nothing in this policy limits academic freedom, guaranteed by the Faculty Code, which is a pre-eminent value of the university. This policy shall not be interpreted to abridge academic freedom. Accordingly, in an academic setting expression that is reasonably designed or reasonably intended to contribute to academic inquiry, education or debate on issues of public concern shall not be construed as sexual harassment.

A person who commits sexual harassment in violation of this policy will be subject to disciplinary action, up to and including expulsion or termination.

Dissemination of This Policy

The university is committed to preventing and remedying sexual harassment of students, faculty, and staff. To that end, the university has appointed individuals to oversee

compliance with applicable federal and local laws, including Title IX, as well as this policy and the procedures described herein. The Title IX Coordinator will oversee dissemination of this policy and these procedures to the university community. In addition, the university will sponsor programs to inform students, faculty, and staff about sexual harassment and the problems it causes; advise members of the university community of their rights and responsibilities under this policy and these procedures; and train personnel responsible for the administration of the policy and procedures. In particular, the university shall ensure that the Title IX Coordinator, Deputy Title IX Coordinator, and Assistant Title IX Coordinators and other personnel involved in responding to allegations of sexual harassment receive formal training by one or more individuals with appropriate expertise.

Consensual Relationships

Relationships that are welcomed by the parties do not entail sexual harassment, and are beyond the scope of this policy. Whether a relationship is in fact welcomed will be gauged according to the circumstances; special risks are involved when one party – whether a faculty member, staff member or student – is in a position to evaluate or exercise authority over the other. It is inappropriate for a faculty member or teaching assistant to have a sexual relationship with a student who is currently in his/her course or is subject to his/her supervision or evaluation. It is similarly inappropriate for someone in a supervisory position to have a sexual relationship with an individual in a subordinate position. Even when both parties previously consented to a sexual relationship, a charge of sexual harassment may be based on subsequent conduct that one of them does not welcome. Members of the university community are cautioned that consensual relationships can in some circumstances entail abuse of authority, conflict of interest, or other adverse consequences that may be addressed in accordance with pertinent university policy and practice.

Addressing Sexual Harassment

Members of the university community who believe they have been sexually harassed may seek redress through one or more of the following means: consultation, administrative review, and formal hearing. Often, concerns can be resolved through consultation or after administrative review. If the matter is not satisfactorily resolved using these procedures, a formal hearing may be initiated.

Members of the university community who experience one or more instances of conduct of a sexual nature that may be inappropriate (even if the person is unsure whether the conduct constitutes sexual harassment) may discuss the matter with the person who has engaged in the behavior, and are encouraged to discuss it with the appropriate department chair, dean, or staff supervisor, the Dean of Students, the Title IX Coordinator, the Deputy Title IX Coordinator, or an Assistant Title IX Coordinator (see the list under Contacts on page 7). However, in cases involving allegations of sexual violence, discussion with the person who engaged in the behavior is discouraged. Anyone who

observes conduct of this nature directed at other persons should bring it to the attention of one or more of the university officials listed in this paragraph.

I. Consultation

Any university official or individual with responsibilities under this policy who receives a report of possible sexual harassment shall advise the reporting person of the opportunity to consult with the Sexual Harassment Response Coordinator (“Response Coordinator”). During consultation, the person who alleges sexual harassment will be provided with a copy of the university’s Sexual Harassment and Sexual Violence Policy and Procedures, have an opportunity to ask questions about them, and obtain assistance in developing strategies to deal with the matter. See Appendix A.

II. Administrative Review

Any member of the university community who believes that he or she has been sexually harassed by a university employee, student or third party in connection with any university program or activity may file a complaint against that person. The allegations will be carefully investigated and an effort will be made to resolve the complaint in accordance with the procedures set forth in Appendix B.

III. Formal Hearing Procedure

The formal hearing procedure set forth in Appendix C is available when the administrative review procedure fails to resolve a complaint of sexual harassment. The person who made the complaint (“Complainant”) or a responsible university official may initiate a formal hearing against the person who allegedly engaged in sexual harassment (“Respondent”). When both the Complainant and the Respondent are students, the procedures set forth in Section 1 of Appendix C will govern the formal hearing procedure. In all other cases the procedures set forth in Section 2 of Appendix C will govern the formal hearing procedure.

Outcomes

When allegations of sexual harassment are addressed through the administrative review procedure or the formal hearing procedure, both parties will receive concurrent written notice of the outcome. When either procedure results in a determination that sexual harassment occurred, the findings and recommendations shall be referred to the appropriate university official for imposition of corrective action and sanctions as appropriate.

In cases involving Respondents who are students, any such corrective action or sanctions shall be determined by the Office of Student Rights and Responsibilities. No final sanction may be imposed in such cases based only on administrative review unless the Respondent has consented in writing. In cases involving suspension or expulsion, the

Senior Associate Provost and Dean of Student Affairs, in concurrence with the Provost and Executive Vice President for Academic Affairs, will impose sanctions. In cases involving GW faculty and staff, no final sanction except a written reprimand may be imposed based on an administrative review without the Respondent's written consent. Corrective actions are non-punitive measures that may include, without limitation, training, guidance, adjustment of supervisory or evaluative responsibilities (including administrative leave with full pay and benefits), and measures to protect health and safety. A range of relevant considerations should be taken into account in determining the extent of sanctions, such as the severity of the offense, the effect of the offense on the victim and on the university community, and the Respondent's record of past offenses, if any. Sanctions may include, but are not limited to, a written reprimand, disciplinary probation, suspension, expulsion, or termination of employment; provided that a tenured faculty member may not be dismissed except in accordance with the procedures set forth in Section F of the Procedures for Implementation of the [Faculty Code](#). The university may impose interim corrective action at any time, if doing so reasonably appears required to protect a member of the university community.

Redress of Disciplinary Action

Nothing in this policy or these procedures shall be deemed to revoke any right that any member of the GW faculty or staff may have to seek redress of a disciplinary action, such as a faculty member's right to maintain a grievance under the [Faculty Code](#).

Confidentiality

Investigators and decision-makers will strive to maintain confidentiality to the full extent appropriate, consistent with applicable law and the need to resolve matters effectively and fairly and protect the university community. All persons involved in the proceedings will be advised of the need for discretion and confidentiality. Inappropriate breaches of confidentiality may result in disciplinary action.

In some cases Complainants may request that their names be kept confidential during the consultation (Appendix A) and administrative review (Appendix B) stages. The university will do so as long as it does not prevent the university from responding effectively to the incident and protecting other members of the campus community. If the Respondent is a student the Complainant may choose to reiterate his or her request for confidentiality at the formal hearing stage (Appendix C), but will be told that the university's ability to proceed with the hearing may be limited as a result. If the Respondent is a member of the GW faculty or staff, the Complainant whose name has not been released earlier will be required to permit release of such information to the Respondent in order for the Complainant to initiate the formal hearing procedure.

Retaliation

Retaliation against a person who reports or complains of sexual harassment or provides information in a sexual harassment investigation or proceeding is prohibited by law.

Allegations of retaliation will be investigated and may result in disciplinary action, up to and including termination or expulsion.

False Claims

A person who knowingly makes false allegations of sexual harassment, or who knowingly provides false information in a sexual harassment investigation or proceeding, will be subject to disciplinary action, up to and including termination or expulsion.

Time Limits

The university aims to administer this policy and these procedures in an equitable and timely way. The time limits set forth herein may be extended for good cause, upon request. Persons making allegations of sexual harassment are encouraged to come forward without undue delay.

Interpretation of Policy

The Office of the Senior Vice President and General Counsel (202-994-6503) is available to provide advice on questions regarding interpretation of this policy and the procedures described herein.

Website Address

[GW University Policies](#)

Contacts

Title IX Coordinator:

Vice Provost for Diversity and Inclusion (202) 994-7440 diverse@gwu.edu
Rice Hall, Suite 813
2121 Eye Street, NW
Washington, D.C. 20052

Deputy Title IX Coordinator:

Sexual Harassment Response Coordinator (202) 994-2657 taraw@gwu.edu
Rice Hall, Suite 403
2121 Eye Street, NW
Washington, D.C. 20052

Assistant Title IX Coordinators:

Assistant Vice Provost, Faculty Recruitment & Personnel Relations (202) 994-6783 abwool@gwu.edu

SEXUAL HARASSMENT AND SEXUAL VIOLENCE POLICY AND PROCEDURES

Associate Dean of Students, Administrative
Services & Senior Advisor (202) 994-6710 kermit@gwu.edu
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Related Information

[Code of Student Conduct](#)
[Equal Employment Opportunity/Affirmative Action Statement](#)
[Non-Retaliation Policy](#)
[Faculty Code](#)
[Staff grievance procedures](#)

Appendices

Appendix A Consultation Procedure
Appendix B Administrative Review
Appendix C Formal Hearing Procedure

Who Approved This Policy

Louis Katz, Executive Vice President and Treasurer
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Beth Nolan, Senior Vice President and General Counsel

History/Revision Dates

Origination Date: April 1999
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Next Review Date: June 2015

Appendix A

Consultation Procedure

1. The consultation consists of one or more voluntary meetings between the Response Coordinator and the person who requests the consultation based on one or more instances of a sexual nature that may be inappropriate.
2. During the consultation, a copy of the Sexual Harassment and Sexual Violence Policy and Procedures will be provided and questions about them will be answered. Other matters may also be addressed or clarified, and the person alleging sexual harassment will be offered assistance in developing strategies to deal with the matter, including counseling. The outcome of the consultation may be that no further action is necessary, or the administrative review procedure under Appendix B may be initiated.
3. A record of the consultation will be prepared and maintained. The record will be considered confidential to the full extent consistent with fairness, applicable law, and the university's need to take preventive and corrective action (see also "Confidentiality" above). If the record of the consultation includes an allegation of sexual harassment against a person named in the record, the record will not be disclosed to any person other than the Response Coordinator, the Title IX Coordinator, and the Office of the Senior Vice President and General Counsel, unless the person so named is notified in writing. Absent compelling reason to the contrary, any such notification shall precede the disclosure.
4. When the Response Coordinator has reason to believe that criminal conduct may have occurred or that action is necessary to protect the health or safety of any individual or to comply with applicable law, the university may, as the Office of the Senior Vice President and General Counsel determines, refer the matter to appropriate authorities.
5. Persons who believe they have been subjected to or who otherwise have observed sexual harassment are encouraged to seek assistance from the university through these procedures promptly. As discussed in Appendix B, a person who wishes to file a complaint alleging sexual harassment and invoke administrative review ordinarily must do so within two years of when the harassment occurred and before the individual accused graduates, otherwise ceases to be an enrolled student, or leaves the university's employ. ,

