

To the University Community

In the Fall of 1993, Interim President Claire Fagin appointed a Working Group to assess and update the procedures and practices through which the University implements its policy on sexual harassment, adopted in its current form in 1988. The Working Group was charged with recommending ways in which the current University policy could be more effectively implemented, not with revision of the policy. The report of the Working Group is published here for comment and discussion by the University community. Comments may be directed in writing to the Office of the President, 121 College Hall, and should be received no later than December 16, 1994.

— Judith Rodin, President

Report of the Working Group on Implementation of the Sexual Harassment Policy

Summary by the Working Group

Last year Interim President Claire Fagin constituted a Working Group on Sexual Harassment Policy Implementation to assess the University's implementation of its sexual harassment policy. The Working Group met regularly over a six-month period and consulted with a wide range of individuals about the current practices and procedures for addressing sexual harassment. We determined that the challenge facing the University in the sexual harassment area is less one of defining a workable policy than of overcoming obstacles to its implementation.

The single most important factor in overcoming these obstacles is leadership at the highest levels of University administration. The administration's consistent and visible commitment to eliminating sexual harassment gives legitimacy and force to the sexual harassment policy. It also provides the institutional support needed to encourage administrators and faculty to enforce the policy. Effective leadership requires: (1) taking steps to assure the consistent implementation of sexual harassment procedures and policies; (2) providing adequate resources to educate the community and to respond promptly and effectively to complaints; (3) demonstrating a willingness to consider violations of the sexual harassment policy in evaluations of faculty and staff; (4) treating sexual harassment and other types of misconduct in relationships as violating a central aspect of our institutional mission; and (5) following through on serious violations of the policy with appropriate and visible sanctions.

There is a critical need for increased discussion and effective education about sexual harassment. Although the University's policy unequivocally condemns sexual harassment, there continues to be a lack of consensus within the community about sexual harassment and the University's appropriate role in addressing it.

The Working Group also identified the need for greater knowledge and accountability regarding the sexual harassment policies and procedures. Some of the current policies and procedures of the University have either been discontinued in practice or are not generally followed. Those in positions currently bearing formal responsibility for responding to complaints of sexual harassment, such as deans, chairs, and supervisors, frequently do not know that they are individually responsible for responding promptly and effectively to these complaints. Many of them do not have experience, knowledge, training, or direction in handling these complaints. Students, staff and faculty who need assistance in addressing sexual harassment frequently lack knowledge of where and how to proceed.

The current system relies heavily on each school or department to create both informal and formal processes for addressing sexual harassment. This system has resulted in wide variation in the level of informal assistance provided to those with sexual harassment complaints, the administrative responsiveness to such complaints, the enforcement of the policy, and types of sanctions and interventions imposed for violations of the sexual harassment policy. It also generates some confusion about the relationship between school and University wide procedures, as well as about the connection between informal and formal processes.

The procedures in effect fail to offer credible intermediate responses between the informal processes of counselling and mediation and the formal processes for imposing sanctions. The delay, adversariness, and confusion generated by the current system was a common theme. Our current system provides inadequate incentives and opportunities to develop creative and appropriate responses to incidents of harassment. Processes are needed to gauge the seriousness of the alleged conduct and steer the complaint to the appropriate level of formality throughout the process of resolution.

There is also a need to clarify and strengthen the role of University resource offices currently addressing sexual harassment. The roles of these offices have not been adequately clarified, and in some instances resource offices have been asked to perform conflicting duties. In addition, these offices have expressed concern that they lack adequate staff and resources to carry out their responsibilities.

In response to these findings, the Working Group developed a series of recommendations designed to achieve the following goals:

- Strengthening leadership on the issue of sexual harassment, both at the highest levels of University administration and within each school or department.
- Promoting open and constructive discussion about sexual harassment and the University's role in preventing and redressing it.
- Providing greater assistance to and accountability of those responsible for addressing sexual harassment complaints.
- Providing information and resources to the University community about the sexual harassment policy and channels for responding to sexual harassment complaints.
- Developing a system that provides for both accessible, informal, confidential interventions that permit localized and mediated resolution where appropriate, and for prompt, fair, formal procedures that lead to visible enforcement in cases where serious violations have been established.
- Offering a wider range of possible institutional responses to sexual harassment.

We hope that this Report provides an opportunity for constructive discussion about how to improve the University's capacity to address the problem of sexual harassment.

The Working Group on Sexual Harassment Policy Implementation

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Report of the Working Group on Implementation of the Sexual Harassment Policy

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Introduction

Sexual harassment has emerged as an issue of recurring concern on university campuses throughout the country. The University of Pennsylvania has been grappling with the issue of how to define, prevent, and redress sexual harassment since 1980, when the Equal Employment Opportunity Commission issued its interim guidelines on sexual harassment. Over the last decade, Penn has convened numerous committees to study and evaluate the problem. It has adopted a sexual harassment policy that affirms a commitment to the dignity and worth of each member of the community, and unequivocally declares that sexual harassment violates the standards of conduct required of all persons associated with the institution. The University also provides organizations such as the Ombudsman, Penn Women's Center, Staff Relations, Labor Relations, Office of Affirmative Action, and Faculty/Staff Assistance Program, to address the problems of harassment. It has adopted procedures that both afford complainants a wide range of choice in pursuing sexual harassment complaints and emphasize decentralized responsibility for redressing sexual harassment.

