

On Sexual and Racial and Ethnic Harassment

To the University Community:

A proposed new policy on sexual and racial and ethnic harassment follows. This draft policy is based on the reports of the two committees that worked extensively for more than a year, on numerous University Council discussions of the reports of those committees, the views of the Senate Executive Committee, and on wide consultation throughout the University community. In preparing this draft I have taken into account the views of many persons who have written and spoken on these matters within the University. Given the complexity of the issues and the legitimate differences of opinion, the resulting policy tries to accomplish its major purposes, while being consistent with other cherished values of the University. I should like to emphasize the following points.

First, the most difficult issue is how to define clearly the behavior we all want to prohibit, yet to do so without infringing on freedom of expression. In addition to adopting the committees' careful language on definitions, I have also chosen a procedural safeguard. Any faculty member may ask either the School or Senate Committee on Academic Freedom and Responsibility to review any action under the policy that she or he believes infringes on academic freedom or the right of free expression. Second, I have kept separate the policy statements and the definitions with regard to sexual harassment and racial and ethnic harassment, but I have otherwise combined the enforcement procedures into one. It is my view that our community is best served by utilizing the same procedures to resolve complaints of harassment, whether they be sexual or racial and ethnic harassment. To set up distinct procedures could be duplicative, potentially difficult to establish and difficult to maintain. In addition, I have adopted as the preamble to this draft policy sections of the statement on Conduct and Misconduct.

In addition to restating our firm commitment that sexual and racial and ethnic harassment will not be tolerated at Penn, and to enumerating clearly the resources and mechanisms available to members of our community to resolve complaints, the policy calls for several new procedures. Special faculty, staff and student advisors will be named in each school and major administrative unit to advise on issues of sexual, racial and ethnic harassment. Our policies and procedures will be publicized more widely through the campus media and through information provided to those who will be most likely to receive complaints of harassment, as well as to new students, faculty and employees. I further propose that the Senate Committee on Academic Freedom and Responsibility act as the University-wide faculty panel to which students, staff members and administrators, as well as faculty, may bring complaints of racial and ethnic and sexual harassment. While there seems to be general agreement that access to such a panel would be needed in only a very few cases each year, there was agreement also that the existence of such a panel would make informal settlements more likely. I found this convincing.

Finally, I have recommended that a central reporting mechanism be established in the Office of the Ombudsman, to which descriptions of incidents of harassment, but not the names of individuals involved, will be sent.

Taken together, it is my hope that these measures will make it more comfortable for members of our community to report incidents of harassment, and more likely they will see them resolved.

I invite all those with comments or suggestions to send them to me as soon as possible, and in any event before *April 30, 1987*. I plan to publish the final version of this policy in May.

My thanks to the members of the two committees, to the University Council, to the Senate Executive Committee, and to all others who have given so wisely of their time on these matters.

Sheldon Hackney

Harassment Policies

I. Conduct

Our community depends on trust and civility. A willingness to recognize the dignity and worth of each person at the University is essential to our mission.

It is the responsibility of each person on campus to respect the personal dignity of others. We expect members of our University community to demonstrate a basic generosity of spirit that precludes expressions of bigotry.

Penn properly celebrates the diversity of its community. We come to Penn from many different backgrounds and include different races, religions, sexual orientations, and ethnic ancestries. Learning to understand the differences among us, as well as the similarities, is an important dimension of education, one that continues for a lifetime. Tolerance alone, however, is not enough. Respect and understanding also are needed. We should delight in our differences, and should seek to appreciate the richness and personal growth which our diversity provides to us as members of this community.

The University is committed to freedom of thought, discourse and speech, and the attainment of the highest quality of academic and educational pursuits and daily work. Policies and regulations implementing this commitment include the Statement on Academic Freedom and Responsibility, the Guidelines on Open Expression, and the Code of Academic Integrity.

The University also has established policies on behaviors that interfere with these freedoms. Foremost among these policies is the University's Statement on Non-Discrimination, which prohibits discrimination on the basis of race, color, sex, sexual preference, religion, national or ethnic origin, handicap or disability.

The University has also adopted the following policies concerning racial and ethnic harassment, and sexual harassment.

II. Purposes and Definitions

A. Racial and Ethnic Harassment

1. Purpose

Racial and ethnic harassment will not be tolerated at Penn—not only because they are reprehensible and discriminatory, but because they constitute forms of unprofessional conduct that seriously undermine the atmosphere of trust and mutual respect that is essential to academic pursuit.

2. Definition

For the purposes of University policy, the term "racial and ethnic harassment" refers to any behavior, verbal or physical, that stigmatizes or victimizes individuals on the basis of race, ethnic or national origin, and that:

- a. Involves a stated or implicit threat to the victim's academic or employment status;
- b. Has the purpose or effect of interfering with an individual's academic or work performance; and/or,
- c. Creates an intimidating or offensive academic, living, or work environment.