Appendix B

Administrative Review

1. Following consultation, or if consultation is not sought, a member of the university community who believes that he or she has been sexually harassed by a university employee or student or third party may file a complaint against the person believed to have engaged in the harassing conduct.
2. Complaints of sexual harassment by students against other students must be filed with the GW Office of Student Rights and Responsibilities (“SRR”), 2129 I Street, NW, Washington, DC 20052, Tel. (202) 994-6758. All other complaints must be filed with the Response Coordinator, Suite 403, 2121 Eye Street, NW, Washington, DC 20052, Tel. (202) 994-2657. Complaints must be filed within two years of when the harassment occurred, unless the person alleging sexual harassment (the “Complainant”) can demonstrate good cause to the SRR or Response Coordinator why the complaint could not have been filed within this period. The time to file a complaint will also end when the individual accused graduates or otherwise ceases to be an enrolled student, or leaves the university’s employ.
3. To file a complaint, the Complainant will be asked to provide a signed statement containing a factual account of the alleged harassment. The SRR or Response Coordinator may assist the Complainant in preparing this statement. If the Complainant declines to provide a signed statement, a written summary of the Complainant’s oral allegations may be prepared.
4. After the complaint is filed, the person who is accused of harassment (the “Respondent”) will be provided with a written summary of the material allegations. The Title IX Coordinator will also be informed that the complaint has been filed and provided with the Complainant’s signed statement or written summary.
5. The SRR or Response Coordinator will conduct an adequate, reliable and impartial investigation of the alleged harassment, typically within 30 days. Depending on the circumstances, the SRR or Response Coordinator may work with the GW Police Department to conduct the investigation and consult with other university offices with respect to it. The SRR or Response Coordinator will provide the Complainant and the Respondent with similar and timely opportunities to identify witnesses and provide evidence relevant to the complaint, and will advise the parties and any persons interviewed or notified about the alleged harassment and of the need for discretion and confidentiality.
6. While the investigation is underway, the university may take interim action in response to the complaint, if appropriate. If the person accused is a student, this action could include interim suspension from the university or removal from university housing. (See Section 7 of the Code of Student Conduct for procedures relating to interim suspension.) Steps may also be taken to allow the person making the complaint to minimize or avoid contact with the accused person, change academic

or living arrangements for one or both parties, or provide the complaining person with access to counseling, medical or academic support services.

7. After the investigation is completed, the SRR or Response Coordinator will attempt to determine whether an acceptable resolution of the matter may be achieved informally. If the matter involves a Respondent who is a member of the GW faculty or staff, the Response Coordinator will also discuss the matter with the university official who would be responsible for recommending any corrective and/or disciplinary action against the Respondent (“Responsible University Official”) and that person will assist in the effort to determine whether the matter may be resolved informally.
8. Informal resolution of a matter could involve corrective action and/or sanctions against the Respondent, or it could involve no further action. Informal resolution of a matter does not involve face-to-face mediation between the parties and either party may end his or her participation at any time. In cases involving Respondents who are members of the GW faculty or staff, no final sanction except a written reprimand may be taken based on an administrative review procedure without the Respondent’s written consent. In cases involving Respondents who are GW students, no disciplinary sanction may be imposed based on an administrative review procedure without the Respondent’s written consent. Any corrective action or sanction imposed by a Responsible University Official must be within his or her discretion and consistent with his or her authority. The university may also take interim corrective action during this period if doing so reasonably appears to be required to protect a member of the university community.
9. The SRR or Responsible University Official will provide concurrent written notice to the Complainant and Respondent of the outcome of the administrative review procedure, subject to any legal restrictions regarding confidentiality. (See section in Policy entitled “Confidentiality” for limitations on disclosure of information.)
10. If the matter is not resolved informally, the SRR or Responsible University Official shall determine whether to initiate a formal hearing against the Respondent as set forth in Appendix C.
11. If the matter is not resolved informally, and the SRR or Responsible University Official decides not to initiate a formal hearing against the Respondent, or the matter is resolved informally and the Complainant is dissatisfied with that resolution, the Complainant may request further review as set forth in Appendix C.

Appendix C

Formal Hearing Procedure

Section 1 – Students

1. If a student’s complaint of sexual harassment against another student is not resolved through the administrative review procedure, the SRR will determine, based on the complaint and the investigation, whether to charge the Respondent with violating the GW Code of Student Conduct (the “Code”). SRR will make this determination within 30 days of when it completes the administrative review procedure, and it will communicate its decision in writing to the Complainant and the Respondent. Upon request, SRR will also provide both parties with access to witness statements and documents obtained in connection with the investigation that are relevant to the complaint, to the extent permitted by law.
2. If a student’s complaint of sexual harassment against another student is not resolved through the administrative review procedure, and the SRR decides not to charge the Respondent with violating the Code, or the student’s complaint of sexual harassment against another student is resolved through the administrative review procedure, and the Complainant is dissatisfied with that resolution, the Complainant may appeal that decision or resolution by submitting a letter that fully explains all reasons for the appeal to the Response Coordinator, 403 Rice Hall, 2121 I Street, NW, Washington, DC 20052. The appeal must be filed within 5 business days of the date the Complainant receives from the SRR notice of the outcome of the administrative review procedure. The SRR will provide the appeal to the Respondent, who shall be permitted to file a response to the appeal within 5 business days of when the appeal is received. The Response Coordinator will evaluate the appeal and notify the Complainant and Respondent in writing whether it has been granted or denied. This determination by the Response Coordinator will generally be made within 20 business days of when the appeal has been received. That determination is final and may not be further appealed.
3. Students should be aware that when the Response Coordinator grants an appeal of a decision by the SRR not to charge the other student with violating the Code it does not mean that the student has violated the Code or will be sanctioned. Instead, it means that a charge will now be made and disciplinary proceedings will be conducted on that charge. The student will only be found in violation if the hearing board or conference officer is persuaded by a preponderance of the evidence that the student has committed the violation charged.
4. If the SRR charges the Respondent with violating the prohibitions in the Code on sexual violence and/or sexual misconduct, *see* Sections 11(a) and (b) of the

Code, disciplinary proceedings will be commenced against that student according to the procedures outlined in the Code and in this Section of the Sexual Harassment and Sexual Harassment Policy and Procedures. If there is any conflict between the procedures outlined in the Code and the procedures outlined in the Sexual Harassment and Sexual Violence Policy and Procedures, the latter will govern.

5. In cases where a student has filed a sexual harassment complaint against another student, the Complainant may choose to be a party in the disciplinary hearing or conference conducted on that charge. In these cases, the Complainant will be given a timely opportunity, similar to the Respondent's, to present and question other witnesses and offer relevant evidence to the hearing board or conference officer.
6. In cases involving charges of sexual violence by one student against another student, neither the Complainant nor the Respondent will be permitted to question the other directly. Instead, any questions that the Complainant or the Respondent want to ask the other must be written out and provided to the presiding officer, who will read the questions while the party who provided the questions listens from a separate location. Relevant and probative follow-up questions will also be allowed.
7. In cases involving charges of sexual violence and/or sexual misconduct, the parties will have similar and timely access to witness statements and other documents gathered in connection with the investigation of the complaint that the SRR intends to use in the hearing or conference, to the extent permitted by law. SRR will inform the Complainant and Respondent in writing of the outcome of the hearing or conference, and any sanction that has been imposed that relates directly to the Complainant.
8. As a general practice the SRR attempts to complete disciplinary proceedings on charges of sexual violence and/or sexual misconduct within 45 days. However, completing these proceedings may take longer in individual cases, depending on the circumstances involved, the complexity of the facts, the availability of witnesses, and other factors.
9. The parties will have a similar and timely opportunity to appeal the outcome of the disciplinary hearing or conference, to the extent permitted by law, although not the sanction imposed, if any. Appeals will be conducted according to the procedure outlined in Sections 32 through 35 of the Code of Student Conduct. As a general practice, the appeal panel will attempt to reach its decision within 45 days from the date the appeal is filed, although additional time may be required in individual cases depending on the circumstances involved, the complexity of the facts, the availability of witnesses, and other factors. The decision of the appeal panel will be communicated in writing to the Complainant and Respondent within this

period. That decision, and the outcome and sanctions (if any) resulting from any new hearing or conference ordered by the appeal panel in connection with the appeal shall be final and conclusive and no further appeals will be permitted.

10. All of the time periods discussed in this Appendix C.1. of the Sexual Harassment and Sexual Violence Policy and Procedures and the Code of Student Conduct will be suspended if either the fall or spring semester ends while proceedings on a student's complaint of sexual harassment against another student are pending. Those periods will then resume when the next fall or spring semester begins. In addition, if the university has taken interim steps in response to a complaint of sexual harassment, such as making it possible for a Complainant to minimize or avoid contact with a Respondent, those steps will remain in effect during the suspension period. The university may also take additional interim steps in response to a complaint, if appropriate, during this period.
11. In cases where the university is unable to complete its work within the time periods discussed herein, and believes substantial additional time will be required to do so, it will notify the affected party or parties and explain that further time is required.
12. It is important to note that federal law prohibits unlawful retaliation against any student who files a complaint alleging sexual harassment, participates in an investigation of any complaint alleging sexual harassment, or otherwise asserts the right to an educational environment free of sexual harassment.

Section 2 – Special Panels

- A. Initiation of Special Panel Procedure
 1. In all cases not covered by Section 1 of Appendix C, if a complaint of sexual harassment is not resolved through the administrative review procedure, or is resolved through that procedure but the Complainant is dissatisfied with that resolution, the Complainant or Responsible University Official may initiate a formal hearing by filing a written request with the Vice President for Human Resources or his/her designee. In such cases the procedures set forth in this Section 2 of Appendix C shall apply, and if there is any conflict between these procedures and the procedures in Section 1 of Appendix C or the GW Code of Student Conduct, the procedures set forth in this Section 2 shall apply.
 2. The request for a formal hearing must be filed within 30 days after receipt of information from the Responsible University Official of the disposition of the administrative review (See Appendix B). The written request for a formal hearing (the "formal complaint") must include a description of the material facts related to the alleged sexual harassment, must state why the

disposition of the matter should be modified or overturned, and may include a statement of the relief requested.