Despite these efforts, many members of the University community have expressed concern over the adequacy of the University's response to sexual harassment. As in many bureaucracies, the University's aspirations stated in its policy and by its numerous committees have yet to be realized in practice. In the fall of 1993, Interim President Claire Fagin constituted a Working Group on Sexual Harassment Policy Implementation to consider the current sexual harassment procedures and practices for implementing the University of Pennsylvania Sexual Harassment Policy. President Fagin focused the Working Group's mission on the implementation of the current policy on sexual harassment, rather than on the particular language of the policy.

The Working Group mapped out an agenda that began with an examination of the adequacy of the dissemination of the University's policy and of information concerning the procedures and practices for addressing sexual harassment. We then considered the University's resources and their accessibility to individuals seeking counseling and assistance in dealing with sexual harassment. The Working Group evaluated current policy and practice designed to educate the community about the sexual harassment policy and procedures and to prevent or minimize the incidence of sexual harassment. It examined the informal and formal procedures and processes for responding to sexual harassment, both within schools or departments and University-wide.

This inquiry covered issues involving students, faculty, administration, and staff. It considered the tensions between confidentiality and reporting, informal dispute resolution and prompt sanctions for serious misconduct, localized decision-making and consistent, effective handling of sexual harassment, academic freedom and prevention of sexual harassment. The Working Group did not discuss the sexual harassment policies and procedures at the Hospital of the University of Pennsylvania, which has its own policies and procedures. The Oversight Committee or some other appropriate body should examine the hospital's implementation of its policy.

The Committee devoted considerable energy to attempting to understand why the policies and recommendations regarding sexual harassment proved so difficult to implement. The Committee recognized that previous committees had made recommendations concerning the policies and procedures, some of which had been adopted as University policy and many of which resembled those embraced by the current Working Group. Many Working Group members, as individuals and as resource office representatives, have

supported similar recommendations in the past. *The challenge appears to be less one of defining a workable policy than of overcoming obstacles to its implementation.* Several recurring themes emerged as central to this implementation challenge.

Leadership

The single most important factor that emerged from the Working Group's inquiry is leadership at the highest levels of University administration on the issue of sexual harassment. Concern was expressed about the level of consistency, commitment, and follow-through demonstrated by high level administrators in the past. This concern stems in part from the fact that several previous efforts by University committees to improve the sexual harassment procedures did not prompt any significant institutional response, and that procedures that had been in effect simply lapsed. Both the experience at Penn and the findings of studies concerning effective sexual harassment programs elsewhere confirm that the administration's visible and consistent commitment to preventing and redressing sexual harassment is crucial to effective implementation of such a policy. This administrative commitment is expressed by: (1) taking steps to assure the consistent implementation of sexual harassment procedures and policies; (2) providing adequate resources to educate the community and to respond promptly and effectively to complaints; (3) demonstrating a willingness to consider violations of the sexual harassment policy in evaluations of faculty and staff; (4) treating sexual harassment and other types of misconduct in relationships as violating a central aspect of our institutional mission; and (5) following through on serious violations of the policy with appropriate and visible sanctions.

Accountability

Both the reality and the perception of a strong and credible administrative response to sexual harassment are central to the implementation of the sexual harassment policy. Failure to respond promptly and responsibly to allegations of sexual harassment conveys the impression that the University does not take this issue seriously or is simply seeking to avoid "rocking the boat." Administrative acquiescence undermines the morale of those responsible for investigating and attempting to resolve complaints about sexual harassment, and encourages them to abdicate responsibility for responding to complaints. It also discourages complainants from risking retaliation by seeking redress from responsible administrators.

Those in positions currently bearing formal responsibility for responding to complaints of sexual harassment, such as deans, chairs, and supervisors, frequently do not know that they are individually responsible for responding promptly and effectively to these complaints. Many of them do not have experience, knowledge, training or direction in handling sexual harassment complaints. There were numerous descriptions of inaction or unwillingness to become involved in addressing sexual harassment on the part of departmental chairs, graduate chairs, and undergraduate chairs. Similarly, supervisors of staff reportedly were unaware of their responsibilities regarding sexual harassment and how best to fulfill them. Counselors, advocates, deans, and former ombudsmen described a pervasive need to provide students, staff, supervisors, and faculty with regular and repeated clarification and training concerning sexual harassment policies and procedures.

The need for greater knowledge and accountability regarding sexual harassment policies and procedures stems in part from the current decentralization of responsibility for addressing sexual harassment. Each school

or administrative unit bears primary and often exclusive responsibility for responding to sexual harassment. Sexual harassment is only one of many administrative issues confronting management, and is not part of the daily routine of administration. No mechanism currently exists to assure that the policies and practices regarding sexual harassment are incorporated into the day-to-day management within the schools and administrative units.

Clarification and Strengthening of the Role of University Resources for Addressing Sexual Harassment

The University relies heavily on resource offices such as the Penn Women's Center, the Ombudsman, Staff Relations, Labor Relations, the Office of Affirmative Action, and FSAP to handle sexual harassment. These resource offices have expressed concern that they lack adequate staff and resources to carry out their designated responsibilities. Moreover, their roles have never been clarified to the community, and in some instances they are called upon to perform functions that may conflict with their counseling and mediation roles. Finally, the resource offices cannot substitute for a strong and consistent administrative response both from the individual schools and from the central administration.

