**Memorandum**

To: Chancellors  
From: Joseph F. Kauffman  
Subject: Development of Policy on Sexual Harassment

On the agenda of the Education Committee of the Board of Regents for their December 4-5, 1980 meeting was a report on sexual harassment developed by the Regents' Task Force on the Status of Women. In conjunction with that report, the Regents also considered a draft resolution which contained a policy statement on sexual harassment, a process for developing grievance procedures, and suggested guidelines for institutional implementation of the policy and grievance procedures. Both of these documents (Attachments B and C) are enclosed.

The discussion of these two documents in the Education Committee centered around two major concerns:

a. Did faculty participation on the task force, in institutional hearings, and on institutional resource boards satisfy the need for faculty governance bodies to review and make recommendations concerning policies and procedures regarding sexual harassment?

b. Is the proposed definition of sexual harassment contained in Part I of the draft resolution (Attachment B) compatible with the principles of academic freedom and constitutional guarantees of free speech?

As a result of this discussion, the Education Committee, and, subsequently, the full Board approved a resolution reaffirming its commitment to rid the System of sexual harassment and remanding the report and draft policy to the Chancellor and faculty of each institution for immediate review and the development of recommendations to the Regents by their March meeting (the resolution approved was I.1.1. [Revised], enclosed as Attachment A). The purpose of this memo is to relate to you the Regents' mandate and to suggest next steps as well as a timetable.

I think it is most urgent for the Board to receive and act on a policy statement and definition of sexual harassment at their March, 1981 meeting. It appears
appropriate for the Board to approve a single System policy statement and definition of sexual harassment. Therefore, I would ask the Chancellors and the faculty of each institution to respond by February 13, 1981 to the report and draft policy enclosed with recommendations for a UW System policy on and definition of sexual harassment. I understand that is a tight schedule, particularly given holidays and term breaks, but the Board does consider it important to have a sexual harassment policy in place as soon as possible. If you can respond to me by February 13, System Administration will compile a summary of institutional recommendations and draft a policy statement based on these recommendations for discussion with the Chancellors and the Faculty Representatives in late February before further consideration by the Board of Regents in March.

It seems to me that guidelines and grievance procedures developed to implement a sexual harassment policy will be institution-specific in order to be compatible with existing institutional policies and governance structures. Assuming the Regents will approve a policy and definition of sexual harassment in March, I would ask, further, that the Chancellors and faculty of each institution begin the process of developing institutional rules and grievance procedures to implement a sexual harassment policy and that you plan to submit these rules and procedures to me by April 17, 1981. They will be reviewed by System Administration and brought to the Board of Regents for approval at the May or June Board meeting.

Thank you for your cooperation in this important matter.

Enclosures

cc: Faculty Representatives
EDUCATION COMMITTEE

Resolution:

Whereas, it is the policy of the Board of Regents of the University of Wisconsin System to foster an environment of respect for the dignity and worth of all students and staff of the System; and

Whereas, incidents of sexual harassment are demeaning to all persons involved and impair the ability of the System to perform its educational functions;

Now, therefore, the Board of Regents of the University of Wisconsin System expresses its appreciation for the report on sexual harassment. The Board reaffirms its commitment to rid the System of sexual harassment and hereby refers the report to each campus, directing the Chancellor and faculty of each to give the report immediate and careful consideration and to report their recommendations to the Board of Regents by the March meeting of the Board.
Sexual Harassment

EDUCATION COMMITTEE

Resolution:

That, upon recommendation of the President of the System, the following policy and implementing procedures on sexual harassment be approved:

Part I - Sexual Harassment Policy Statement

WHEREAS, it is the policy of the Board of Regents of the University of Wisconsin System to foster an environment of respect for the dignity and worth of all students and employees of the System; and

WHEREAS, incidents of sexual harassment are demeaning to all students and employees of the System and impair the ability of the System to perform its educational functions;

NOW, THEREFORE, BE IT RESOLVED, that sexual harassment is impermissible and unprofessional conduct, subject to disciplinary action in accordance with applicable due process requirements, including, but not limited to reprimand, temporary suspension, expulsion or discharge of the harassing individual.

The following conduct constitutes sexual harassment:

a. Any attempt to engage an unconsenting person in sexual activities or physical contact of a sexual nature; or

b. The following, if unsolicited and repeated: sexually derogatory epithets, sexually derogatory statements or gestures concerning an individual's body, or sexually derogatory statements or gestures concerning the anatomical parts specific to one gender; or

c. Unsolicited and repeated physical contact of a sexual nature; or

d. Any attempt to penalize or punish a person for rejecting or objecting to the actions described in paragraphs a., b., or c., above.