3. The Vice President for Human Resources will send a copy of the formal complaint, including the name of the person alleged to have been sexually harassed, to the Respondent.

B. Establishment of Special Panel Procedures

1. A formal complaint filed under Appendix C, Section 2, will be heard by a six-member panel selected by lot by the Vice President for Human Resources as described in Section C. Panelists will be selected from a pool of 18, six of whom are faculty members appointed by the Provost and Executive Vice President for Academic Affairs, with the concurrence of the Council of Deans and the Faculty Senate Executive Committee. If the concurrence does not occur within 30 days, the Provost and Executive Vice President for Academic Affairs and the Council of Deans shall select three of the faculty panel members, and Faculty Senate Executive Committee shall select the remaining three faculty panel members. An additional six members of the pool shall be staff employees appointed by the Vice President for Human Resources; and the final six members of the pool shall be students appointed by the Senior Associate Provost and Dean of Student Affairs.
2. Each appointee to the pool ordinarily will serve a two-year term. The appointing official should stagger the appointments so that, if feasible, the terms of not more than five of his or her appointees expire in any year.
3. An appointee to the pool may be removed and replaced at any time, at the discretion of the appointing official. The appointing official should promptly fill vacancies in the pool according to the procedure in Section B.1 above.
4. The Vice President for Human Resources or designee will conduct mandatory training of all appointees to the pool at the time of appointment and periodically thereafter. No pool member shall receive such training while serving on a special panel. Training will address roles and responsibilities of panel members, hearing procedures, applicable policies, and other techniques and standards pertinent to the formal complaint and hearing process.

C. Selection of Panel

1. Within five business days after receiving the written request to proceed with a formal complaint (see A.1 above), the Vice President for Human Resources will select by lot the six-member panel from the pool. Three of the panel members will be drawn from the same status group (faculty, staff or student) as the Respondent and three panel members will be drawn from the same status group as the Complainant. No member of a faculty member's

department or of a staff member's administrative department may serve on the special panel.

2. The Vice President for Human Resources will notify the parties of the panelists' names. Within three business days of receipt of the notice, either party may submit to the Vice President for Human Resources a written objection to designation of any panel member. The objection must clearly state the reasons for the objection. The Vice President for Human Resources may, at his or her discretion, replace a challenged panelist with another member of the pool from the same status group.
3. A designated panelist who at any time has or may reasonably be perceived as having a conflict of interest is otherwise unable to serve on a special panel shall recuse himself or herself, and notify the Vice President for Human Resources of the recusal. For sound reasons, which shall be disclosed to the parties and panel members, the Vice President for Human Resources, in his or her discretion, may replace a panel member. The successor panel member shall be selected by lot by the Vice President for Human Resources from among pool members of the recused or replaced panel member's status group.

D. Special Panel Organization

1. Within five business days after their appointment, special panel members will select a chairperson and review the request for a hearing.
2. The special panel may request clarification or additional information from the Vice President for Human Resources or the parties. Panel members may not communicate with either party outside the presence of the other party. The special panel shall provide both parties with copies of all written communications sent to either party.

E. Scheduling Hearing

1. The special panel will set a hearing date and time. The panelists will meet within a reasonable time, normally with five business days after their appointment, to select a chairperson and set the hearing date and time. The hearing will be held within a reasonable time, normally within 20 business days after the special panel is appointed.
2. The special panel chairperson will notify the parties of the hearing date, time, and location at least ten business days before the hearing. Within two business days after receiving notice of the hearing, a party with a scheduling conflict may submit to the chairperson a request for postponement. The chairperson, after consulting the special panel members, has discretion to reschedule the hearing. All parties will be notified as soon as feasible if the hearing is rescheduled.

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3. If a party does not appear for the hearing within 30 minutes after the scheduled time, the special panel will decide whether to reschedule the hearing or proceed.
4. Upon request the parties will be provided access to witness statements and other documents gathered in connection with the investigation of the complaint, to the extent permitted by law.

F. Conduct of Hearing

1. The special panel chairperson will preside at the hearing and decide procedural issues. Only persons participating in the proceeding may be present during the hearing except as otherwise provided in these procedures. The hearing will be conducted in the following sequence:
 - a) Preliminary matters. The Chairperson will introduce the parties, their advisors, and the special panel members; review the order of proceedings; explain procedures that govern use of the tape recorder; and present a brief summary of the formal complaint.
 - b) Opening statements. The party who requested the hearing may make an opening statement. The responding party may then make an opening statement. Each opening statement shall not exceed 15 minutes.
 - c) Presentation of formal complaint. The party who requested the hearing may present to the panel testimony, witnesses, documents or other evidence. Following the testimony of the party who requested the hearing, and of each witness, the responding party may ask questions.
 - d) Response to formal complaint. The party who responded to the formal complaint may present testimony, witnesses, documents or other evidence to the panel. Following the testimony of the responding party, and of each witness, the party who requested the hearing may ask questions. In cases of sexual violence, the special panel typically does not allow parties to question or cross-examine each other directly during the hearing, and instead requires that such questioning be conducted indirectly and/or from a separate location.
 - e) Closing statements. The party who requested the hearing may make a closing statement. The responding party may then make a closing statement. Each closing statement shall not exceed 15 minutes.
2. Special panel members may ask questions of parties or witnesses at any time during the hearing.

3. The hearing will not be conducted according to strict rules of evidence. However, the special panel chairperson may limit or exclude irrelevant or repetitive testimony, and may otherwise rule on what evidence may be offered. To determine whether a persistent pattern of harassment exists, the special panel may request that appropriate University officials (in consultation with the Office of the Senior Vice President and General Counsel) provide evidence subject to university policies and applicable laws, including the privacy of student education records, of prior written reprimands and/or sanctions imposed against the Respondent based on past incidents of sexual harassment as part of the hearing record.
4. When the hearing cannot be completed in one session, the special panel chairperson may continue the hearing to a later date and time.
5. The hearing will be audio recorded. Either party may obtain from the Chief Human Resource Officer a copy of the recording at reasonable cost, on written request, if permitted by law.

G. Witnesses

1. Each party (and the panel) may ask witnesses to testify at the hearing, but no person may be compelled to testify. However, each party shall have a right to know prior to the hearing the contents of and names of the authors of any written statements that may be introduced against him or her, and the right to rebut unfavorable inferences that might be drawn from such statements.
2. At least three business days before the hearing, each party must provide the chairperson, the Vice President for Human Resources and the other party a list of witnesses he or she intends to present at the hearing.
3. The special panel may request that additional witnesses appear. The Vice President for Human Resources will, if feasible, arrange for the appearance of these witnesses.
4. Each party is responsible for notifying its witnesses of the hearing date, time, and location. A hearing will not necessarily be postponed because a witness fails to appear.
5. In identifying persons to appear as witnesses, parties should be aware that live testimony is preferred and that the panel may give less weight to the evidence of a witness who is able but unwilling to appear.
6. All witnesses (except for the Complainant and the Respondent) will be excluded from the hearing before and after their testimony. A witness may be recalled at the discretion of the special panel chairperson.

7. A university employee must obtain permission from his or her supervisor to be absent from work to appear at a hearing. Employees will be paid for reasonable time spent while preparing for or appearing at a hearing during working hours, but not for other time spent on the complaint outside working hours.
8. A student must obtain permission from his or her professor to be absent from class to appear at a hearing.
9. Supervisors and professors should be aware of the importance of hearings and not unreasonably withhold permission to appear at a hearing. If an employee or student needs assistance in obtaining permission to appear at a hearing, he or she should contact the Vice President for Human Resources.

H. Advisors

1. Each party may be accompanied by not more than two advisors, who may be university employees or other persons the party selects; provided that not more than one of the advisors shall be an attorney.
2. No advisor, including an attorney who may be acting as an advisor, may speak on behalf of the party, make an opening or closing statement, present testimony or examine witnesses. The advisor's role is limited to assisting the party to prepare for the hearing and providing the party private advice during the hearing.
3. A Complainant or Respondent who plans to be accompanied by an attorney or other advisor at the hearing must notify the panel chairperson and the other party at least five business days before the hearing.
4. The special panel may request or the university may provide a University-furnished attorney or other advisor to be present at any hearing to advise the special panel.
5. The university may have an observer present at the hearing.

I. Decision After Hearing

1. After the hearing, the special panel will meet in closed session to review the hearing and make a decision on the formal complaint. In order to make a determination that sexual harassment occurred the decision must be supported by a preponderance of the evidence and approved by a majority of the special panel members. A preponderance of the evidence means that it is more likely than not that sexual harassment or violence occurred.
2. The special panel's report of its decision must be in writing and set forth findings of fact, conclusions, and, where appropriate, recommendations for

corrective action, including sanctions, that are approved by a majority of the special panel members.

3. The special panel will submit the report of its decision to the Vice President for Human Resources within ten business days after the hearing ends. The Vice President for Human Resources shall send a copy of the special panel report to the Complainant and to the Respondent (at their home addresses of record, by courier, overnight mail or certified mail, return receipt requested) except for portions that the university is required by law to treat as confidential. The Vice President for Human Resources shall also send copies of the special panel report to the responsible university officials, including the vice president(s) responsible for oversight of the status group(s) to which the parties belong.
4. If the special panel concludes that sexual harassment occurred, the Vice President for Human Resources will forward a copy of the special panel report to the Responsible University Official or SRR. After reviewing the special panel report, the Responsible University Official or SRR will decide whether to impose corrective action, including sanctions, consistent with that official's authority. In cases involving suspension or expulsion of a student, the Senior Associate Provost and Dean of Student Affairs, in concurrence with the Provost and Executive Vice President for Academic Affairs, will impose sanctions. A responsible university official will notify the parties in writing of the disposition, and the basis for that disposition.
5. As a general practice, a decision on a formal complaint will be rendered within 45 days of when the Vice President for Human Resources receives it. However, certain cases may require additional time, depending on the circumstances involved, the complexity of the facts, the availability of witnesses, and other factors. In cases where a special panel is unable to complete its work within this period of time, and believes substantial additional time will be required, it will notify the affected party or parties and explain that further time is required.