The Need for a Range of Credible and Effective Set of Procedures to Address Sexual Harassment

The Working Group identified many of the same concerns with the informal and formal procedures identified by the Commission on Strengthening the Community. The University lacks a set of intermediate responses between the informal processes of counseling, advocacy, and mediation and the formal processes for imposing sanctions. Many of those interviewed lacked confidence in the existing formal and informal procedures for addressing misconduct by faculty, staff and students as a means of providing prompt and meaningful redress. The delay, adversariness, and confusion

generated by the current system was also a common theme. These difficulties appeared to be magnified in cases of sexual harassment, which present issues of great sensitivity that may require special expertise or training. In addition, the existing range of possible responses to violations of the sexual harassment policy is extremely limited.

Part of the resistance to enforcing the sexual harassment policy stems from our tendency to merge naming and blaming. Sexual harassment embraces a wide range of behavior, from unintended remarks of a sexual nature that create a hostile environment to rape. Too often, we lump together this wide range of conduct in defining the appropriate institutional response. Some would like to treat all forms of sexual harassment as our community's equivalent of a crime and enforce our equivalent of the death penalty—suspension or expulsion from the community. Others, who fear that the system will punish individuals for unintended errors, would insulate all but perhaps rape from regulation. Our current system provides inadequate incentives and opportunities to develop creative and appropriate responses to incidents of sexual harassment. Processes are needed to gauge the seriousness of the alleged conduct and steer the complaint to the appropriate level of formality.

The Challenge of Graduate Education

The Working Group identified graduate students as an area of particular concern and challenge in addressing sexual harassment. Graduate students are especially vulnerable to sexual harassment because of their dependence on a particular faculty member and their close and ongoing working relationship with that faculty member. Some faculty members do not perceive sexual relationships with graduate students to be inappropriate. In addition, opportunities to respond to sexual harassment by limiting contact between the graduate student and the offending faculty member are much more limited. Finally, graduate students with teaching or supervisory responsibilities over undergraduates face risks and challenges in defining and maintaining the limits of this professional relationship, particularly with regard to sexual relationships.

Specific Areas of Concern and Recommendations

1. Creation of a University Committee on Sexual Harassment to Coordinate and Oversee Implementation of the Sexual Harassment Policy

Many aspects of current policies and procedures offer effective approaches to addressing sexual harassment. However, in part because of the problem of decentralization described above, there has been only partial implementation of these policies and procedures. Some of the current policies and procedures published in *Policies and Procedures*, the faculty handbook, and the staff handbook, have either been discontinued in practice or are not currently in place. Also, several previous efforts by committees to revise and improve sexual harassment procedures have not resulted in significant institutional response. Some of the issues addressed by this year's committee were identical to those addressed by the Task Force on Conduct and Misconduct in 1985, which came up with series of recommendations; some of these recommendations were never implemented. Some were implemented only in the year following the recommendations. Some schools and departments have done little to implement the sexual harassment policies and procedures. In addition, although some training is occurring, lack of resources and coordination means that training and education are sporadic and do not reach a broad audience.

The decentralized system in place also creates difficulties in addressing patterns of sexual harassment that arise in particular schools. In part, this is a generic problem stemming from the difficulty of getting information about problems concerning sexual harassment to those in a position to act without breaching confidentiality or unduly invading privacy of either accused or alleged victim. The Working Group is particularly concerned about reports that individuals who bear direct responsibility for enforcing sexual harassment standards were themselves found to have engaged in sexual harassment. In some instances, there was no formal action taken at the time. In others, there was no notation on the records of previous offenders, and no mechanism for assuring that this information was passed along when leadership changed within the school or University. The Working Group struggled with the challenge of developing a mechanism for conveying information about patterns of harassment to high level administration without depriving individuals of their legitimate privacy and due process interests.

This history suggests the need for a greater level of coordination and oversight in implementing the sexual harassment policy. This coordination and oversight must proceed from the highest level of University administration. The President's involvement in and insistence on implementation lies at the core of any effective system.

Effective implementation also requires adequate information about existing practices, recurring problems, and strategies for dealing with sexual harassment. Those with knowledge and responsibility need a way to share information and to communicate concerns to high level administrators. One way to achieve this goal is to create an oversight body comprised of those within the community who bear ongoing administrative responsibility for implementing the sexual harassment policies and procedures, along with at least one representative of the faculty, staff and undergraduate, graduate, and professional students. The Oversight Committee should include a high level administrator designated by the President as bearing overall administrative responsibility for implementing the sexual harassment policy.¹

Because the Oversight Committee would include those who regularly deal with sexual harassment, it would afford a vehicle for sharing information, investigating current practices, and brainstorming about solutions. Hopefully, membership on the Oversight Committee would help individuals in responding to allegations of sexual harassment. The Committee would offer a central forum for those with concerns about sexual harassment and the University's response. It would provide a way of holding the University accountable for implementing existing policies and procedures. The oversight body may also serve as a mechanism for striking an appropriate balance between maintaining the confidentiality of individuals involved in claims and developing an effective institutional response to sexual harassment.