The University regards such behavior as a violation of the standards of conduct required of all persons associated with the institution. The prohibition against racial and ethnic harassment applies to all interactions occurring on campus, in University facilities, or within the context of University-related activities.

As noted in the *Handbook for Faculty and Academic Administrators*, in *Penn Policies and Procedures*, in the *Academic Bulletin*, and other University publications, persons engaged in such harassment within the University setting are subject to the full range of internal institutional disciplinary actions, including separation from the institution.

Not every act that might be offensive to an individual or a group necessarily will be considered as harassment and/or a violation of the

University's standards of conduct. In determining whether an act constitutes racial or ethnic harassment, the totality of the circumstances that pertain to any given incident in its context must be carefully reviewed. Due consideration must be given to the protection of individual rights, freedom of speech, academic freedom and advocacy. Any review should establish whether or not the behavior in question amounts to stigmatization or victimization with one or more of the adverse effects listed above.

B. Sexual Harassment

1. Purpose

For many years the University has stressed that sexual harassment is not tolerated at Penn. As an employer, the University seeks to ensure that the workplace is free from harassment of any kind. As an educational institution, the University's commitment to eradicating sexual harassment goes beyond the Equal Employment Opportunity Commission guidelines.

Sexual harassment in any context is reprehensible and is a matter of particular concern to an academic community in which students, faculty, and staff must rely on strong bonds of intellectual trust and dependence.

2. Definition

For the purposes of University policy, the term "sexual harassment" refers to any unwanted sexual attention that:

- a. Involves a stated or implicit threat to the victim's academic or employment status;
- b. Has the purpose or effect of interfering with an individual's academic or work performance; and/or
- c. Creates an intimidating or offensive academic, living, or work environment.

The University regards such behavior, whether verbal or physical, as a violation of the standards of conduct required of all persons associated with the institution. Accordingly, those inflicting such behavior on others are subject to the full range of internal institutional disciplinary actions, including separation from the University.

Because the relationship between teacher and student is central to the academic mission of the University, it is essential to establish that the standard of expected conduct in that relationship goes beyond the proscription against sexual harassment as defined in the University's policy. No non-academic or personal ties should be allowed to interfere with the academic integrity of the teacher-student relation. With respect to sexual relations in particular, what might appear to be consensual, even to the parties involved, may in fact not be so.

On this basis, any sexual relations between any teacher and a student of that teacher are inappropriate. This category includes relations between a graduate student and an undergraduate when the graduate student has some supervisory academic responsibility for the undergraduate. In addition, it includes relations between an administrator, coach, adviser, program director, counselor, or residential staff member who has supervisory responsibility for a student, and that student. Although the University does not have the means to enforce an absolute prohibition against such relations, the University deems them to be unethical. The Provost, Deans, Department Chairs, and other administrators should respond to reports brought to them of inappropriate and unethical behavior and act to help ensure that the integrity of the University is maintained.

In order to discourage such relations, in acting on complaints that come to the University's attention it will be presumed that any complaint of sexual harassment by a student against an individual is valid if sexual relations have occurred between them while the individual was teaching or otherwise had supervisory responsibility for the student. The presumption might be overcome, but the difficulties in doing so would be substantial. In short, any teacher or person in a supervisory capacity enters at peril into sexual relations with a student. continued past insert

III. Resources

School and administrative units should make known to all of their members the available resources and the informal and formal procedures for resolving complaints of sexual harassment or racial and ethnic harassment within the unit or at the University level.

A. Information, Counseling and Support

The following University resources are available to members of the University community who seek information and counseling about University policies on harassment, standards of behavior, informal and formal mechanisms for resolving complaints and resources for complainants and respondents.

- Special advisors should be designated by the deans of individual schools and directors of major administrative units from among their faculty, staff, and students to serve as advisors on issues of sexual harassment and racial and ethnic harassment. These individuals should be informed about the issues of harassment, the techniques of mediation and about University policies and resources. The advisors should be available to meet in confidence with persons who believe they are being harassed to provide information as to informal and formal grievance procedures, to counsel and to support, and to provide information as to additional university resources for support and counsel.

- *The Women's Center* aids students, faculty and staff with counseling, advocacy, advice and referral concerning formal and informal avenues of redress in matters of sexual and racial or ethnic harassment. The Women's Center does not conduct investigations and keeps all information confidential.

- *The Office of the Ombudsman* exists to help resolve grievances of all members of the University community—students, faculty and staff—on a confidential and informal basis, and helps persons with complaints about sexual harassment decide on a course of action. The Office is independent of the University's formal administrative structure and grievance mechanisms.