J. Review of Special Panel Decision

1. A party dissatisfied with a special panel decision may submit a request for review to the Vice President for Human Resources, who will transmit the request to the vice president(s) responsible for oversight of the status groups to which the parties belong. For example, when the Complainant is a staff member and the Respondent a faculty member, the Vice President for Human Resources and the Provost and Executive Vice President for Academic Affairs will jointly review the matter; when Complainant and Respondent are both faculty members, the Provost and Executive Vice President for Academic Affairs will review the matter.

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2. The request for review must be in writing and set forth reasons why the special panel decision should be modified or overturned. The request for review must be based on the hearing record and may not present new evidence or testimony.
3. The request for review must be submitted within 10 business days after the party's receipt of the special panel decision. If the request is not received by then, the special panel decision will be the final university decision on the formal complaint.
4. The Vice President(s) will strive to issue a final decision on the review, based on the hearing record, within 30 business days following submission of the request for review. The decision of the Vice President(s) shall be the final decision on the formal complaint within the university.
5. When a special panel decision that includes a finding of sexual harassment is final, or when the final decision on a review is issued, the Vice President for Human Resources will provide a copy of it to the Responsible University Official or SRR. Any corrective action, including sanctions, taken shall be within the discretion and consistent with the authority of that official. In cases involving suspension or expulsion of a student, the Senior Associate Provost and Dean of Student Affairs, in concurrence with the Provost and Executive Vice President for Academic Affairs, will impose sanctions. A range of relevant considerations should be taken into account in determining the extent of sanctions, such as the severity of the offense, the effect of the offense on the victim and on the university community, and the Respondent's record of past offenses, if any.
6. A responsible university official shall send a copy of the final decision to the parties (at their home address of record, by courier, overnight mail or certified mail, return receipt requested) except for portions that the university is required by law to treat as confidential.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 4, 2011

Dear Colleague:

Education has long been recognized as the great equalizer in America. The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime.

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX. In order to assist recipients, which include school districts, colleges, and universities (hereinafter "schools" or "recipients") in meeting these obligations, this letter¹ explains that the requirements of Title IX pertaining to sexual harassment also cover sexual violence, and lays out the specific Title IX requirements applicable to sexual violence.² Sexual violence, as that term is used in this letter, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape,

¹ The Department has determined that this Dear Colleague Letter is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at:

http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/012507_good_guidance.pdf.

OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This letter does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

² Use of the term "sexual harassment" throughout this document includes sexual violence unless otherwise noted. Sexual harassment also may violate Title IV of the Civil Rights Act of 1964 (42 U.S.C. § 2000c), which prohibits public school districts and colleges from discriminating against students on the basis of sex, among other bases. The U.S. Department of Justice enforces Title IV.

sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.

The statistics on sexual violence are both deeply troubling and a call to action for the nation. A report prepared for the National Institute of Justice found that about 1 in 5 women are victims of completed or attempted sexual assault while in college.³ The report also found that approximately 6.1 percent of males were victims of completed or attempted sexual assault during college.⁴ According to data collected under the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), in 2009, college campuses reported nearly 3,300 forcible sex offenses as defined by the Clery Act.⁵ This problem is not limited to college. During the 2007-2008 school year, there were 800 reported incidents of rape and attempted rape and 3,800 reported incidents of other sexual batteries at public high schools.⁶ Additionally, the likelihood that a woman with intellectual disabilities will be sexually assaulted is estimated to be significantly higher than the general population.⁷ The Department is deeply concerned about this problem and is committed to ensuring that all students feel safe in their school, so that they have the opportunity to benefit fully from the school's programs and activities.

This letter begins with a discussion of Title IX's requirements related to student-on-student sexual harassment, including sexual violence, and explains schools' responsibility to take immediate and effective steps to end sexual harassment and sexual violence. These requirements are discussed in detail in OCR's *Revised Sexual Harassment Guidance* issued in 2001 (*2001 Guidance*).⁸ This letter supplements the *2001 Guidance* by providing additional guidance and practical examples regarding the Title IX requirements as they relate to sexual violence. This letter concludes by discussing the proactive efforts schools can take to prevent sexual harassment and violence, and by providing examples of remedies that schools and OCR may use to end such conduct, prevent its recurrence, and address its effects. Although some examples contained in this letter are applicable only in the postsecondary context, sexual

³ CHRISTOPHER P. KREBS ET AL., THE CAMPUS SEXUAL ASSAULT STUDY: FINAL REPORT xiii (Nat'l Criminal Justice Reference Serv., Oct. 2007), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>. This study also found that the majority of campus sexual assaults occur when women are incapacitated, primarily by alcohol. *Id.* at xviii.

⁴ *Id.* at 5-5.

⁵ U.S. Department of Education, Office of Postsecondary Education, Summary Crime Statistics (data compiled from reports submitted in compliance with the Clery Act), available at <http://www2.ed.gov/admins/lead/safety/criminal2007-09.pdf>. Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person, forcibly and/or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. 34 C.F.R. Part 668, Subpt. D, App. A.

⁶ SIMONE ROBERS ET AL., INDICATORS OF SCHOOL CRIME AND SAFETY: 2010 at 104 (U.S. Dep't of Educ. & U.S. Dep't of Justice, Nov. 2010), available at <http://nces.ed.gov/pubs2011/2011002.pdf>.

⁷ ERIKA HARRELL & MICHAEL R. RAND, CRIME AGAINST PEOPLE WITH DISABILITIES, 2008 (Bureau of Justice Statistics, U.S. Dep't of Justice, Dec. 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/capd08.pdf>.

⁸ The *2001 Guidance* is available on the Department's Web site at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>. This letter focuses on peer sexual harassment and violence. Schools' obligations and the appropriate response to sexual harassment and violence committed by employees may be different from those described in this letter. Recipients should refer to the *2001 Guidance* for further information about employee harassment of students.

harassment and violence also are concerns for school districts. The Title IX obligations discussed in this letter apply equally to school districts unless otherwise noted.

Title IX Requirements Related to Sexual Harassment and Sexual Violence

Schools' Obligations to Respond to Sexual Harassment and Sexual Violence

Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment prohibited by Title IX.⁹

As explained in OCR's *2001 Guidance*, when a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For instance, a single instance of rape is sufficiently severe to create a hostile environment.¹⁰

Title IX protects students from sexual harassment in a school's education programs and activities. This means that Title IX protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the school, whether those programs take place in a school's facilities, on a school bus, at a class or training program

⁹ Title IX also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. The Title IX obligations discussed in this letter also apply to gender-based harassment. Gender-based harassment is discussed in more detail in the *2001 Guidance*, and in the 2010 Dear Colleague letter on Harassment and Bullying, which is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

¹⁰ See, e.g., *Jennings v. Univ. of N.C.*, 444 F.3d 255, 268, 274 n.12 (4th Cir. 2006) (acknowledging that while not an issue in this case, a single incident of sexual assault or rape could be sufficient to raise a jury question about whether a hostile environment exists, and noting that courts look to Title VII cases for guidance in analyzing Title IX sexual harassment claims); *Vance v. Spencer Cnty. Pub. Sch. Dist.*, 231 F.3d 253, 259 n.4 (6th Cir. 2000) (“[w]ithin the context of Title IX, a student’s claim of hostile environment can arise from a single incident” (quoting *Doe v. Sch. Admin. Dist. No. 19*, 66 F. Supp. 2d 57, 62 (D. Me. 1999))); *Soper v. Hoben*, 195 F.3d 845, 855 (6th Cir. 1999) (explaining that rape and sexual abuse “obviously qualify[ed] as...severe, pervasive, and objectively offensive sexual harassment”); see also *Berry v. Chi. Transit Auth.*, 618 F.3d 688, 692 (7th Cir. 2010) (in the Title VII context, “a single act can create a hostile environment if it is severe enough, and instances of uninvited physical contact with intimate parts of the body are among the most severe types of sexual harassment”); *Turner v. Saloon, Ltd.*, 595 F.3d 679, 686 (7th Cir. 2010) (noting that “[o]ne instance of conduct that is sufficiently severe may be enough,” which is “especially true when the touching is of an intimate body part” (quoting *Jackson v. Cnty. of Racine*, 474 F.3d 493, 499 (7th Cir. 2007))); *McKinnis v. Crescent Guardian, Inc.*, 189 F. App’x 307, 310 (5th Cir. 2006) (holding that “the deliberate and unwanted touching of [a plaintiff’s] intimate body parts can constitute severe sexual harassment” in Title VII cases (quoting *Harvill v. Westward Commc’ns, L.L.C.*, 433 F.3d 428, 436 (5th Cir. 2005))).

sponsored by the school at another location, or elsewhere. For example, Title IX protects a student who is sexually assaulted by a fellow student during a school-sponsored field trip.¹¹

If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.¹² Schools also are required to publish a notice of nondiscrimination and to adopt and publish grievance procedures. Because of these requirements, which are discussed in greater detail in the following section, schools need to ensure that their employees are trained so that they know to report harassment to appropriate school officials, and so that employees with the authority to address harassment know how to respond properly. Training for employees should include practical information about how to identify and report sexual harassment and violence. OCR recommends that this training be provided to any employees likely to witness or receive reports of sexual harassment and violence, including teachers, school law enforcement unit employees, school administrators, school counselors, general counsels, health personnel, and resident advisors.

Schools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school's education program or activity. If a student files a complaint with the school, regardless of where the conduct occurred, the school must process the complaint in accordance with its established procedures. Because students often experience the continuing effects of off-campus sexual harassment in the educational setting, schools should consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus. For example, if a student alleges that he or she was sexually assaulted by another student off school grounds, and that upon returning to school he or she was taunted and harassed by other students who are the alleged perpetrator's friends, the school should take the earlier sexual assault into account in determining whether there is a sexually hostile environment. The school also should take steps to protect a student who was assaulted off campus from further sexual harassment or retaliation from the perpetrator and his or her associates.

Regardless of whether a harassed student, his or her parent, or a third party files a complaint under the school's grievance procedures or otherwise requests action on the student's behalf, a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. As discussed later in this letter, the school's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct. The specific steps in a school's

¹¹ Title IX also protects third parties from sexual harassment or violence in a school's education programs and activities. For example, Title IX protects a high school student participating in a college's recruitment program, a visiting student athlete, and a visitor in a school's on-campus residence hall. Title IX also protects employees of a recipient from sexual harassment. For further information about harassment of employees, see *2001 Guidance* at n.1.