Recommendation: Creation of the Sexual Harassment Oversight Committee

1a. *The President should establish a Sexual Harassment Oversight Committee to monitor and facilitate the University's compliance with the sexual harassment policy, to gather and share information concerning the incidence of and response to sexual harassment, and to increase the accountability*

¹ *University Policies and Procedures 1992-94* indicates that the Provost and Senior Vice President bear oversight responsibility for implementing the sexual harassment policy.

of those responsible for implementing the sexual harassment policies and procedures. The committee should consist of those within the community who bear ongoing administrative responsibility for implementing the sexual harassment policies and procedures, along with at least one representative of the faculty, staff, undergraduate, graduate, and professional students. The Oversight Committee should include a high level administrator designated by the President as bearing overall administrative responsibility for implementing the sexual harassment policy. The Sexual Harassment Oversight Committee should report directly to the President.

1b. The Sexual Harassment Oversight Committee should work closely with the administrators responsible for developing and revising University manuals and policies and procedures to assure that appropriate revisions concerning sexual harassment and hostile environment harassment are made.

2. Lack of clarity concerning the sexual harassment policy's application to hostile environment discrimination and to sexual relationships between faculty and students currently under their academic supervision.

The Sexual Harassment Policy Working Group was explicitly requested to focus its attention on implementation issues rather than on the definition of sexual harassment as it appears in our current policy. However, a recurring theme among those who spoke with the Committee concerned the confusion over the scope and meaning of the current definition of sexual harassment. To some extent, this confusion is an inevitable feature of sexual harassment standards. Sexual harassment can only take on precise meaning in the context of particular circumstances. The lack of consensus on the meaning of sexual harassment, particularly at the margins of the definition, adds to the policy's ambiguity. The current definition of sexual harassment does not undertake to determine in advance whether particular kinds of conduct constitutes sexual harassment, and instead articulates a general principle covering a wide range of conduct. Although the Working Group did not consider revising the general definition of sexual harassment, it did recognize the need for sustained discussion and education about the meaning and scope of the sexual harassment policy. This discussion and resulting recommendations are presented in Section III below.

The Working Group also identified confusion about the applicability of the sexual harassment policy to hostile environment discrimination and to relationships between faculty members and students currently under their academic supervision. These issues create particular implementation problems. The policy's lack of clarity complicates the task of enforcing the University's non-discrimination policy as it pertains to hostile environment harassment. It may also increase the cost of enforcement by leaving open the possibility in each case of fighting over the policy's meaning and scope.

Two areas were of particular concern:

A. Hostile environment discrimination targeting individuals based on their sex or sexual orientation.

There is considerable confusion within the University community over whether conduct or speech that is not explicitly sexual in nature but that targets individuals based on their sex or sexual orientation and creates a hostile learning or working environment is covered by the sexual harassment policy or any other University policy. This type of harassment is of particular concern to members of the gay, lesbian, and bisexual community and to those who might be perceived as lesbian, gay or bisexual. Harassment based on sexual orientation, rather than unwelcome sexual advances, was identified as the more pervasive form of discrimination against lesbians, gay men, and bisexuals. Yet, resource office staff reported wide uncertainty over whether the University regulations cover this form of harassment. This confusion inhibits the capacity of counselors to guide members of the community seeking to prevent and redress this abuse.

The Working Group considers it essential that the University clearly inform the community that conduct or speech targeting people based on their sex or sexual orientation that creates a hostile or abusive environment violates University policy. Statements or acts targeting people based on their sex or sexual orientation that create a hostile or abusive environment deprive those people of their access to education, single them out based on their race, sex or sexual orientation, and arbitrarily exclude them from full participation in the University community.

The Working Group determined that existing University policies, notably the University non-discrimination policy, proscribes hostile environment discrimination based on sex or sexual orientation. Specifically, the University Non-Discrimination Policy Statement declares that the University does not discriminate based on sex, or sexual orientation. The Code of Student Conduct states that "student speech may be subject to discipline when it violates applicable laws or University regulations or policies."

The University non-discrimination policy does not specifically refer to or define hostile environment discrimination. However, the courts have defined discrimination to include hostile environment discrimination; the Supreme Court has ruled that Title VII creates liability for harassing conduct that is sufficiently severe to create a hostile or abusive environment, and has relied on Title VII in interpreting sexual harassment cases in interpreting Title IX. This legal background reinforces the Working Group's view that the University's non-discrimination policy covers hostile environment discrimination.

Fair and effective application of the non-discrimination policy as it applies to hostile environment discrimination requires general knowledge that University policy covers this conduct. Yet, no University publication explicitly informs the University community of the applicability of the non-discrimination policy to harassment based on sex or sexual orientation. University Policies and Procedures, the Staff Handbook, and the Handbook for Faculty and Academic Administrators provide only the general language of the non-discrimination policy, and gives the community no guidance on the issue of hostile environment harassment. The recently adopted Code of Student Conduct does not specifically address the University's responsibility to prevent and redress hostile environment discrimination. It does state that student speech as such should not be the basis of disciplinary action.

The Working Group has observed that the confusion and ambiguity surrounding the hostile environment area hampers the ability of resource centers to respond to hostile environment harassment allegations. We are also concerned that the current presentation of University policy regarding student conduct creates the impression that targets of hostile environment discrimination lack any recourse. Disciplinary action is not the only available recourse for hostile environment discrimination. For example, a student that repeatedly verbally harasses a student residing in the same dormitory based on sex or sexual orientation may be required to transfer to another dormitory or to leave University housing. The disciplinary route represents only one possible administrative avenue for responding to this conduct. Indeed, one of the recommendations that is discussed more fully in a subsequent section concerns the need to develop a more diverse range of possible responses to harassment—sexual and otherwise—than simply to punish through the imposition of disciplinary sanctions. Unless the full picture is presented to the University, there is the risk of conveying the impression that hostile environment discrimination is beyond the scope of University action.