- *Deans, department chairs, directors, and individual faculty and staff* are available to provide information and counseling in confidence.

- *University Counseling Service, Gay and Lesbian Peer Counseling, and the psychiatric section of the Student Health Service* provide assistance to student victims of harassment or those acting on behalf of the student. Contacts with these services are strictly confidential and may be particularly helpful to students who desire assistance in dealing with harassment.

- *The Office of Affirmative Action* is responsible for the development and implementation of the University's Affirmative Action Program, for providing a formal liaison between the federal, state, and city compliance agencies and the University and to oversee programs designed to increase the representation of minorities, women, and the disabled throughout the University. The Office is also responsible for overseeing the mechanisms for resolving non-academic grievances as they relate to equal opportunity and affirmative action.

- *The Faculty/Staff Assistance Program* provides confidential counseling, support and assistance to individuals concerned with issues of racial, ethnic and sexual harassment. The Office works in consultation with the Office of Affirmative Action and the Ombudsman and it helps individuals resolve complaints and develop strategies for change.

- *Victim and Security Support Services of the Department of Public Safety* counsels members of the University community on a range of matters including racial and ethnic and sexual harassment. The Office works closely with the Office of Affirmative Action, the Ombudsman, and the Department of Public Safety, conducts investigations in cooperation with the other offices, and assists in the informal resolution of complaints. The Office also provides advice to individuals who have complaints of racial, ethnic, or sexual harassment against non-University individuals.

- *The Office of the Associate Vice President for Staff and Labor Relations* provides counseling and support to University staff on all employment related matters, including allegations of racial, ethnic, or sexual harassment. The Office interprets University policies, works closely with the Offices of the Ombudsman and Affirmative Action and administers the non-academic grievance procedure. All discussions are confidential.

B. Informal Mechanisms for Mediation and Resolution

The special advisors appointed in each school and major administrative unit should serve as primary, accessible contacts to receive complaints and to assist in informal mediation and resolution of incidents of sexual, racial, or ethnic harassment. In addition, the Ombudsman, the Office of Affirmative Action, the Women's Center, the Judicial Inquiry Officer, the Director of Student Life, the Office of Residential Living, the Office of the Associate Vice President for Staff and Labor Relations, Department Chairs, Deans and the Provost are available to assist in the resolution of complaints.

C. Formal Mechanisms for Resolution and Adjudication

The University believes that a strong system of informal resolution, with special advisors receiving and handling most complaints, will encourage reporting and resolution of complaints. When informal resolution is not chosen or is unsatisfactory, complainants are urged to use the appropriate formal mechanism as described below:

1. Complaints of harassment against a faculty member, instructor, or teaching assistant may be brought by or on behalf of a student, staff, or faculty member to a Department Chair or Dean of the faculty member. The Department Chair or Dean who receives a complaint is charged with pursuing the matter. While the process depends on the particulars of the complaint, normally the Department Chair or Dean interviews the faculty member. If the matter is not resolved informally, the Department Chair or Dean either conducts an investigation or requests that the Ombudsman or Office of Affirmative Action do so. If the results of the investigation persuade the Dean or Department Chair that sanctions are warranted, he/she consults with faculty members—without disclosing the identity of the individuals involved—to aid in determining an appropriate sanction, including whether there is substantial reason to believe that just cause exists for suspension or termination. If it is determined that action should be taken for suspension or termination, the Dean should refer the matter to the Committee on Academic Freedom and Responsibility of the School for proceedings in accordance with the procedures set out in section II.E.10. of the *Handbook for Faculty and Academic Administrators* (1983).

2. Complaints of harassment against a staff member may be brought by or on behalf of a student, staff member or faculty member to a supervisor of the one complained against. The supervisor who receives the complaint should pursue the matter. While the process will depend upon the particulars of the complaint, normally the supervisor interviews the staff member. If the matter is not resolved informally, the supervisor either conducts an investigation or requests that the Ombudsman or Office of Affirmative Action do so. If the result of the investigation persuades the supervisor that sanctions are warranted, he or she consults with his or her colleagues or supervisor—without disclosing the identity of individuals involved—to aid in determining an appropriate sanction.

3. Complaints by students of harassment also may be made to the Director of the Office of Student Life, in accordance with the Student Grievance Procedure set out in *Penn Policies and Procedures*. Grievances associated with harassment in student employment may also fall within the Director's purview. The director of the Office of Student Life is also responsible for dealing with student grievances arising under Title IX of the Educational Amendments of 1972, which prohibits sex discrimination in education.

