

**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 Women<sup>1</sup> 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.<sup>3</sup> The report also found that approximately 6.1 percent of males were victims of completed or attempted sexual assault during college.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> Additionally, the likelihood that a woman with intellectual disabilities will be sexually assaulted is estimated to be significantly higher than the general population.<sup>7</sup> 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.”*

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“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]

And,

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, PEAf 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 PEAFC 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. Some 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 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

**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

**Adopted, as amended, May 10, 2013**