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NOTE: Refer to the Cornell Policy website (http://www.policy.cornell.edu/vol6_4.cfm) for the most current policy.

According to the bylaws of the university, the “...functions of the University Faculty shall be to consider questions of educational policy which concern more than one college, school or separate academic unit, or are general in nature…”

Responsibility of: Committee on Academic Freedom and Professional Status. The Committee considers matters relating to academic freedom and responsibility; freedom of teaching and learning; professional status of the faculty, including policies and procedures relevant to faculty appointments, promotion, retirement, separation, and tenure; and receives and reviews written complaints brought by or against a faculty member when other specific procedures have not been designated for hearing those grievances. It reports to the Faculty Senate.

PROCEDURES

October 9, 1996, Records, pp. 7739-7740S
November 13, 1996, Records, pp. 7772-7781S, Appendices L & M
February 12, 1997, Records, pp. 7810-7822S, Appendix A
February 19, 1997, Records, pp. 7825-7839S
May 13, 1998, Records, pp. 8075-8081S
September 9, 1998, Records, pp. 8098-8110S, Appendices C & D

At the October 1996 meeting, Dean Stein read the following letter dated October 3, 1996 from Philip Lewis, Dean of the College of Arts and Sciences:

"Dear Peter:

“At its meeting yesterday afternoon, the faculty of Arts and Sciences passed a sense-of-the-body resolution that urges the university administration to revoke the procedure for handling complaints of sexual harassment that was promulgated last summer and to work with the faculty senate to design a procedure more acceptable to the faculty. The same resolution also urged members of the university faculty to consider whether or not, in light of various objections to the procedure, they should cooperate with its implementation.

“I interpret the college faculty's opinion as an expression of strong dissatisfaction on the part of a substantial group of faculty members who have taken an active interest in the sexual harassment issue. I am confident that a procedure recently adopted by the faculty senate will satisfy the concerns of the college faculty.”
sexual harassment procedure. While the vote has no direct bearing on the status of the procedure, one must ask if the procedure is likely to work satisfactorily in the absence of faculty support, or at least acquiescence. Will it, for example, be possible for the Arts College administration to recruit from the faculty ranks counselors who are fully committed to the use of the procedure? The difficulty ahead of us is obvious.

“I believe, therefore, that the University Senate should revisit the issue with the votes of our faculty and the faculty of the Law School in mind and should seek the cooperation of the university administration in such an endeavor.

“From the debate at our meeting, one might extract several major concerns on the part of those who oppose the current procedure:

“1. They would prefer an approach to the design and crafting of the procedure in which faculty members were participants, rather than merely consulted parties.

“2. They object to the adjudicatory authority accorded to deans in the current policy and advocate reducing or eliminating it.

“3. They consider the description of the investigative process too vague and want the post-investigative judgment on whether charges should be brought or dropped to be made by a faculty panel.

“4. They consider the guarantees of accused faculty members' rights to be insufficient and support strengthening them; similarly, they consider the specification of procedures for hearings at the various levels of investigation, adjudication, and appeal to be insufficient and seek to have them detailed.

“5. They criticize the procedure's provisions about recordkeeping and access to records and argue for reinforcing access of accused faculty while limiting that of administrative officials.

“The critics of the procedure have many other, more specific objections. Perhaps what is needed from the faculty senate or a faculty committee is (1) an account of the concerns that an acceptable procedure for handling complaints against faculty members needs to address and (2) a proposal suggesting how the university should do this. Meanwhile, the status of the current procedure remains somewhat elusive. Perhaps the senate should also consider calling either for a return to the pre-July 1 university-wide procedure or for temporary adherence to the current procedure.