¹² This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. See *2001 Guidance* at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. See *Davis v. Monroe Cnty. Bd. of Ed.*, 526 U.S. 629, 643, 648 (1999).

investigation will vary depending upon the nature of the allegations, the age of the student or students involved (particularly in elementary and secondary schools), the size and administrative structure of the school, and other factors. Yet as discussed in more detail below, the school's inquiry must in all cases be prompt, thorough, and impartial. In cases involving potential criminal conduct, school personnel must determine, consistent with State and local law, whether appropriate law enforcement or other authorities should be notified.¹³

Schools also should inform and obtain consent from the complainant (or the complainant's parents if the complainant is under 18 and does not attend a postsecondary institution) before beginning an investigation. If the complainant requests confidentiality or asks that the complaint not be pursued, the school should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the school should inform the complainant that its ability to respond may be limited.¹⁴ The school also should tell the complainant that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

As discussed in the *2001 Guidance*, if the complainant continues to ask that his or her name or other identifiable information not be revealed, the school should evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the school may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.¹⁵ The school should inform the complainant if it cannot ensure confidentiality. Even if the school cannot take disciplinary action against the alleged harasser because the complainant insists on confidentiality, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence. Examples of such steps are discussed later in this letter.

Compliance with Title IX, such as publishing a notice of nondiscrimination, designating an employee to coordinate Title IX compliance, and adopting and publishing grievance procedures, can serve as preventive measures against harassment. Combined with education and training programs, these measures can help ensure that all students and employees recognize the

¹³ In states with mandatory reporting laws, schools may be required to report certain incidents to local law enforcement or child protection agencies.

¹⁴ Schools should refer to the *2001 Guidance* for additional information on confidentiality and the alleged perpetrator's due process rights.

¹⁵ For example, the alleged harasser may have a right under FERPA to inspect and review portions of the complaint that directly relate to him or her. In that case, the school must redact the complainant's name and other identifying information before allowing the alleged harasser to inspect and review the sections of the complaint that relate to him or her. In some cases, such as those where the school is required to report the incident to local law enforcement or other officials, the school may not be able to maintain the complainant's confidentiality.

nature of sexual harassment and violence, and understand that the school will not tolerate such conduct. Indeed, these measures may bring potentially problematic conduct to the school's attention before it becomes serious enough to create a hostile environment. Training for administrators, teachers, staff, and students also can help ensure that they understand what types of conduct constitute sexual harassment or violence, can identify warning signals that may need attention, and know how to respond. More detailed information and examples of education and other preventive measures are provided later in this letter.

Procedural Requirements Pertaining to Sexual Harassment and Sexual Violence

Recipients of Federal financial assistance must comply with the procedural requirements outlined in the Title IX implementing regulations. Specifically, a recipient must:

- (A) Disseminate a notice of nondiscrimination;¹⁶
- (B) Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX;¹⁷ and
- (C) Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex discrimination complaints.¹⁸

These requirements apply to all forms of sexual harassment, including sexual violence, and are important for preventing and effectively responding to sex discrimination. They are discussed in greater detail below. OCR advises recipients to examine their current policies and procedures on sexual harassment and sexual violence to determine whether those policies comply with the requirements articulated in this letter and the *2001 Guidance*. Recipients should then implement changes as needed.

(A) Notice of Nondiscrimination

The Title IX regulations require that each recipient publish a notice of nondiscrimination stating that the recipient does not discriminate on the basis of sex in its education programs and activities, and that Title IX requires it not to discriminate in such a manner.¹⁹ The notice must state that inquiries concerning the application of Title IX may be referred to the recipient's Title IX coordinator or to OCR. It should include the name or title, office address, telephone number, and e-mail address for the recipient's designated Title IX coordinator.

The notice must be widely distributed to all students, parents of elementary and secondary students, employees, applicants for admission and employment, and other relevant persons. OCR recommends that the notice be prominently posted on school Web sites and at various

¹⁶ 34 C.F.R. § 106.9.

¹⁷ *Id.* § 106.8(a).

¹⁸ *Id.* § 106.8(b).

¹⁹ *Id.* § 106.9(a).

locations throughout the school or campus and published in electronic and printed publications of general distribution that provide information to students and employees about the school's services and policies. The notice should be available and easily accessible on an ongoing basis.

Title IX does not require a recipient to adopt a policy specifically prohibiting sexual harassment or sexual violence. As noted in the *2001 Guidance*, however, a recipient's general policy prohibiting sex discrimination will not be considered effective and would violate Title IX if, because of the lack of a specific policy, students are unaware of what kind of conduct constitutes sexual harassment, including sexual violence, or that such conduct is prohibited sex discrimination. OCR therefore recommends that a recipient's nondiscrimination policy state that prohibited sex discrimination covers sexual harassment, including sexual violence, and that the policy include examples of the types of conduct that it covers.

(B) Title IX Coordinator

The Title IX regulations require a recipient to notify all students and employees of the name or title and contact information of the person designated to coordinate the recipient's compliance with Title IX.²⁰ The coordinator's responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. The Title IX coordinator or designee should be available to meet with students as needed. If a recipient designates more than one Title IX coordinator, the notice should describe each coordinator's responsibilities (*e.g.*, who will handle complaints by students, faculty, and other employees). The recipient should designate one coordinator as having ultimate oversight responsibility, and the other coordinators should have titles clearly showing that they are in a deputy or supporting role to the senior coordinator. The Title IX coordinators should not have other job responsibilities that may create a conflict of interest. For example, serving as the Title IX coordinator and a disciplinary hearing board member or general counsel may create a conflict of interest.

Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. Because sexual violence complaints often are filed with the school's law enforcement unit, all school law enforcement unit employees should receive training on the school's Title IX grievance procedures and any other procedures used for investigating reports of sexual violence. In addition, these employees should receive copies of the school's Title IX policies. Schools should instruct law enforcement unit employees both to notify complainants of their right to file a Title IX sex discrimination complaint with the school in addition to filing a criminal complaint, and to report incidents of sexual violence to the Title IX coordinator if the complainant consents. The school's Title IX coordinator or designee should be available to provide assistance to school law enforcement unit employees regarding how to respond appropriately to reports of sexual violence. The Title IX coordinator also should be given access to school law enforcement unit investigation notes

²⁰ *Id.* § 106.8(a).

and findings as necessary for the Title IX investigation, so long as it does not compromise the criminal investigation.

(C) Grievance Procedures

The Title IX regulations require all recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints.²¹ The grievance procedures must apply to sex discrimination complaints filed by students against school employees, other students, or third parties.

Title IX does not require a recipient to provide separate grievance procedures for sexual harassment and sexual violence complaints. Therefore, a recipient may use student disciplinary procedures or other separate procedures to resolve such complaints. Any procedures used to adjudicate complaints of sexual harassment or sexual violence, including disciplinary procedures, however, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution.²² These requirements are discussed in greater detail below. If the recipient relies on disciplinary procedures for Title IX compliance, the Title IX coordinator should review the recipient's disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX.²³

Grievance procedures generally may include voluntary informal mechanisms (*e.g.*, mediation) for resolving some types of sexual harassment complaints. OCR has frequently advised recipients, however, that it is improper for a student who complains of harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the school (*e.g.*, participation by a trained counselor, a trained mediator, or, if appropriate, a teacher or administrator). In addition, as stated in the *2001 Guidance*, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault complaints.

²¹ *Id.* § 106.8(b). Title IX also requires recipients to adopt and publish grievance procedures for employee complaints of sex discrimination.

²² These procedures must apply to all students, including athletes. If a complaint of sexual violence involves a student athlete, the school must follow its standard procedures for resolving sexual violence complaints. Such complaints must not be addressed solely by athletics department procedures. Additionally, if an alleged perpetrator is an elementary or secondary student with a disability, schools must follow the procedural safeguards in the Individuals with Disabilities Education Act (at 20 U.S.C. § 1415 and 34 C.F.R. §§ 300.500-300.519, 300.530-300.537) as well as the requirements of Section 504 of the Rehabilitation Act of 1973 (at 34 C.F.R. §§ 104.35-104.36) when conducting the investigation and hearing.

²³ A school may not absolve itself of its Title IX obligations to investigate and resolve complaints of sexual harassment or violence by delegating, whether through express contractual agreement or other less formal arrangement, the responsibility to administer school discipline to school resource officers or "contract" law enforcement officers. See 34 C.F.R. § 106.4.

Prompt and Equitable Requirements

As stated in the *2001 Guidance*, OCR has identified a number of elements in evaluating whether a school's grievance procedures provide for prompt and equitable resolution of sexual harassment complaints. These elements also apply to sexual violence complaints because, as explained above, sexual violence is a form of sexual harassment. OCR will review all aspects of a school's grievance procedures, including the following elements that are critical to achieve compliance with Title IX:

- Notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;
- Application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence;
- Designated and reasonably prompt time frames for the major stages of the complaint process;
- Notice to parties of the outcome of the complaint;²⁴ and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

As noted in the *2001 Guidance*, procedures adopted by schools will vary in detail, specificity, and components, reflecting differences in the age of students, school sizes and administrative structures, State or local legal requirements, and past experiences. Although OCR examines whether all applicable elements are addressed when investigating sexual harassment complaints, this letter focuses on those elements where our work indicates that more clarification and explanation are needed, including:

(A) Notice of the grievance procedures

The procedures for resolving complaints of sex discrimination, including sexual harassment, should be written in language appropriate to the age of the school's students, easily understood, easily located, and widely distributed. OCR recommends that the grievance procedures be prominently posted on school Web sites; sent electronically to all members of the school community; available at various locations throughout the school or campus; and summarized in or attached to major publications issued by the school, such as handbooks, codes of conduct, and catalogs for students, parents of elementary and secondary students, faculty, and staff.

(B) Adequate, Reliable, and Impartial Investigation of Complaints

OCR's work indicates that a number of issues related to an adequate, reliable, and impartial investigation arise in sexual harassment and violence complaints. In some cases, the conduct

²⁴ "Outcome" does not refer to information about disciplinary sanctions unless otherwise noted. Notice of the outcome is discussed in greater detail in Section D below.

may constitute both sexual harassment under Title IX and criminal activity. Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation. In addition, a criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.