Because existing University policy does cover harassing speech that creates a hostile or abusive environment, the Working Group does not believe that it is necessary at this point to revise the definition of sexual harassment to cover this type of discrimination. However, effective implementation of the non-discrimination policy as it applies to hostile environment discrimination requires that the University inform the community in both formal and informal publications that hostile environment discrimination violates the non-discrimination policy, and that recourse is available for those subjected to hostile environment discrimination. The Working Group did not consider the applicability of the nondiscrimination policy to other forms of discrimination and harassment, such as racial, ethnic or religious harassment, because these areas lie outside their mandate. However, we recommend that the University develop a comprehensive approach to informing the community about the scope and applicability of the non-discrimination policy.

Recommendation: Clarification of University Policy on Hostile Environment Discrimination Based on Sex or Sexual Orientation

2a. The Working Group recommends that the University revise the Policies and Procedures Manual, as well as other publications setting forth University policy, to inform the University community that hostile environment discrimination targeting individuals based on their sex or sexual orientation violates the University's nondiscrimination policy, and that recourse is available to those subjected to hostile environment discrimination. These publications should be developed as part of an overall initiative by the University to develop a comprehensive approach to informing the community about the scope and applicability of the non-discrimination policy to various types of conduct.

B. Ambiguity exists over whether sexual relationships between faculty members and students currently under their direct supervision violate University policy.

The current sexual harassment policy states that "any sexual relations between any teacher and a student of that teacher are inappropriate....In order to discourage such relations, in acting on complaints that come to the University's attention it will be presumed that any complaint [sic] of sexual

harassment by a student against any individual is valid if sexual relations have occurred between them while the individual was teaching or otherwise had supervisory responsibilities for the student. The presumption might be overcome, but the difficulties in doing so would be substantial.”

Although this policy clearly states that any teacher “enters at peril into sexual relationships with a student,” it does leave some ambiguity as to the circumstances that might serve to rebut a presumption of sexual harassment. Those who view the existence of the teacher-student relationship as precluding the possibility of a meaningful consensual sexual relationship believe the presumption to be essentially un rebuttable. Those who view the issue of consent as a function of the particular circumstances, such as the age of the participants and the nature of the relationship, believe the existence of consent can serve as an adequate rebuttal.

The current policy also does not explicitly address the issue of who can bring complaints against a teacher for having sexual relationships with a student under his or her supervision. Other universities and colleges with a prohibition on sexual relationships between teachers and current students differ in their approach. Some restrict claims to students who are involved in sexual relationships with teachers. Others allow any student affected by a sexual relationship between faculty and current students to bring a claim.

The ambiguity that exists in current University policy complicates the task of enforcement. Greater clarity would best serve the interests of those contemplating the risks of undertaking a relationship with a student under their supervision, as well as the interests of the University when faced with a complaint about a faculty-student sexual relationship.

The Working Group learned that other schools and universities, such as Harvard College, the University of California, University of Iowa, NYU Law School, University of Chicago, and Wellesley College, explicitly provide that sexual relationships with students currently under their academic supervision make teachers, graduate teaching fellows, and teaching assistants liable for sexual harassment or otherwise violate the University’s code of conduct for faculty. Some schools address the issue of teacher-student sexual relationships under a general code of faculty conduct, rather than as an issue of sexual harassment. These schools seem to proceed on the premise that a relationship between a teacher and a current student violates the professional and ethical standards of a teacher and interferes with the teaching and learning process. These schools prohibit relationships between teachers and students currently under their academic supervision, regardless of whether the relationship is found to be consensual. They do not characterize this conduct as sexual harassment, but rather as a violation of the faculty code of conduct.

The Working Group did not consider itself the appropriate body to recommend to the President that the University adopt a *per se* rule against sexual relationships between teachers and students under their academic supervision. This recommendation would lie at the margins of our mandate. In addition, we felt that faculty and student input would be essential to a credible and effective policy concerning faculty-student sexual relationships.

Recommendation: Clarification of Policy on Sexual Relationships Between Teachers and Students

2b. *The Working Group recommends that the President designate an appropriate group to consider and recommend to the President whether University policy should explicitly prohibit sexual relationships between a teacher (including anyone with supervisory responsibility over a student’s academic work) and a student currently under that person’s academic supervision. This Committee should consider who should be permitted to file charges for violations of this policy. It should also consider whether the policy, if adopted, should be included as part of the Sexual Harassment Policy or as part of a more general code of conduct for faculty.*

C. The Need for a Distinct and Complete Policy Statement Governing Sexual Harassment

The current *University Policies and Procedures* provides the purpose and definition of sexual harassment, indicates that “schools and administrative units should make known to all their members the available resources and the informal and formal procedures for resolving complaints of harassment within the unit or at the University level,” and then refers to the Racial Harassment Policies for resources available. It is important that a distinct and free-standing Sexual Harassment Policy be developed and presented to the University community. The new Policies and Procedures does contain a full consolidated text of the Sexual Harassment Policy, with procedures identical to those used in Racial Harassment cases.

