

Reviewing Illinois Wesleyan University's Sexual Harassment Policy

By Joerg Tiede

Illinois Wesleyan University, like all colleges and universities, recently received a so-called “Dear Colleague” letter by the U.S. Department of Education’s Office for Civil Rights. The letter, which was widely covered in the press, explains the university’s obligations under Title IX regarding sexual harassment and sexual assault. In a response to Assistant Secretary for Civil Rights Russlyn Ali, the AAUP’s Committee on Women in the Academic Profession and AAUP President Cary Nelson applauded the Department of Education’s letter for “instructing educational institutions to develop clear procedures to address sexual harassment and violence....”

However, both this AAUP letter and an earlier letter by Gregory Scholtz, Director of the Director of Academic Freedom, Tenure, and Governance, raised concerns about the requirement that the standard of evidence that is to be used in hearings regarding accusations of sexual assault or harassment should be that of “preponderance of evidence” rather than the “clear and convincing evidence” standard that can be found in multiple AAUP-approved statements on academic due process.

As Committee A on Academic Freedom and Tenure pointed out in a report entitled Due Process in Sexual Harassment Complaints, “sexual harassment – which Committee A certainly does not condone, be the offender a faculty member of anyone else - is not somehow so different from other kinds of sanctionable misconduct as to permit the institution to render judgment and to penalize without having afforded due process.” Nevertheless, unless the Department of Education issues a letter changing the requirements for standard of proof, the “preponderance of evidence” standard will have to be employed in sexual assault and sexual harassment hearings at Illinois Wesleyan.

It should be noted that, even if the “preponderance of evidence” standard is used in sexual harassment and sexual assault hearings, the standard of proof for dismissal for cause hearings, which are required before a faculty member can be dismissed, is that of “clear and convincing evidence” and is not affected by the Department of Education’s letter. Therefore, it does not appear that adopting the “preponderance of evidence” standard for such hearings makes it easier to dismiss faculty.

In addition to modifying the existing policy to reflect the changes mandated by the U.S. Department of Education, Illinois Wesleyan’s existing sexual harassment policy (located in chapter 6 of the Faculty Handbook) was reviewed by the AAUP’s Department of Academic Freedom, Tenure, and Shared Governance last year and was found to be deficient in two respects:

1. IWU’s policy calls for a committee to be appointed by the Provost to review the allegations of sexual harassment, rather than for the Hearing Committee to review such allegations. It has been the long-standing policy of the AAUP that disciplinary hearings should be conducted by elected faculty committees.

2. IWU’s policy does not make an explicit exception for academic freedom. The AAUP’s statement on Sexual Harassment states that speech qualifies as sexual harassment if such speech or conduct is reasonably regarded as offensive and substantially impairs the academic or work opportunity of students, colleagues, or co-workers. If it takes place in the teaching context, it must also be persistent, pervasive, and not germane to the subject matter. The academic setting is distinct from the workplace in that wide latitude is required for professional judgment in determining the appropriate content and presentation of academic material.

Thus, in both of these points, IWU’s existing policy fails to comport with AAUP-approved statements on the topic. The recently formed administrative task force which is to review the existing sexual harassment policy will hopefully be able to address these shortcomings, in addition to addressing any changes to make the policy compliant with the Department of Education’s requirements.

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