“On behalf of the College of Arts and Sciences, let me thank you for your interest in this vexing matter."
At the November 1996 meeting, the Faculty Senate adopted the following resolution pertaining to the Sexual Harassment Policy:

WHEREAS, the Faculties of the College of Arts and Sciences and the Law School have expressed concerns about the University Sexual Harassment Policy implemented in July 1996, and

WHEREAS, the fairness and effectiveness of the Sexual Harassment Policy is of great concern to the entire faculty,

THEREFORE, BE IT RESOLVED, that the Senate instructs the Academic Freedom and Professional Status of the Faculty Committee (AFPS) to conduct a thorough review of those provisions of the University Sexual Harassment Policy that apply to faculty members, with the understanding that the review will include soliciting the opinions of individuals with a variety of perspectives, and

BE IT FURTHER RESOLVED that the AFPS Committee shall report back to the Senate no later than its February meeting with its recommendations for improving the fairness and effectiveness of the Policy.

The Academic Freedom and Professional Status Committee introduced the following draft for discussion on adjudicating contested findings since it is charged with that responsibility.

Preliminary Draft
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.
At the February 1997 meeting, amendments to the Sexual Harassment Procedures were discussed and voted on. The following amendment was adopted:

Amendment: On page 15, delete the “Note” in section entitled, “Time Period for Filing a Complaint,” and replace with the following:

Note: Prior convictions of sexual harassment and prior mediation agreements in sexual harassment cases shall be admissible in proceedings hereunder. Other than such records, however, records of prior accusations of sexual harassment not leading to convictions and records concerning similar harassing behavior not subject to the complaint(s) in the case shall not be admissible. Testimony about such prior accusations or similar harassing behavior shall be admissible, but only with respect to behavior that satisfies the time requirements set forth above for filing a complaint.

At the second February 1997 meeting, continued discussion on the Sexual Harassment Policy ensued. The Faculty Senate voted to adopt the January 29, 1997 Sexual Harassment Policy as amended.

The Faculty Senate revisited the matter of the University’s Sexual Harassment Procedures at its May 1998 meeting. Dean of the University Faculty, Peter Stein, gave the background for the resolution. After a brief set of comments, Professor Kenneth Strike, Education, and Chair of the Committee on Academic Freedom and Professional Status, read the original proposal as follows:

WHEREAS, a just and well-governed community must strive to eliminate all forms of unlawful discrimination and at the same time provide adjudicatory procedures that satisfy reasonable standards of process and fairness, and

WHEREAS, the Provost has shared with AFPS the sexual harassment policy he proposed to adopt, and has, after discussion with the AFPS, stated his intention to modify this policy in some measure in accordance with the proposals below, and

WHEREAS, the Senate finds that by narrowing the jurisdiction of the AFPS adjudicatory hearing, the Provost’s proposed policy -- which does not guarantee the charged the right to confront his or her accuser(s), the right to know and rebut the evidence for the charges brought, or the right to present evidence on his or her behalf -- does not guarantee fairness or process to a faculty member accused of sexual harassment, and

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WHEREAS, the proposed policy affords significantly less fairness and process to a faculty member accused of sexual harassment than the July 1996 policy that it is proposed to replace, and

WHEREAS, the Senate understands and is sympathetic to the Provost’s desire to reduce inappropriate asymmetries between the fairness and process afforded to different segments of our community, and

WHEREAS, both subordinate-supervisory academic relationships and issues of academic freedom are unique to the academic staff, and

WHEREAS, the February 1997 Senate adopted recommendations were triggered by strong dissatisfaction with the current (July 1996) Sexual Harassment Policy expressed by the faculties of the College of Arts and Sciences and the Law School,

THEREFORE, BE IT RESOLVED THAT THE SENATE RESPECTFULLY REQUESTS THAT the procedures in the Provost’s proposed policy be redrafted to expand the fairness and process afforded to both academic and non-academic staff and to reduce the asymmetry between the two parallel procedures. The changes made should minimally provide every charged individual with a right to confront his or her accuser(s), a right to know and rebut the evidence for the charges brought, and a right to present evidence on his or her own behalf and,

THAT the jurisdiction of the AFPS adjudicatory hearing be broadened to include all allegations that arise out of the context of subordinate-supervisory academic relationships (e.g., teaching, advising, research, thesis, or dissertation supervision) as well as issues of academic freedom (a jurisdictional scope that is a compromise between the narrow definition in the Provost’s proposed policy and the wide definition in the Senate’s February 1997 recommendation), and

THAT, the current (July 1996) policy remain in place until these changes are made, since it is preferable to the Provost’s proposed policy.

