Policy 6.4 and Procedures related to Faculty

Risa Lieberwitz
Professor of Labor and Employment Law
ILR School
Faculty Senate member
Policy 6.4: Prohibited Bias, Discrimination, Harassment, and Sexual and Related Misconduct

Policy 6.4

Procedures to enforce Policy 6.4
• Title IX cases
• Non-Title IX cases
Policy 6.4: Prohibited Bias, Discrimination, Harassment, and Sexual and Related Misconduct

<table>
<thead>
<tr>
<th>“preponderance of evidence standard”</th>
<th>“clear and convincing standard”</th>
</tr>
</thead>
<tbody>
<tr>
<td>[“more likely than not”]</td>
<td>[i.e. “highly probable”]</td>
</tr>
</tbody>
</table>

- Consistent with standard of evidence in prior version of Policy 6.4
- May encourage complainants to come forward.
- Standard used in civil lawsuits
- Consistent with the level of certainty needed for potentially severe sanctions.
- Consistent with AFPS hearings.
- Consistent with AAUP principles.
- Hearings are private; civil suits are carried out in public hearings.
Procedures for Title IX cases
(alleged sexual misconduct/sexual harassment)

**STUDENT RESPONDENT**

- **Investigator** decides whether enough evidence to send case to Hearing Panel.

- **Full hearing before Hearing Panel ("Hearing A") prior to conclusions on the allegations.**

**FACULTY RESPONDENT**

- **Investigator** decides whether enough evidence to send case to Hearing Panel.

- **Full hearing by Hearing Panel prior to conclusions on the allegations.**
Procedures for Non-Title IX cases (alleged sexual misconduct/sexual harassment/other harassment or discrimination)

**STUDENT RESPONDENT:**
- **Investigator** decides whether enough evidence to send case to Hearing Panel
- **Full hearing** by Hearing Panel PRIOR TO conclusions on the allegations.
  - “Hearing A” where potential sanction of suspension/dismissal.
  - “Hearing B” where lesser sanction.

**FACULTY RESPONDENT:**
- Investigator concludes whether misconduct occurred/recommends sanctions.
- Investigator sends report to Dean to make final decision.
- Full Hearing only where there is a subordinate-supervisory relationship or academic freedom issue:
  - Hearing by Senate Committee on Academic Freedom AFTER the decision reached by investigator and the Dean.
- All other non-Title IX cases: NO hearing on misconduct/sanctions
  - Dean reviews investigative report and makes final decision.
  - Faculty respondent may file grievance in college-level grievance procedure.
Non-Title IX cases (alleged sexual misconduct/sexual harassment/other harassment or discrimination)

Current Procedures

FACULTY RESPONDENT:

• Investigator concludes whether misconduct occurred/recommends sanctions.

• Investigator sends report to **Dean to make final decision**.

• **Full Hearing only** where there is a subordinate-supervisory relationship or academic freedom issue:
  
  • Hearing by Senate Committee on Academic Freedom AFTER the decision reached by investigator and the Dean.

• **All other non-Title IX cases: NO hearing** on misconduct/sanctions
  
  • **Dean** reviews investigative report and makes final decision.

  • Faculty respondent may file grievance in **college-level grievance procedure**.
Non-Title IX Procedures could be amended with:
Full hearings for faculty prior to decisions in ALL non-Title IX cases
[note: amendments in red]

- **Investigator** decides whether enough evidence to send case to a hearing.

- Full Hearing by Senate Committee on Academic Freedom and Professional Status (AFPS) in all non-Title cases.

- Dean must accept the AFPS’s findings of fact and conclusions. However, **Dean may modify the AFPS recommended sanctions.**
CONSIDERING THE AMENDMENTS TO NON-TITLE IX PROCEDURES FOR FACULTY

IN FAVOR OF AMENDMENTS

Due Process/Fairness:
• Full hearings by peers (AFPS) in all non-Title IX cases.
• Separates role of investigator and decision-maker.
• Timing of hearings prior to decisions.
• Faculty and students have same levels of due process.

AGAINST AMENDMENTS

• This level of due process is not required by law (including Title IX).
  [Note: This is also true for student respondents.]
• Students hesitant to bring complaints or appear as witnesses against faculty.
  [Note: This applies to any hearings.]