However, the process of developing procedures specifically designed for sexual harassment complaints provides the opportunity to consider sexual

harassment as one aspect of the general University policies addressing discrimination. In what respects does the sexual harassment policy present distinct challenges requiring specialized procedures? How does the sexual harassment policy relate to other aspects of the University’s policies? The current University policy, like that of virtually every institution, has not yet come to terms with cases involving multiple types of discrimination. Issues of race, ethnicity and national origin frequently overlap with sexual harassment issues. Studies and anecdotal reports suggest that race, culture, and ethnicity affect the experience of sexual harassment. There are indications that individuals who are perceived as marginalized or vulnerable are more likely to be targets of sexual harassment. Race, sex, national origin and age frequently act in combination to affect the experience of individuals in the workplace and the educational setting.

Recommendation: Presenting a Distinct and Comprehensive Statement on Sexual Harassment Policies and Procedures

2c. *The University should develop a separate section of the Policies and Procedures that clearly and fully explains the policies and procedures for addressing sexual harassment. In considering any revisions to the sexual harassment procedures, administrators, in consultation with appropriate committees, should assess whether there is a need for procedures or resources designed specifically to address complaints or problems involving sexual harassment. It should also consider the issue of how best to deal with cases involving both sexual harassment and other forms of discrimination. The University should develop a comprehensive approach to addressing discrimination issues and complaints.*

3. Fostering Acceptance and Enforcement of the Sexual Harassment Policy: The Need for Discussion, Education, and Effective Dissemination

The Working Group determined that there is a critical need for increased discussion and effective education concerning sexual harassment. Although the University’s policy unequivocally condemns sexual harassment, there continues to be a lack of consensus within the community about sexual harassment and the University’s appropriate role in addressing it. Several explanations for this continuing controversy emerged from the Working Group’s inquiry.

First, some faculty members joined the profession during a period when relationships between faculty and students or supervisors and staff were considered purely private matters, beyond the scope of University regulation. The legal and institutional response to sexual harassment has evolved considerably over the last fifteen years. However, consultants to the committee, including deans, former chairs of departments, and former ombudsmen, described numerous informal conversations with faculty members who stated that they continue to view sexual relationships as a private matter, and that they do not view sexual harassment to be a proper issue of University concern. This attitude was particularly apparent with respect to graduate students, whom some faculty members perceive as consenting adults who should be able to take care of themselves. Ironically, graduate students have consistently been described as the population most vulnerable to sexual harassment and the most difficult to protect from sexual harassment.

Second, some of the resistance to the sexual harassment policy stems from the inherent difficulty in defining sexual harassment at the margins. By its nature, sexual harassment often can only be defined in context, depending on the nature of the relationship between the actors and the circumstances surrounding the behavior. Moreover, studies and surveys suggest that, as a group, men and women may experience similar conduct or comments quite differently. Much of the public discussion of sexual harassment centers on conduct that falls in the grey area of the sexual harassment policy or that involves important competing values of academic freedom and free speech. Concern over the possibility of unfairness or overreaching by the University predisposes some faculty to resist the sexual harassment policy in its entirety. Discussion of such issues has occurred primarily in reaction to a crisis—an incident that has already occurred and that triggers strong and dissonant reactions. There has been little opportunity for those responsible for implementing the sexual harassment policy to discuss the boundaries and standards that should govern relationships between professors and students, supervisors and staff. As a result, the necessary acceptance of the policy and facility in addressing the issue has yet to be achieved.

Finally, a more fundamental obstacle to the sexual harassment policy’s implementation concerns attitudes about the appropriate institutional response to conduct that violates the sexual harassment policy. Even those who accept the validity of the sexual harassment policy in theory resist the idea that valued faculty members should have their careers jeopardized or even affected over conduct that they view as “peripheral” or minor in

relation to the faculty's central research mission. Part of the resistance to the sexual harassment policy stems from the fact that the sexual harassment policy puts the integrity of the teacher/student relationship center stage. We have yet to embrace the idea as a community that constructive and ethical relationships between faculty, students, and staff are central to our institutional mission. Sexual harassment is only one aspect of the general question of ethical and responsible relationships among faculty, staff and students. One important prong of a successful implementation strategy must involve creating incentives to fulfill these responsibilities.

An additional concern that emerged from the Working Group's inquiry involved the widespread lack of knowledge and understanding concerning sexual harassment. This general lack of knowledge characterized students, staff, and even faculty who need assistance in responding to concerns about sexual harassment. Counselors, advocates, and administrators reported that particularly students and staff have no clear knowledge of where and how to seek assistance in responding to sexual harassment. The current policies and procedures manual merely lists the resources in the general category of counseling services. It does not aid members of the community in assessing which route they should follow, and many students do not know where to go to find out about available resources. Many of the resource staff reported that students in particular were misdirected to people with little understanding of sexual harassment or the resources available to deal with the problem. Students were described as falling into two categories: those who have developed a connection with a faculty member or administrator that they trust and those who are "not plugged in at all." The second group was described as at risk of not finding the resources necessary to address problems of sexual harassment.

Similarly, staff members' awareness of the procedures and resources for addressing harassment was uneven. The procedures are not currently publicized. They are included in the procedures manual that is on-line, but not in the published version of the manual. The staff grievance procedure has not been widely distributed, and the staff handbook does not talk about harassment. One manager responsible for addressing sexual harassment concerning staff indicated that serendipity often accounted for whether a staff member found out about all of the avenues available to address sexual harassment problems.