A school should notify a complainant of the right to file a criminal complaint, and should not dissuade a victim from doing so either during or after the school's internal Title IX investigation. For instance, if a complainant wants to file a police report, the school should not tell the complainant that it is working toward a solution and instruct, or ask, the complainant to wait to file the report.

Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation and, if needed, must take immediate steps to protect the student in the educational setting. For example, a school should not delay conducting its own investigation or taking steps to protect the complainant because it wants to see whether the alleged perpetrator will be found guilty of a crime. Any agreement or Memorandum of Understanding (MOU) with a local police department must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any charges), the school must promptly resume and complete its fact-finding for the Title IX investigation.²⁵ Moreover, nothing in an MOU or the criminal investigation itself should prevent a school from notifying complainants of their Title IX rights and the school's grievance procedures, or from taking interim steps to ensure the safety and well-being of the complainant and the school community while the law enforcement agency's fact-gathering is in progress. OCR also recommends that a school's MOU include clear policies on when a school will refer a matter to local law enforcement.

As noted above, the Title IX regulation requires schools to provide equitable grievance procedures. As part of these procedures, schools generally conduct investigations and hearings to determine whether sexual harassment or violence occurred. In addressing complaints filed with OCR under Title IX, OCR reviews a school's procedures to determine whether the school is using a preponderance of the evidence standard to evaluate complaints. The Supreme Court has applied a preponderance of the evidence standard in civil litigation involving discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.* Like Title IX,

²⁵ In one recent OCR sexual violence case, the prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances.

Title VII prohibits discrimination on the basis of sex.²⁶ OCR also uses a preponderance of the evidence standard when it resolves complaints against recipients. For instance, OCR’s Case Processing Manual requires that a noncompliance determination be supported by the preponderance of the evidence when resolving allegations of discrimination under all the statutes enforced by OCR, including Title IX.²⁷ OCR also uses a preponderance of the evidence standard in its fund termination administrative hearings.²⁸ Thus, in order for a school’s grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (*i.e.*, it is more likely than not that sexual harassment or violence occurred). The “clear and convincing” standard (*i.e.*, it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence.

Throughout a school’s Title IX investigation, including at any hearing, the parties must have an equal opportunity to present relevant witnesses and other evidence. The complainant and the alleged perpetrator must be afforded similar and timely access to any information that will be used at the hearing.²⁹ For example, a school should not conduct a pre-hearing meeting during which only the alleged perpetrator is present and given an opportunity to present his or her side of the story, unless a similar meeting takes place with the complainant; a hearing officer or disciplinary board should not allow only the alleged perpetrator to present character witnesses at a hearing; and a school should not allow the alleged perpetrator to review the complainant’s

²⁶ See, *e.g.*, *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99 (2003) (noting that under the “conventional rule of civil litigation,” the preponderance of the evidence standard generally applies in cases under Title VII); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 252-55 (1989) (approving preponderance standard in Title VII sex discrimination case) (plurality opinion); *id.* at 260 (White, J., concurring in the judgment); *id.* at 261 (O’Connor, J., concurring in the judgment). The 2001 *Guidance* noted (on page vi) that “[w]hile *Gebser* and *Davis* made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the *Davis* Court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX.” See also *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007) (“We look to case law interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX.”).

²⁷ OCR’s Case Processing Manual is available on the Department’s Web site, at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

²⁸ The Title IX regulations adopt the procedural provisions applicable to Title VI of the Civil Rights Act of 1964. See 34 C.F.R. § 106.71 (“The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference.”). The Title VI regulations apply the Administrative Procedure Act to administrative hearings required prior to termination of Federal financial assistance and require that termination decisions be “supported by and in accordance with the reliable, probative and substantial evidence.” 5 U.S.C. § 556(d). The Supreme Court has interpreted “reliable, probative and substantial evidence” as a direction to use the preponderance standard. See *Steadman v. SEC*, 450 U.S. 91, 98-102 (1981).

²⁹ Access to this information must be provided consistent with FERPA. For example, if a school introduces an alleged perpetrator’s prior disciplinary records to support a tougher disciplinary penalty, the complainant would not be allowed access to those records. Additionally, access should not be given to privileged or confidential information. For example, the alleged perpetrator should not be given access to communications between the complainant and a counselor or information regarding the complainant’s sexual history.

statement without also allowing the complainant to review the alleged perpetrator’s statement.

While OCR does not require schools to permit parties to have lawyers at any stage of the proceedings, if a school chooses to allow the parties to have their lawyers participate in the proceedings, it must do so equally for both parties. Additionally, any school-imposed restrictions on the ability of lawyers to speak or otherwise participate in the proceedings should apply equally. OCR strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing. Allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment. OCR also recommends that schools provide an appeals process. If a school provides for appeal of the findings or remedy, it must do so for both parties. Schools must maintain documentation of all proceedings, which may include written findings of facts, transcripts, or audio recordings.

All persons involved in implementing a recipient’s grievance procedures (*e.g.*, Title IX coordinators, investigators, and adjudicators) must have training or experience in handling complaints of sexual harassment and sexual violence, and in the recipient’s grievance procedures. The training also should include applicable confidentiality requirements. In sexual violence cases, the fact-finder and decision-maker also should have adequate training or knowledge regarding sexual violence.³⁰ Additionally, a school’s investigation and hearing processes cannot be equitable unless they are impartial. Therefore, any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties should be disclosed.

Public and state-supported schools must provide due process to the alleged perpetrator. However, schools should ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant.

(C) *Designated and Reasonably Prompt Time Frames*

OCR will evaluate whether a school’s grievance procedures specify the time frames for all major stages of the procedures, as well as the process for extending timelines. Grievance procedures should specify the time frame within which: (1) the school will conduct a full investigation of the complaint; (2) both parties receive a response regarding the outcome of the complaint; and (3) the parties may file an appeal, if applicable. Both parties should be given periodic status updates. Based on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint. Whether OCR considers complaint resolutions to be timely, however, will vary depending on the complexity of the investigation and the severity and extent of the harassment. For example, the resolution of a complaint involving multiple incidents with multiple complainants likely would take longer than one involving a single incident that

³⁰ For instance, if an investigation or hearing involves forensic evidence, that evidence should be reviewed by a trained forensic examiner.

occurred in a classroom during school hours with a single complainant.

(D) Notice of Outcome

Both parties must be notified, in writing, about the outcome of both the complaint and any appeal,³¹ *i.e.*, whether harassment was found to have occurred. OCR recommends that schools provide the written determination of the final outcome to the complainant and the alleged perpetrator concurrently. Title IX does not require the school to notify the alleged perpetrator of the outcome before it notifies the complainant.

Due to the intersection of Title IX and FERPA requirements, OCR recognizes that there may be confusion regarding what information a school may disclose to the complainant.³² FERPA generally prohibits the nonconsensual disclosure of personally identifiable information from a student's "education record." However, as stated in the *2001 Guidance*, FERPA permits a school to disclose to the harassed student information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student. This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.³³ Disclosure of other information in the student's "education record," including information about sanctions that do not relate to the harassed student, may result in a violation of FERPA.

Further, when the conduct involves a crime of violence or a non-forcible sex offense,³⁴ FERPA permits a postsecondary institution to disclose to the alleged victim the final results of a

³¹ As noted previously, "outcome" does not refer to information about disciplinary sanctions unless otherwise noted.

³² In 1994, Congress amended the General Education Provisions Act (GEPA), of which FERPA is a part, to state that nothing in GEPA "shall be construed to affect the applicability of title VI of the Civil Rights Act of 1964, title IX of Education Amendments of 1972, title V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program." 20 U.S.C. § 1221(d). The Department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between the requirements of FERPA and the requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. *See 2001 Guidance* at vii.

³³ This information directly relates to the complainant and is particularly important in sexual harassment cases because it affects whether a hostile environment has been eliminated. Because seeing the perpetrator may be traumatic, a complainant in a sexual harassment case may continue to be subject to a hostile environment if he or she does not know when the perpetrator will return to school or whether he or she will continue to share classes or a residence hall with the perpetrator. This information also directly affects a complainant's decision regarding how to work with the school to eliminate the hostile environment and prevent its recurrence. For instance, if a complainant knows that the perpetrator will not be at school or will be transferred to other classes or another residence hall for the rest of the year, the complainant may be less likely to want to transfer to another school or change classes, but if the perpetrator will be returning to school after a few days or weeks, or remaining in the complainant's classes or residence hall, the complainant may want to transfer schools or change classes to avoid contact. Thus, the complainant cannot make an informed decision about how best to respond without this information.

³⁴ Under the FERPA regulations, crimes of violence include arson; assault offenses (aggravated assault, simple assault, intimidation); burglary; criminal homicide (manslaughter by negligence); criminal homicide (murder and

disciplinary proceeding against the alleged perpetrator, regardless of whether the institution concluded that a violation was committed.³⁵ Additionally, a postsecondary institution may disclose to anyone—not just the alleged victim—the final results of a disciplinary proceeding if it determines that the student is an alleged perpetrator of a crime of violence or a non-forcible sex offense, and, with respect to the allegation made, the student has committed a violation of the institution’s rules or policies.³⁶

Postsecondary institutions also are subject to additional rules under the Clery Act. This law, which applies to postsecondary institutions that participate in Federal student financial aid programs, requires that “both the accuser and the accused must be informed of the outcome³⁷ of any institutional disciplinary proceeding brought alleging a sex offense.”³⁸ Compliance with this requirement does not constitute a violation of FERPA. Furthermore, the FERPA limitations on redisclosure of information do not apply to information that postsecondary institutions are required to disclose under the Clery Act.³⁹ Accordingly, postsecondary institutions may not require a complainant to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the redisclosure of this information.

Steps to Prevent Sexual Harassment and Sexual Violence and Correct its Discriminatory Effects on the Complainant and Others

Education and Prevention

In addition to ensuring full compliance with Title IX, schools should take proactive measures to prevent sexual harassment and violence. OCR recommends that all schools implement preventive education programs and make victim resources, including comprehensive victim services, available. Schools may want to include these education programs in their (1) orientation programs for new students, faculty, staff, and employees; (2) training for students who serve as advisors in residence halls; (3) training for student athletes and coaches; and (4) school assemblies and “back to school nights.” These programs should include a

non-negligent manslaughter); destruction, damage or vandalism of property; kidnapping/abduction; robbery; and forcible sex offenses. Forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person’s will, or not forcibly or against the person’s will where the victim is incapable of giving consent. Forcible sex offenses include rape, sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses are incest and statutory rape. 34 C.F.R. Part 99, App. A.