Professor Strike then introduced the substitute motion that the Senate debated:

WHEREAS, a just and well-governed community must strive to eliminate all forms of unlawful discrimination and at the same time provide adjudicatory procedures that satisfy reasonable standards of process and fairness,
THEREFORE, BE IT RESOLVED THAT THE SENATE RESPECTFULLY REQUESTS THAT the procedures in the policy be redrafted to expand the fairness and process afforded to both academic and non-academic staff. The changes made should provide every charged individual with a right to confront his or her accuser(s) and a right to know and rebut the evidence for the charges brought.

After some debate, a proposal to postpone discussion was made and carried. Discussion will resume on this matter in September.

At the September 1998 meeting, the Chair of the Academic Freedom and Professional Status of the Faculty Committee, Assistant Professor Melissa Hines, Chemistry and Chemical Biology, reported on what has been going on with the Sexual Harassment Policy. The Committee also wished to bring forward a resolution. The Speaker indicated an amendment was on the floor from the last meeting, namely to strike the words “with a right to confront his or her accusers” from the policy.

Following discussion, the amendment was defeated.

A second amendment, circulated by two Senators, was then discussed. Following a vote, the amendment carried:

The Senate respectfully recommends to the Committee on Academic Freedom and Professional Status of the Faculty that, in carrying out its responsibilities under the Sexual Harassment Policy in those cases where matters of fact are in dispute, it follow the following procedures:

a. The Committee has jurisdiction of a case when, in the judgment of the Committee based on the charged party’s written request, the charged party’s version of the facts leads to a reasonable conclusion that the charged party’s conduct arose out of the nature of a subordinate-supervisory academic relationship (e.g., teaching, advising, research, thesis or dissertation supervision) or that an issue of academic freedom was involved.

b. Once the Committee accepts jurisdiction under (a), it shall exercise jurisdiction until the case is fully resolved on its merits, even if the Committee ultimately concludes that the faculty member’s conduct was not appropriate to a subordinate-supervisory academic relationship or protected by academic freedom.

The resolution from the AFPS Committee was then considered, and it was adopted as follows:
WHEREAS, a just and well-governed community must strive to eliminate all forms of unlawful discrimination and at the same time provide adjudicatory procedures that satisfy reasonable standards of process and fairness,

THEREFORE, BE IT RESOLVED THAT THE SENATE RESPECTFULLY REQUESTS THAT the procedures in the policy be redrafted to expand the fairness and process afforded to both academic and non-academic staff. The changes made should provide every charged individual with a right to confront his or her accuser(s) and a right to know and rebut the evidence for the charges brought.

SELECTION OF SEXUAL HARASSMENT CO-INVESTIGATOR POOL

September 11, 1996, Records, pp. 7707-11S, Appendix E

Dean Stein introduced a motion establishing the procedure for selecting a pool of faculty co-investigators, as mandated by the Sexual Harassment Procedures. The motion carried as follows:

WHEREAS, the sexual harassment procedures adopted by the Provost in July 1996 require the Senate to establish procedures for selecting a pool of qualified sexual harassment co-investigators, and

WHEREAS, the Organization and Procedures of the University Faculty provide that the Nominations and Election Committee proposes members of administration and faculty-administration committees when the administration makes such requests to the Senate, subject to Senate ratification.

BE IT RESOLVED, that the procedures for selection of the pool of sexual harassment co-investigators will conform to the procedure for the selection of other appointed administration and faculty administration committees (i.e., by proposal of the Nominations and Elections Committee subject to Senate ratification).