

October 29, 1996

Committee on Academic Freedom and Professional Status of the Faculty

**Procedures for Adjudicating Contested Investigatory Findings and Recommendations in Sexual Harassment Cases**

**Preamble**

According to the University's sexual harassment policy (Policy 6.4), if a faculty member contests an investigation report's findings or recommended sanction in a case where the recommended sanction is short of dismissal, the faculty member shall have recourse to an adjudicatory process conducted by the Committee on Academic Freedom and Professional Status of the Faculty (hereinafter the "Committee"). This is a preliminary draft of the Committee's procedures for adjudicating such cases.

In drafting these procedures, the Committee does not endorse the University's current sexual harassment policy. Nor can this draft correct all of the flaws in the University's policy. However, the Committee is charged with adjudicating contested investigatory findings and recommendations under the current policy, and we feel that we should be prepared with internal procedures in the event that a sexual harassment case should arise.

It is the Committee's expectation that the Senate will likely present to the administration proposed changes to the University's current sexual harassment policy. We believe that one of the key elements of any such policy will be a hearing by peers. That hearing will have to be governed by a formal set of procedures, which must be acceptable to the Faculty Senate. We therefore present this preliminary draft to the Senate for their reaction and suggestions.

**I. General Provisions**

1. Any member of the Committee whose personal or professional relationships might interfere with providing a fair and unbiased hearing shall recuse himself or herself from the proceedings. A member of the Committee who is in the same department as the accused shall recuse himself or herself. [Footnote: The Hotel School, the Johnson Graduate School or Management, the Law School, and the School of Industrial and Labor Relations shall be treated as departments for purposes of this sentence.] The charged party and the complaining party or parties may challenge any member of the Committee who does not recuse himself or herself. Following such a challenge, if a majority of the other members of the Committee, not including recused members and student members, votes in favor of recusal, then the challenged member shall recuse himself or herself.
2. The remaining members of the Committee, not including recused members and student members, shall participate in the proceedings. If there are fewer than five such remaining members of the Committee, the Committee shall decline to hear the grievance until the Nominations and Elections Committee of the Faculty Senate adds members to the Committee to make a complement of five participating members. The participating members will be referred to hereinafter as the "members of the Committee."
3. A majority of the members of the Committee shall constitute a quorum for any hearing. Decisions of the Committee shall be rendered by a majority vote of the members present.
4. Each person who appears before the Committee shall be advised that he or she is obligated to treat everything that is said in the proceedings as confidential, and may not disclose this information to any other person, unless compelled to do so by law.
5. The members of the Committee shall elect an Administrative Chair (hereinafter the "chair") from among themselves. Subject to paragraph 6, the chair shall control the conduct of all proceedings and shall make such procedural rulings as may be necessary to assure fairness and to avoid unnecessary delay, including rulings on the relevance of suggested witnesses or lines of questioning. The Committee may overrule any such ruling by a majority vote of the members present.
6. The Committee may appoint a faculty member who is a member of a state bar to serve as an independent legal advisor

to advise the Committee on all matters relating to the performance of its responsibilities hereunder. The legal advisor shall not be a Committee member and shall not have a vote in the Committee's decisions. At the invitation of the Committee, the legal advisor may be present at any time during the proceedings and during the Committee's deliberations. The chair may authorize the legal advisor to control the conduct of the proceedings and to make procedural rulings. The Committee, by a majority vote of the members present, may withdraw this authority at any time and may overrule any procedural ruling made by the legal advisor.

7. The Committee shall recommend that the Faculty Senate maintain a list of qualified individuals who have agreed to serve as volunteer advisors or attorneys for the parties in the Committee's proceedings. Nothing in these procedures shall be interpreted, however, to obligate the Faculty Senate or the Committee to guarantee that the charged party and the complaining party or parties will be able to obtain the services of an advisor or attorney.

8. The Committee has a responsibility to conduct fair and even-handed proceedings, and to make sure that all parties and witnesses are treated in a polite, respectful manner.

9. The members of the Committee shall first read the investigation report and the written grievance of the faculty member.