³⁵ 34 C.F.R. § 99.31(a)(13). For purposes of 34 C.F.R. §§ 99.31(a)(13)-(14), disclosure of “final results” is limited to the name of the alleged perpetrator, any violation found to have been committed, and any sanction imposed against the perpetrator by the school. 34 C.F.R. § 99.39.

³⁶ 34 C.F.R. § 99.31(a)(14).

³⁷ For purposes of the Clery Act, “outcome” means the institution’s final determination with respect to the alleged sex offense and any sanctions imposed against the accused. 34 C.F.R. § 668.46(b)(11)(vi)(B).

³⁸ 34 C.F.R. § 668.46(b)(11)(vi)(B). Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person’s will, or not forcibly or against the person’s will where the person is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses include incest and statutory rape. 34 C.F.R. Part 668, Subpt. D, App. A.

³⁹ 34 C.F.R. § 99.33(c).

discussion of what constitutes sexual harassment and sexual violence, the school's policies and disciplinary procedures, and the consequences of violating these policies.

The education programs also should include information aimed at encouraging students to report incidents of sexual violence to the appropriate school and law enforcement authorities. Schools should be aware that victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of school or campus rules were involved.⁴⁰ As a result, schools should consider whether their disciplinary policies have a chilling effect on victims' or other students' reporting of sexual violence offenses. For example, OCR recommends that schools inform students that the schools' primary concern is student safety, that any other rules violations will be addressed separately from the sexual violence allegation, and that use of alcohol or drugs never makes the victim at fault for sexual violence.

OCR also recommends that schools develop specific sexual violence materials that include the schools' policies, rules, and resources for students, faculty, coaches, and administrators. Schools also should include such information in their employee handbook and any handbooks that student athletes and members of student activity groups receive. These materials should include where and to whom students should go if they are victims of sexual violence. These materials also should tell students and school employees what to do if they learn of an incident of sexual violence. Schools also should assess student activities regularly to ensure that the practices and behavior of students do not violate the schools' policies against sexual harassment and sexual violence.

Remedies and Enforcement

As discussed above, if a school determines that sexual harassment that creates a hostile environment has occurred, it must take immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects. In addition to counseling or taking disciplinary action against the harasser, effective corrective action may require remedies for the complainant, as well as changes to the school's overall services or policies. Examples of these actions are discussed in greater detail below.

Title IX requires a school to take steps to protect the complainant as necessary, including taking interim steps before the final outcome of the investigation. The school should undertake these steps promptly once it has notice of a sexual harassment or violence allegation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to change academic or living situations as appropriate. For instance, the school may prohibit the alleged perpetrator from having any contact with the complainant pending the results of the school's investigation. When taking steps to separate the complainant and alleged perpetrator, a school should minimize the burden on the

⁴⁰ The Department's Higher Education Center for Alcohol, Drug Abuse, and Violence Prevention (HEC) helps campuses and communities address problems of alcohol, other drugs, and violence by identifying effective strategies and programs based upon the best prevention science. Information on HEC resources and technical assistance can be found at www.higheredcenter.org.

complainant, and thus should not, as a matter of course, remove complainants from classes or housing while allowing alleged perpetrators to remain. In addition, schools should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling, health, and mental health services, and their right to file a complaint with local law enforcement.⁴¹

Schools should be aware that complaints of sexual harassment or violence may be followed by retaliation by the alleged perpetrator or his or her associates. For instance, friends of the alleged perpetrator may subject the complainant to name-calling and taunting. As part of their Title IX obligations, schools must have policies and procedures in place to protect against retaliatory harassment. At a minimum, schools must ensure that complainants and their parents, if appropriate, know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred.

When OCR finds that a school has not taken prompt and effective steps to respond to sexual harassment or violence, OCR will seek appropriate remedies for both the complainant and the broader student population. When conducting Title IX enforcement activities, OCR seeks to obtain voluntary compliance from recipients. When a recipient does not come into compliance voluntarily, OCR may initiate proceedings to withdraw Federal funding by the Department or refer the case to the U.S. Department of Justice for litigation.

Schools should proactively consider the following remedies when determining how to respond to sexual harassment or violence. These are the same types of remedies that OCR would seek in its cases.

Depending on the specific nature of the problem, remedies for the complainant might include, but are not limited to:⁴²

- providing an escort to ensure that the complainant can move safely between classes and activities;
- ensuring that the complainant and alleged perpetrator do not attend the same classes;
- moving the complainant or alleged perpetrator to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district;
- providing counseling services;
- providing medical services;
- providing academic support services, such as tutoring;

⁴¹ The Clery Act requires postsecondary institutions to develop and distribute a statement of policy that informs students of their options to notify proper law enforcement authorities, including campus and local police, and the option to be assisted by campus personnel in notifying such authorities. The policy also must notify students of existing counseling, mental health, or other student services for victims of sexual assault, both on campus and in the community. 20 U.S.C. §§ 1092(f)(8)(B)(v)-(vi).

⁴² Some of these remedies also can be used as interim measures before the school's investigation is complete.

- arranging for the complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant’s academic record; and
- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.⁴³

Remedies for the broader student population might include, but are not limited to:

Counseling and Training

- offering counseling, health, mental health, or other holistic and comprehensive victim services to all students affected by sexual harassment or sexual violence, and notifying students of campus and community counseling, health, mental health, and other student services;
- designating an individual from the school’s counseling center to be “on call” to assist victims of sexual harassment or violence whenever needed;
- training the Title IX coordinator and any other employees who are involved in processing, investigating, or resolving complaints of sexual harassment or sexual violence, including providing training on:
 - the school’s Title IX responsibilities to address allegations of sexual harassment or violence
 - how to conduct Title IX investigations
 - information on the link between alcohol and drug abuse and sexual harassment or violence and best practices to address that link;
- training all school law enforcement unit personnel on the school’s Title IX responsibilities and handling of sexual harassment or violence complaints;
- training all employees who interact with students regularly on recognizing and appropriately addressing allegations of sexual harassment or violence under Title IX; and
- informing students of their options to notify proper law enforcement authorities, including school and local police, and the option to be assisted by school employees in notifying those authorities.

Development of Materials and Implementation of Policies and Procedures

- developing materials on sexual harassment and violence, which should be distributed to students during orientation and upon receipt of complaints, as well as widely posted throughout school buildings and residence halls, and which should include:
 - what constitutes sexual harassment or violence
 - what to do if a student has been the victim of sexual harassment or violence
 - contact information for counseling and victim services on and off school grounds
 - how to file a complaint with the school
 - how to contact the school’s Title IX coordinator

⁴³ For example, if the complainant was disciplined for skipping a class in which the harasser was enrolled, the school should review the incident to determine if the complainant skipped the class to avoid contact with the harasser.

- what the school will do to respond to allegations of sexual harassment or violence, including the interim measures that can be taken
- requiring the Title IX coordinator to communicate regularly with the school’s law enforcement unit investigating cases and to provide information to law enforcement unit personnel regarding Title IX requirements;⁴⁴
- requiring the Title IX coordinator to review all evidence in a sexual harassment or sexual violence case brought before the school’s disciplinary committee to determine whether the complainant is entitled to a remedy under Title IX that was not available through the disciplinary committee;⁴⁵
- requiring the school to create a committee of students and school officials to identify strategies for ensuring that students:
 - know the school’s prohibition against sex discrimination, including sexual harassment and violence
 - recognize sex discrimination, sexual harassment, and sexual violence when they occur
 - understand how and to whom to report any incidents
 - know the connection between alcohol and drug abuse and sexual harassment or violence
 - feel comfortable that school officials will respond promptly and equitably to reports of sexual harassment or violence;
- issuing new policy statements or other steps that clearly communicate that the school does not tolerate sexual harassment and violence and will respond to any incidents and to any student who reports such incidents; and
- revising grievance procedures used to handle sexual harassment and violence complaints to ensure that they are prompt and equitable, as required by Title IX.

School Investigations and Reports to OCR

- conducting periodic assessments of student activities to ensure that the practices and behavior of students do not violate the school’s policies against sexual harassment and violence;
- investigating whether any other students also may have been subjected to sexual harassment or violence;
- investigating whether school employees with knowledge of allegations of sexual harassment or violence failed to carry out their duties in responding to those allegations;
- conducting, in conjunction with student leaders, a school or campus “climate check” to assess the effectiveness of efforts to ensure that the school is free from sexual harassment and violence, and using the resulting information to inform future proactive steps that will be taken by the school; and

⁴⁴ Any personally identifiable information from a student’s education record that the Title IX coordinator provides to the school’s law enforcement unit is subject to FERPA’s nondisclosure requirements.

⁴⁵ For example, the disciplinary committee may lack the power to implement changes to the complainant’s class schedule or living situation so that he or she does not come in contact with the alleged perpetrator.

- submitting to OCR copies of all grievances filed by students alleging sexual harassment or violence, and providing OCR with documentation related to the investigation of each complaint, such as witness interviews, investigator notes, evidence submitted by the parties, investigative reports and summaries, any final disposition letters, disciplinary records, and documentation regarding any appeals.

Conclusion

The Department is committed to ensuring that all students feel safe and have the opportunity to benefit fully from their schools' education programs and activities. As part of this commitment, OCR provides technical assistance to assist recipients in achieving voluntary compliance with Title IX.

If you need additional information about Title IX, have questions regarding OCR's policies, or seek technical assistance, please contact the OCR enforcement office that serves your state or territory. The list of offices is available at <http://wdcroboelp01.ed.gov/CFAPPS/OCR/contactus.cfm>. Additional information about addressing sexual violence, including victim resources and information for schools, is available from the U.S. Department of Justice's Office on Violence Against Women (OVW) at <http://www.ovw.usdoj.gov/>.⁴⁶

Thank you for your prompt attention to this matter. I look forward to continuing our work together to ensure that all students have an equal opportunity to learn in a safe and respectful school climate.