Part II - Grievance Procedures

Recognizing the sensitive nature of sexual harassment complaints, and the need to safeguard the rights of both the complainant and the alleged harassing individual, the Board of Regents directs as follows:

a. Sexual Harassment Study Committees or their equivalents shall be established within each institution or unit of the System, for the purpose of developing recommendations for grievance procedures to deal with sexual harassment complaints in a manner which will adequately protect the rights of both the complainant and the alleged harassing individual;

b. Each such committee or its equivalent shall be appointed by the Chancellor of the institution or unit, in consultation with the Title IX coordinator, the affirmative action officer, and committees concerned with the status of women;
c. Such committees shall be composed of approximately equal numbers of women and men who are representative of students, academic staff, administration, classified staff and faculty, both tenured and nontenured;

d. Grievance procedure recommendations developed by the Sexual Harassment Committees or their equivalents pursuant to this part shall, upon completion, be submitted to the Board of Regents for such action as may be appropriate in accordance with the Sexual Harassment Policy Statement.

Part III - Implementing Guidelines

The Board of Regents recommends that the Sexual Harassment Study Committees or their equivalents consider the following guidelines in developing their recommendations for sexual harassment grievance procedures:

a. Sexual harassment grievance procedures should permit the initial filing of a complaint of sexual harassment with an individual or entity outside the unit of work or study in which the alleged harassing conduct has occurred;

b. The procedures should provide for various forms of complaints according to the nature of the conduct alleged, and various gradations of disciplinary action, depending on the severity and frequency of the harassing conduct;

c. The procedures should provide adequate protection from and corrective action for retaliation against any complaining party or witness;

d. The procedures should provide for adequate record keeping of all complaints; any identification of parties must be consistent with existing rules and regulations regarding personnel and student record keeping;

e. The procedures should provide for periodic notice of and publicity concerning the policy prohibiting sexual harassment and the grievance procedures for sexual harassment complaints; such notice should be given by each institution or unit in appropriate publications such as employee newsletters, student, faculty and staff handbooks and student newspapers and should provide information on where and with whom a sexual harassment complaint can be filed.
Regents' Task Force on the Status of Women

Recommendations on Sexual Harassment

The Regents' Task Force on the Status of Women recommends that the Board of Regents adopt and disseminate the following policy which defines and prohibits sexual harassment.

1. Sexual harassment is impermissible and unprofessional conduct, subject to disciplinary action in accordance with applicable due process requirements, including, but not limited to, reprimand, temporary suspension, expulsion or discharge of the harassing individual.

2. The following conduct constitutes sexual harassment:
   a. Any attempt to engage an unconsenting person in sexual activities or physical contact of a sexual nature; or
   b. The following, if unsolicited and repeated: sexually derogatory epithets, sexually derogatory statements or gestures concerning an individual's body, or sexually derogatory statements or gestures concerning the anatomical parts specific to one gender; or
   c. Unsolicited and repeated physical contact of a sexual nature; or
   d. Any attempt to penalize or punish a person for rejecting or objecting to the actions described in paragraphs a., b., or c. above.

The Task Force further recommends that the Board of Regents direct that Sexual Harassment Study Committees or their equivalents be established within each institution/unit of the system for the purpose of developing recommendations for grievance procedures to deal with sexual harassment complaints in a manner which will adequately safeguard the rights of both the complainant and the alleged harassing individual. Each such committee or its equivalent shall be appointed by the Chancellor of the institution/unit, in consultation with the Title IX coordinator and/or affirmative action officer and committees concerned with the status of women, and should be constituted of approximately equal numbers of women and men representative of students, academic staff, administrators, classified staff and faculty, both tenured and untenured.
Nature and Extent of Sexual Harassment in the University of Wisconsin System