In addition to the problem of reaching those who need assistance in dealing with incidents of sexual harassment, the Working Group learned of the problem of adequately informing professors, teaching assistants, supervisors, and administrators of their responsibilities concerning sexual harassment. Many members of the community apparently do not know what the policy is, what it means or whom it governs. Moreover, many supervisors, chairs, deans and other administrators do not understand that they are agents of the University who are responsible for carrying out the sexual harassment policy in their administrative capacities. The Working Group heard of chairs of departments and supervisors who are unaware of how to respond to complaints of sexual harassment and lack both information and a strategy for how to proceed. Administrators faced with a problem of sexual harassment reported not having adequate resources to assist them in responding to the problem or knowing of the resources. There were reports of individuals in positions of responsibility for implementing University policy on sexual harassment who were unsympathetic to the policy and failed to take it seriously. The adequacy of the institutional response to sexual harassment was repeatedly linked to the interest, commitment, and conscientiousness of the administrator responsible for handling the complaint within the particular department or school.

The Working Group identified several possible explanations for this gap in understanding about the policy and procedures governing sexual harassment. To some extent, the problem is inherent in the nature of sexual harassment. People do not pay attention to the issue, even if it is publicized, until they find themselves face-to-face with a problem. In addition, sexual harassment is by definition somewhat general and imprecise, and often can only be more precisely assessed in a particular context. Both of these dynamics prompt the Working Group to underscore the importance of fostering on-going and open discussions about sexual harassment as an issue to increase awareness and understanding of the problem.

The current presentation and distribution of the sexual harassment policies and procedures could also be improved as a way of increasing awareness. The *University Policies and Procedures* do not specify any requirements for publicizing the sexual harassment policy, although it does indicate that the policy is noted in "the *Handbook for Faculty and Academic Administrators, Policies and Procedures*, the *Academic Bulletin*, and other University publications." The presentation is fairly general, and is not "user-friendly." It does not provide specific information differentiat-

ing the various resources or helping users determine which administrative route makes the most sense in their circumstances. In some respects, it is out-dated, i.e., it lists incorrect names of resource centers or presents resources not currently in operation. To some extent, the problem stems from the existing multiplicity and confusion over the roles of the various resources—an issue that is separately addressed in this Report.

The University also does not currently provide any systematic and co-ordinated educational program addressing issues of sexual harassment, either for the community at large or for those responsible for implementing the sexual harassment policy. There are orientation, educational and training programs conducted on an ad hoc basis by such programs as the Program Office for Student Transitional Programs, the Penn Women's Center, the Office of Affirmative Action, Staff Relations, and FSAP. However, these programs are sporadic, inadequately supported, and reach a relatively narrow audience. The Working Group perceived that the University has within its walls a wealth of resources that could, with adequate support, provide training and education for the community on issues of sexual harassment. The Wharton School, the Annenberg School, the Law School, the School of Social Work, Women's Studies, General Counsel's Office, the Affirmative Action Office, the Penn Women's Center, Staff Relations, Labor Relations, FSAP, and the Office of Training and Development offer possibilities as in-house resources. As of now, these resources have yet to be fully utilized.

The task of educating supervisors, chairs, and administrators concerning their responsibilities for implementing sexual harassment policy poses particular challenges. The Working Group, along with the faculty and administrators who advised us, agreed that training programs conducted by staff or administrators to whom faculty are not directly accountable are unlikely to be effective. It was also agreed that effective education of administrators, supervisors etc. requires an understanding of how sexual harassment relates to general administrative responsibilities. This guidance must come from the direct administrative superiors of those responsible for implementing the sexual harassment policy, as well as from the highest level of University administration. It will also be helpful to draw on the experience and expertise of those in similar administrative positions who have handled sexual harassment complaints in the past. Finally, the Office of General Counsel could be used more effectively in informing and assisting supervisors and chairs concerning their responsibilities and possible strategies for dealing with and preventing sexual harassment problems.

The Working Group concluded that the development of a successful strategy for informing and educating the University community concerning sexual harassment requires a coordinated and sustained strategy that would build on existing resources and assure adequate follow-up. Given the numerous past committees, with little subsequent results, it is essential that a high level individual be identified and given both responsibility and resources for developing and sustaining a public relations and educational program for the Penn community. Although the Working Group did not consider other issues of importance to the community, such as race and sex discrimination, this approach may be useful in those areas as well.

Recommendations: Providing Information, Training, and Opportunities for Constructive Discussion

3a. (1) *The President should designate an individual or organization with sufficient authority, credibility and resources to develop and oversee a program for informing and educating the University community.*

(2) *The Sexual Harassment Oversight Committee along with the designated administrator should bear oversight responsibility for assuring that the University is adequately educating the community and the administrative staff concerning sexual harassment.*

3b. Publicizing Sexual Harassment Policies:

(1) *The appropriate administrative official, in consultation with the Oversight Committee, should revise the University Policies and Procedures, the staff handbook, the Human Resources Policy Manual, and other formal University publications to correct inaccuracies in the current policy, to lay out the policies and procedures in their entirety, and to present a clear and user-friendly description of resources, options, and procedures. This section should be designed to enable complainants, respondents, and those responsible for handling sexual harassment complaints to make informed choices and to find the appropriate resources and procedures to address the problem.*