Sincerely,

/s/

Russlynn Ali
Assistant Secretary for Civil Rights

⁴⁶ OVW also administers the Grants to Reduce Domestic Violence, Dating Violence, Sexual Assault, and Stalking on Campus Program. This Federal funding is designed to encourage institutions of higher education to adopt comprehensive, coordinated responses to domestic violence, dating violence, sexual assault, and stalking. Under this competitive grant program, campuses, in partnership with community-based nonprofit victim advocacy organizations and local criminal justice or civil legal agencies, must adopt protocols and policies to treat these crimes as serious offenses and develop victim service programs and campus policies that ensure victim safety, offender accountability, and the prevention of such crimes. OVW recently released the first solicitation for the Services, Training, Education, and Policies to Reduce Domestic Violence, Dating Violence, Sexual Assault and Stalking in Secondary Schools Grant Program. This innovative grant program will support a broad range of activities, including training for school administrators, faculty, and staff; development of policies and procedures for responding to these crimes; holistic and appropriate victim services; development of effective prevention strategies; and collaborations with mentoring organizations to support middle and high school student victims.

To: Senate PEAFC Committee

From: Ted Barnhill

Date: 4/30/2013

Subject: Concerns Regarding the DRAFT SEXUAL HARASSMENT AND SEXUAL VIOLENCE POLICY AND PROCEDURES

All of us support strong policies on sexual harassment and violence that are consistently enforced. Some of us remain vocal advocates for: (1) full and frequent disclosure of the policies to all parties (parents, students, faculty, and staff), and (2) a commitment to requiring substantial evidence of wrong doing prior to the termination of faculty or staff or expulsion or suspension of students.

There is no generally accepted definition of "preponderance of evidence". In sexual harassment and violence cases there may be little or no evidence. False, emotional or confused claims do occur. Our proposal to clarify the interpretation of "preponderance of evidence" is focused on insuring that career and education ending decisions are based on substantial evidence. We believe that this is consistent with Title IX and good policy and that it is appropriate to include this language in the University policies and procedure. We are told that the University has in the past required substantial evidence before faculty or staff was terminated or students are suspended or expelled.

I note that the University recently entered into a consent agreement which has not been provided to the PEAFC Committee. This makes shared governance very difficult. It is entirely possible that the University has already agreed to more aggressive procedures with limited evidentiary requirements. A wink and a nod that everything has worked o.k. in the past is no substitute for a commitment to making future decisions on the basis of substantial evidence.

It is also important to note that the PEAFC has not interviewed either plaintiffs or defendants in sexual harassment and violence cases to determine how well they believe the process has worked and what changes may be needed. Thus we do not have firsthand information to support assertions about how well the process has worked in the past.

A troubling point is that the University Administration has repeatedly and **explicitly rejected** the proposition that substantial evidence of wrong doing is necessary before faculty, staff, or students may be separated from the University. Given the Federal Government's aggressive behavior including the Dear Colleague letter it would not be surprising to see a significant, and perhaps justified, increase in complaints. Some of these complaints may have limited or no evidence of wrong doing. Given the threatened financial penalties and potential law suits the University could be pressured to terminate faculty or staff or expel students in the absence of substantial evidence of wrong doing. This potential outcome is consistent with the recent positions taken by the University on standards of evidence and their clear focus on financial matters.

As an old libertarian I joke with my cousin, who is a political science professor, that the most profound thing they have discovered is that "power corrupts and absolute power corrupts absolutely". Have we

forgotten the many sham trial abuses where defendants were convicted in the absence of evidence (Salem, Georgia, Moscow, Afghanistan, etc. etc.)? Are we prepared to have our students, our colleagues, and ourselves face career and education ending sanctions in the absence of substantial evidence of wrong doing? I am not so inclined. To do so even raises the possibility that at some time in the future a controversial professor could be falsely accused and separated from the University thus impacting academic freedom.

Any appeal by terminated faculty or expelled students would have to be based on “clear and convincing evidence” which would be impossible to deliver in circumstances where there is no substantial evidence. While it would involve significant effort we should consider asking to have the Executive Committee review any convictions of sexual harassment and violence and expressing an opinion on appropriate sanctions prior to their being decided.

The full PEAFF has not even met to discuss and vote on the DRAFT SEXUAL HARASSMENT AND SEXUAL VIOLENCE POLICY AND PROCEDURES. It is a sad day for shared governance when the PEAFF is instructed by the Executive Committee to put together (and expected to support) a resolution on SEXUAL HARASSMENT AND SEXUAL VIOLENCE POLICY AND PROCEDURES for presentation to the Faculty Senate at the May 10 Faculty Senate meeting for discussion and possible voting.

If a decision is made to send a motion to approve the draft policy and procedures to the Faculty Senate for a potential vote on May 10, 2013 I ask that this memo be attached to reflect my concerns on this matter.

In terms of a procedure to move forward it seems to me that the entire University community (students, faculty and staff) should receive a full briefing on and discussion of the issues prior to any vote by the Faculty Senate. My hope was (is) that Charles would (will) develop a white paper that lays out the issues which would be distributed to the University community. Senators would then have an opportunity to discuss the topic with their school faculties. In time the Senate would be in a position to debate and vote on any resolution(s).

For many reasons I believe that any votes by the PEAFF and/or Senate should be taken by written secret ballot.

All the best,

Ted Barnhill

COMMENTS OF PROFESSOR NICHOLAS KYRIAKOPOULOS, 4/30/2013

Dear Charles,

In addition to the concerns expressed by Art and Ted, I have a more fundamental concern that goes to the principle of self-governance of the faculty. By any measure, sexual harassment and sexual violence constitute "gross personal misconduct", that, if proven, can result in revocation of tenure. The Code has detailed procedures involving only the faculty for dealing with such allegations. The proposed procedures inject non-faculty actors in the adjudication of gross personal misconduct involving the faculty and erode the principle of self-governance.

Furthermore, the recourse of a faculty member to the grievance process after the decision by the hearing panel as constituted by the proposed policy defies reason. Suppose a faculty member is found guilty by the hearing panel using the standard of preponderance of evidence. Were the faculty member to initiate a grievance according to the Code, he or she would be faced with the Herculean task of presenting clear and convincing evidence to reverse a verdict reached by the lower standard of preponderance of evidence.

In the face of these concerns, the revised resolution is a modest improvement over the original one. Considering the tight deadline under which you operate, I will support bringing it to the Senate for discussion under the condition that the issues raised by Art, Ted and myself are brought to the attention of the Senate.

Nick

COMMENTS OF PROFESSOR ARTHUR WILMARTH, April 30, 2013

On 4/30/2013 12:01 PM, Arthur Wilmarth wrote:

Dear Charles:

I endorse and support your revised draft of the resolution, in the form attached to your message of yesterday evening (April 29th). I believe the revised draft will allow the Faculty Senate to go forward with the Administration's proposed Sexual Harassment and Sexual Violence Policy and Procedures while also clearly stating the PEAFF Committee's concerns about four additional changes that are needed to ensure fundamental fairness to all parties in sexual violence cases.

For the reasons stated below, I strongly believe that the "Dear Colleague" letter from the Office of Civil Rights of the Department of Education does NOT conflict in any way with the concerns stated in subclauses (a), (b), (c) and (d) of the new Resolving Clause 2.

The Dear Colleague letter states (pp. 14-15) that universities should "implement preventive education programs" to inform University stakeholders about "what constitutes sexual harassment and sexual violence, the school's policies and disciplinary procedures, and the consequences of violating these policies." The annual written notice proposed in Resolving Clause 2(a) would promote that educational objective and would therefore help GW to comply with the Dear Colleague letter. The University Compliance Office already sends a written notice each semester reminding University faculty and staff about University compliance policies, including the Statement of Ethical Principles. The Administration has NOT offered any reason why the University should not send the annual written notice proposed in Resolving Clause 2(a).

The Dear Colleague letter (p. 11) states that "in order for a school's grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred)." The letter also states (id.): "The 'clear and convincing' standard (i.e., it is highly probable or reasonably certain that the sexual harassment or violence occurred) . . . is a higher standard of proof" and would be "not equitable under Title IX." The standard of proof in proposed Resolving Clause 2(b) -- defining preponderance of the evidence as "substantial evidence showing that it is more likely than not that a fact is true or an event occurred" -- is entirely consistent with the foregoing language of the Dear Colleague letter. The definition in proposed Resolving Clause 2(b) uses a "more likely than not" standard and does not attempt to establish a "clear and convincing" standard of proof. The Administration disagrees, but I believe a requirement of "substantial evidence" to show that a conclusion is "more likely than not" to be true is completely consistent with the Dear Colleague letter as well as fundamental fairness for all parties.

The Dear Colleague letter (p. 12) "strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing." The Administration's proposed Policy and Procedures do NOT allow the parties to directly question each other, and the PEAFF Committee has NOT disagreed with that position. Instead, PEAFF Committee members have proposed, in Resolving Clause 2(c), that the parties and testifying

witnesses should be able to hear each other on a live basis, either through use of live videoconferencing facilities or by allowing the Complainant to testify behind a screen in the hearing room. The right of the accused to hear -- on a live basis -- testimony presented by his or her accusers is a fundamental right recognized in American jurisprudence that we should uphold. The Dear Colleague letter does NOT attempt to prohibit the exercise of that right, and we should not deny that right to Respondents in view of the likely life-altering and career-ending consequences of a finding of sexual violence. Under the Code of Student Conduct (paragraph 13.a.), the MINIMUM recommended sanction for sexual assault is one year's suspension from the University and exclusion from campus and University housing. In addition, any person found to have committed sexual violence is likely to be barred from a career in many fields, including education, medicine, nursing, law and law enforcement.

The Dear Colleague letter does NOT include any discussion of whether a university should provide known exculpatory evidence in its possession to Respondents. The right of the accused to receive exculpatory evidence from the prosecutor is another fundamental right recognized in American jurisprudence, and we should not deny it to Respondents. The proposal in Resolving Clause 2(d).would only require the Administration to provide KNOWN exculpatory evidence in its possession to Respondents -- it would not require the Administration to undertake a special investigation to find such evidence. The Administration has NOT contended that the proposal in Resolving Clause 2(d) would violate the Dear Colleague letter. Instead, the Administration would simply prefer not to have the duty to provide known exculpatory evidence to Respondents. That preference is NOT consistent with fundamental fairness.

For the foregoing reasons, I believe that Resolving Clause 2 would not require the University to violate the Dear Colleague letter in any way. The PEAFC Committee should therefore affirm the principles of fundamental fairness embodied in Resolving Clause 2. Accordingly, I endorse and support Charles' revised draft of the resolution.

Thanks very much, and best regards Art