At every hearing conducted by the Task Force, each institution/unit presented evidence of sexual harassment of female students, staff and faculty. Generally, the harassing conduct was perpetrated by a male teacher or supervisor who had sufficient power to adversely affect the future of the woman through grades or a change in employment condition such as pay, demotion or discharge. The sexual harassment complained of encompassed a variety of physical and verbal behavior. Students and staff reported demands for sexual activity in exchange for certain grades, jobs or promotion, sexual assaults (as defined by Wisconsin Statute section 940.224), and unwanted touching of their bodies by male faculty and administrators. Several students reported incidents in which a professor stated that an "A" grade would be obtainable only if the woman engaged in sexual intercourse. Other students reported being hugged and kissed by professors in their offices when the students had come to the office for an educational conference. Students stated that they have been required by some professors to complete make-up exams in the professors' homes or apartments where sexual advances were often made to the students. Classified staff also complained of sexual propositions, and repeated touching, patting or pinching by supervisors and faculty members. Non-physical harassment ranged from the use of sexually degrading remarks and material in the classroom or workplace to leering and ogling a woman's body. Testimony consistently included examples of the use of degrading sexual remarks, jokes and materials, such as slides from Playboy or slides of nude women, the reference to women students as "cunts", "Barefoot and Pregnant" suggestions, and statements such as "(t)oday we will gangbang the girls." Physical forms of sexual harassment, at the very least, lower the productivity and self-esteem of the affected women. The verbal forms are equally detrimental and demeaning, particularly for students and others who often regard professors and administrators as role models. Indeed, this form of harassing conduct by some male professors and administrators also has a negative impact on male students and subordinates who are thereby being taught that such conduct is acceptable behavior.

Although the hearings conducted by the Task Force elicited numerous reports of sexual harassment, complete statistical documentation for the system is not available because several universities/units did not have sufficient financial resources or time to conduct a thorough and complete survey. Evidence produced at the hearings plus surveys conducted by several universities/units, however, illustrate that sexual harassment does exist as a problem within the system. A national survey and other more limited surveys have indicated that sexual harassment is a significant problem in the workplace and academy. 1 Certainly, students and employees have the right to be treated with respect and courtesy and thus the Task Force believes that the Board of Regents has a responsibility and obligation, perhaps legally imposed, to attempt to eliminate all forms of sexual harassment within the system by adopting a policy which defines sexual harassment and notifies all employees that it is impermissible and unprofessional conduct. The Task Force's proposed definition of sexual harassment has been drafted to include all forms of sexual harassment which have been experienced by employees and students. It has been drafted to include both heterosexual and homosexual harassment and to apply to any harassing individual, regardless of gender.
Legal Status of Sexual Harassment as Sex Discrimination

The University of Wisconsin System faces potential legal liability if it does not attempt to eliminate sexual harassment of employees and students and to handle expeditiously and effectively complaints of sexual harassment. The Equal Employment Opportunity Commission has issued regulations that sexual harassment constitutes a violation of Title VII of the Civil Rights Act which prohibits discrimination in employment on the basis of sex, color, race, religion or national origin. The regulation states in part:

Harassment on the basis of sex is a violation of Sec. 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.  

It is important to note that sexual harassment is defined in the regulations to include verbal as well as physical conduct that unreasonably interferes with work performance or creates an "intimidating, hostile or offensive" environment. Apparently this definition would encompass the repeated sexually derogatory remarks of which members of the classified staff have complained. The regulations state that employers have a legal duty to "take all steps necessary to prevent sexual harassment from occurring." These regulations also provide that an employer is liable for supervisory employees' acts of sexual harassment, regardless of whether the employer knew or should have known of their occurrence; with respect to harassment perpetrated by a fellow employee, the employer is responsible for such acts where the employer or its agents or supervisory employees knew or should have known of the conduct, unless it can show that it took immediate and appropriate action. Some federal appellate courts have found sexual harassment to constitute sex discrimination within the meaning of Title VII; these cases have generally involved the employment status or condition of a woman worker being adversely affected after refusal to comply with the sexual demands of a supervisor. Wisconsin Statutes section 111.32 (5)(g)(4), which prohibits sex discrimination in employment, defines sex discrimination to include the making of any employment condition or status "contingent upon a person's consent to sexual contact or sexual intercourse." Sexual contact is defined as the touching of the intimate parts of a person, clothed or unclothed, by the hand, mouth or intimate parts of another, clothed or unclothed, if the touching can reasonably be construed as being committed for the purposes of sexual arousal or gratification. Thus, at least with respect to employees, the University of Wisconsin system has a legal responsibility to develop and enforce a policy prohibiting sexual harassment.

The developing case law under Title IX of the Education Amendments of 1972, which prohibits, among other things, sex discrimination in educational programs receiving federal assistance, indicates that the system may have a comparable legal responsibility to its students. The Supreme Court has ruled that a student applicant may bring a private cause of action pursuant to Title IX against a university for sex discrimination in its admission practices. A federal district court has ruled that a female student who
allegedly received a poor grade in retaliation for rejecting the sexual demands of her professor has a private cause of action for sex discrimination against the university; in that case, the student had complained to various university officials about the professor's sexual harassment but had been told that "nothing could be done to remedy her situation." This holding indicates that the university system has an obligation to investigate complaints of sexual harassment and remedy the situation if harassment is found to exist.