10. The Committee shall then conduct formal hearings as provided in Section III, unless the charged party waives his or her right to such hearings, in which case the Committee shall conduct informal proceedings as provided in Section II. Any waiver of the right to formal hearings shall be irrevocable.

## **II. Informal Proceedings**

11. This Section shall apply if and only if the charged party waives his or her right to formal hearings. Section III shall not apply in such a case.

12. The Committee shall invite the charged party to explain why he or she feels that the recommended sanction and/or the underlying investigation findings are unjustified. The charged party may be accompanied by an advisor or attorney of his or her own choice, who may advise the charged party but may not participate in the proceedings in any other way.

13. The Committee may also call the complaining party or parties and any witnesses. A complaining party or witness who is called may be accompanied by an advisor or attorney of his or her own choice, who may advise the complaining party or witness but may not participate in the proceedings in any other way.

## **III. Formal Hearings**

14. The University shall provide an attorney whose sole responsibility in these proceedings shall be to support the findings and recommendations of the investigation report. This attorney shall be entitled to present witnesses and to cross-examine witnesses (including the complaining party or parties and the charged party) who appear before the Committee.

15. The charged party shall be entitled to be accompanied and represented by an advisor or attorney of his or her own choice.

16. The charged party, either personally or through his or her advisor or attorney, shall be entitled to give evidence and to present witnesses in his or her own behalf, to hear the evidence against him or her, and to confront and cross-examine adverse witnesses (including the complaining party or parties) who appear before the Committee.

17. The Committee shall encourage the OEO to turn over to the charged party all exculpatory evidence in their investigatory files.

18. Each complaining party shall be entitled to be accompanied and represented by an advisor or attorney of his or her own choice.

19. Each complaining party, either personally or, if accompanied and represented by an advisor or attorney, through that

advisor or attorney, shall be entitled to give evidence and to present witnesses in his or her behalf and to confront and cross-examine adverse witnesses (including the charged party) who appear before the Committee.

20. Witnesses may raise objections to any question posed to them, either personally or, if represented by an advisor or attorney, through that person. The Committee shall rule on such objections in accordance with paragraphs 5 and 6.

21. The members of the Committee may question all those who appear in the hearings. The members of the Committee may (and are encouraged to) adjourn temporarily to consult concerning the questions to be asked.

22. Formal rules of evidence shall not necessarily apply. The Committee shall endeavor to evaluate all of the relevant facts of a given case. Prior convictions of sexual harassment and prior mediation agreements in sexual harassment cases shall be admissible, but records of prior accusations not leading to convictions and records concerning prior similar behavior not subject to the complaint(s) in the case shall not be admissible. Testimony about prior accusations or prior similar behavior shall be admissible, but only if the behavior in question satisfies the time requirements set forth in the section of the University's Sexual Harassment Procedures entitled "Time Period for Filing a Complaint."

23. The Committee shall base its findings of fact and conclusions solely on the evidence (including but not limited to the investigation report) presented at the hearings.

24. All hearings shall be tape recorded. The Committee shall permit the charged party and the complaining party or parties to listen to the tape recordings upon request.

#### **IV. Decision and Report**

25. The Committee shall decide by a majority vote of the members present whether

there is clear and convincing evidence to find that the charged party is guilty of each of the charges specified in the investigation report. In the case of a tie vote, the Committee shall find that the charged party is not guilty.

26. The Committee shall make a written report setting forth the Committee's findings of fact, conclusions, and recommendations. The Committee shall transmit this report to the Dean and to the parties in the case. Before being given a copy of the Committee's report, the charged party and the complaining party or parties shall be required to sign a statement of confidentiality affirming that they will not divulge the contents of the report to any other person, unless compelled to do so by law. The Committee's report shall include a discussion of the rationale for its findings of fact, conclusions, and recommendations.

27. The Committee shall have discretion to release a public statement of its findings of fact, conclusions, and recommendations. In exercising its discretion, the Committee shall take into account concerns about confidentiality.

28. These procedures and any subsequent amendments shall become effective upon ratification by the Faculty Senate.