4. A complaint of harassment may be brought against a student by filing a complaint under the Charter of the University Student Judicial System, or, if the respondent is a graduate or professional student enrolled in a school which has established a hearing board or other decision-making body, with that body.

5. A tenured or untenured faculty member whether full or part time who believes she or he has been subjected to racial, ethnic or sexual harassment by a faculty member or by any academic administrator may file a grievance under the Faculty Grievance Procedure, *Handbook for Faculty and Academic Administrators*, Part II.E.15, provided the complaint constitutes a grievance as defined in section I of the Procedure. This procedure is administered by the Faculty Grievance Commission composed of three members of the standing faculty with the rank of full professor. Grievances are heard by a panel composed of three faculty members chosen from members of the Standing and Associated Faculty. The panel makes its recommendation to the provost. In cases that involve reappointment, promotion or tenure, and in which the provost has declined or failed to implement the recommendations of the panel to the satisfaction of the grievant, the grievant may obtain a hearing before the Senate Committee on Academic Freedom and Responsibility on the actions of the provost.

6. A faculty member who believes that his or her rights have been violated by another faculty member or administrator under circumstances that relate to academic freedom and responsibility may file a complaint with either the Senate Committee on Academic Freedom and Responsibility or the appropriate School's Committee on Academic Freedom and Responsibility. See *Handbook for Faculty and Academic Administrators*, Part II.A.2.

7. A student or staff member who feels that she or he has been subjected to racial, ethnic, or sexual harassment by a faculty member may bring the matter to the Senate Committee on Academic Freedom and Responsibility. At hearings before the Committee, the student or staff member may be accompanied by an advisor who is a member of the University community (student, faculty or staff.) The findings and recommendations of the Committee shall be advisory and shall be submitted to the Provost for review and implementation.

8. A staff member who believes that his or her rights have been violated directly by another staff member or administrator may file a grievance under the University of Pennsylvania Staff Grievance Procedure, as described in Personnel Policy #801.

D. Central Reporting of Harassment

1. The University believes that a decentralized system of resources encourages resolution of complaints of sexual and racial and ethnic harassment. Such a system also is useful to gather enough information to make judgments about harassment generally. To that end, and with the consent of the complainant, anyone who has handled through mediation or informal counseling a complaint that was not submitted to a formal hearing board should forward to the Ombudsman a report of the matter. Such reports should not include the names of the persons involved but should include a description of the complaint, the School or Administrative Unit to which the complainant and respondent are attached and the disposition of the complaint. In the case of a large department in a large

school, the department should also be identified.

This approach will enable the Ombudsman to identify patterns in the location and frequency of such incidents, and to inform the appropriate dean or administrative supervisor about the existence of such patterns. It also will enable the Ombudsman to act on behalf of the community to conduct whatever investigation he or she deems necessary to determine if University regulations are being violated.

2. Summary reports of formal charges of harassment that have been adjudicated and records of their disposition should be forwarded to the Ombudsman's Office as a matter of information by the persons responsible for such records.

3. Based on the information forwarded to him or her during the previous year, the Ombudsman shall submit to the President on an annual basis a summary report of the number and type of formal and informal charges of sexual harassment and racial and ethnic harassment.

E. Education and Prevention

The prevention of harassment and the establishment of effective procedures with due concern for all parties require a thoughtful educational program.

1. The University will provide to special advisors information concerning—

- a. mediation and resolution mechanisms available;
- b. examples of incidents of harassment and possible resolutions;
- c. definitions of harassment;
- d. descriptions of how and when to report; and
- e. sources of support and information for victims and respondents.

2. Training programs for residential advisors, senior administrative fellows, those who meet students in crisis situations and others serving in an advising capacity to students will include training about referrals, resources, and methods for handling instances of harassment.

3. An overall educational program for students dealing with issues of peer harassment and providing information, definition, support, identification of resources and exploration of behavioral alternatives, will be developed by the Office of Student Life, the Office of Affirmative Action, and the Penn Women's Center in conjunction with the office of Residential Living, the Council of College House Masters, and the Council of Senior Faculty Residents involved with the Freshman Year Program. Such an educational program should be directed toward new undergraduate and graduate/professional students.

4. The University will publish annually the operative portions of this policy statement, including the resources available to advise, counsel and assist in the mediation of harassment allegations. The information will explain how and where to contact university-wide and school specific resources and will be posted in conspicuous locations.

F. Exit Interviews

The University will periodically survey departing students, faculty and staff to measure the existence and frequency of reports of harassment.

Based on the data yielded by these surveys and the annual reports of the Ombudsman, the University Administration will determine, in consultation with the University Council, whether there is need for further steps to be taken on the issue of harassment.

*Comment on this report
may be sent to:
Office of the President
100 College Hall/6303*