**Need for Sexual Harassment Study Committee**

The Task Force believes that a procedure for investigating and resolving complaints of sexual harassment needs to be developed. However, in view of the sensitive nature of sexual harassment complaints, existing grievance procedures probably need to be substantially varied and/or supplemented for sexual harassment complaints in order to fully protect the rights of the complainant and alleged harassing individual. Thus, the Task Force recommends the appointment of Sexual Harassment Study Committees within each institution/unit to fully explore and develop an appropriate grievance procedure for sexual harassment complaints. It is recommended that the Study Committees be constituted of approximately equal numbers of women and men and representatives of each constituency of the campus or unit; comparable representative committees have been established at Harvard, MIT and Yale for instituting grievance procedures for sexual harassment complaints.

Evidence presented to the Task Force illustrated that there are certain problems, perhaps unique to complaints of sexual harassment, which should be dealt with in any grievance procedure which is developed. Thus the Task Force has specified in its Implementation Recommendations certain fundamental provisions which should be contained in the grievance procedure developed by the Study Committees. Currently complaints of sexual harassment are handled on an ad hoc basis; most complaints are apparently filed in the complainant’s unit of work or study with a department chair or a high-level administrator. Often the chair or administrator does an effective investigation and resolution of the complaint, but many complainants expressed the belief that the chairs or administrators were colleagues and/or friends of the alleged harassing individual and thus had not believed the complaint or fully investigated the matter. The evidence produced at the various hearings of the Task Force substantiated many instances of inaction on complaints of sexual harassment. At the same time, many witnesses expressed great reluctance to report incidents of sexual harassment because of fear of retaliation by the harassing individual. For these reasons, the Task Force believes that the grievance procedure should provide a locale for filing complaints outside the unit of work or study of the complainant and should provide protection from and corrective action for retaliation exercised against a complaining party or witness. In view of the range of activities constituting sexual harassment and the spectrum of remedial actions available depending on the nature of the harassing conduct, the Task Force recommends that the grievance procedure should contain several stages, with varying degrees of formality and disclosure of the identities of the parties. These stages would provide flexibility and perhaps facilitate the resolution of the complaint while protecting the interests of the parties involved. The Task Force also believes that even when a formal complaint is not pursued, a record should be maintained without identification of the parties involved. Records of informal and formal complaints will assist in determining the effectiveness of the grievance procedure as well as the dissemination of information to students and employees concerning the system's policy prohibiting sexual harassment.
IMPLEMENTING RECOMMENDATIONS

The Sexual Harassment Study Committees or their equivalents should develop procedures for filing and investigating complaints of sexual harassment which should, among other things, contain the following provisions:

1. The proposed grievance procedures should permit the initial filing of a complaint of sexual harassment with an individual or entity outside the unit of work or study in which the alleged harassing conduct has occurred;

2. The adopted procedures should provide for various forms of complaints according to the nature of the conduct alleged, and various gradations of disciplinary action, depending on the severity and frequency of the harassing conduct;

3. The adopted procedures should provide adequate protection from and corrective action for retaliation against any complaining party or witness;

4. The adopted procedures should provide for adequate record keeping of all complaints. Any identification of parties must be consistent with existing rules and regulations requiring personnel and student record keeping;

5. Upon the establishment of a sexual harassment grievance procedure and periodically thereafter, notice of and publicity concerning the policy prohibiting sexual harassment and the grievance procedure for resolving complaints of sexual harassment should be given by each institution/unit in appropriate publications, including but not limited to employee newsletters, student, faculty and staff handbooks and student newspapers. Such publicity should provide information on where and with whom a sexual harassment complaint can be filed.

Sexual harassment demeans all members of the University of Wisconsin System and substantially impairs its educational mission. The Task Force considers its recommendations for the establishment of a policy prohibiting sexual harassment as a complementary part of the system's continuing commitment to respect the dignity and worth of all individuals.
Footnotes


3. Id. 74677.

4. Id.


6. Wisconsin Statutes section 940.225(5)(b). Wisconsin Statutes section 111.32(5)(g)(4) incorporates by reference the definition of sexual contact contained in section 940.225(5)(b).


8. Alexander v. Yale University, 459 F. Supp. 1 (D. Conn. 1977), appeal pending (No. 79-7546 2nd Ar.). The appeal does not concern the holding discussed in the text.

9. Id. 4.