(2) *The sexual harassment policy should be published in Almanac, The Daily Pennsylvanian, The Compass, and other University publications twice each academic year, at the beginning of each semester.*

(3) *The sexual harassment policy and procedures should, as a matter of policy, be included in PennInfo, the Human Resources Manual, the Policies and Procedures manual, the staff handbook, the student handbook, and other regularly distributed written materials. Provisions should be made to insure that the manuals and the on-line presentation of University policies are regularly updated. The University should consider whether and when these publications need to be republished to reflect the changes discussed in this Report, and should assure that future changes in policy are incorporated into subsequent republications.*

(4) *Informal, accessible articles presenting the sexual harassment policies, procedures, and resources should be published regularly in The Compass and Almanac. Efforts should be made to seek regular publication of articles in The Daily Pennsylvanian and Vision. Articles from the General Counsel, the Provost, the Ombudsman, the Penn Women's Center, and the Office of Affirmative Action, among others, should be solicited.*

3c. Orientation, training and education:

(1) *The issue of sexual harassment should be included in the orientation for incoming students. Effective orientation programs for new staff and faculty should be developed. The individual or office designated as responsible for overseeing the educational effort (see recommendation 3a) should work with those planning the orientation programs to develop an effective strategy for educating students, staff, and faculty concerning sexual harassment.*

(2) *Training concerning approaches to sexual harassment should be given to all newly appointed staff supervisors, chairs of departments, graduate and undergraduate chairs, deans, school or departmental ombudsmen, and others with administrative responsibility for addressing complaints of sexual harassment. This training should be done with the direct involvement of those to whom these individuals report.*

(3) *Graduate chairs, departmental chairs, deans, and others responsible for overseeing graduate fellows, administrative fellows, residential advisors, and teaching assistants should be required to include in each orientation session for those with any supervisory responsibility a presentation and discussion concerning the sexual harassment policy, procedures, and dynamics. They should also instruct graduate fellows and teaching assistants concerning the school-based and campus-wide resources and processes available for addressing sexual harassment so that graduate students are prepared to refer students who seek their counsel in sexual harassment cases.*

(4) *A manual for chairs of departments and deans on how to deal with sexual harassment should be developed by a committee appointed by the President that includes former chairs and deans with experience in addressing sexual harassment complaints. The committee to develop the manual should also include a present or former ombudsman and someone with expertise in the sexual harassment area. The manual should address issues such as what to tell graduate students, how to change a culture that tolerates harassment, what to do when a complaint arises, how to investigate, what are the procedural options, and what are the range of responses and sanctions available for various types of conduct.*

(5) *The President, Provost or other high level administrator should provide consistent leadership in orienting newly appointed chairs, deans and others with responsibility for supervising faculty and staff in their responsibilities for addressing issues of sexual harassment. This orientation should include information about the policy and procedures and guidance concerning the range of appropriate responses to sexual harassment complaints. It should also include, if possible, discussions with past holders of an analogous position with experience in addressing similar issues and with General Counsel.*

(6) *The President and Provost should instruct Deans and Chairs annually concerning their responsibilities to inform their faculty, staff and students concerning the sexual harassment policies and procedures.*

(7) *Adequate resources should be provided to enable educational and training programs to be developed and offered on a regular basis.*

4. Informal Processes for Responding to Sexual Harassment

The task of assessing the adequacy of the current processes for handling sexual harassment requires a vision of the elements of an effective and fair system. An effective system must afford both accessible, informal, confidential interventions and timely, fair formal procedures that lead to visible enforcement in cases where serious violations have been found. Indeed, the effectiveness of the informal processes depends on the existence of a credible formal process and vice versa. Sexual harassment cannot be effectively reduced if the only visible response to sexual harassment occurs in reaction to a crisis and in the context of adversary process. A range of

informal processes that permit localized and mediated resolution is crucial. However, members of the University community will utilize these informal processes only if they perceive that the University is committed to enforcing its sexual harassment policy, particularly in cases of serious violation.

The system currently in place at Penn creates a good foundation for building an effective system for informal dispute resolution. It relies heavily on a decentralized approach to handling sexual harassment claims. The University has created a variety of resource offices that can provide assistance in dealing with sexual harassment, and basically leaves the choice of which resource office will get involved entirely up to the individual who seeks some intervention. In addition, the current University procedures rely on each school and administrative unit to create both informal and formal processes for addressing sexual harassment. Thus, there is a combination of diverse resource offices that operate University-wide and informal procedures within the various schools.

There are some important virtues to this decentralized approach. The resource offices offer a range of options and types of assistance by individuals with varying degrees of training and expertise in handling sexual harassment complaints. Some of these resource offices, such as Student Health, FSAP, and University Counseling Services, provide purely counseling services designed to enable targets of sexual harassment to cope better and minimize the harm associated with sexual harassment. Some offices, such as the Program for the Lesbian, Gay and Bisexual Community at Penn and the African American Resource Center, provide support, advocacy, and referral. The Penn Women's Center combines counseling, education, training, consultation, and advocacy for targets of sexual harassment.

In addition to the counseling and advocacy offices, the University has created the Ombudsman's office, which provides individuals with a place to go to speak in complete confidence, to get the advice of an experienced and respected member of the faculty, and to obtain assistance in reaching a resolution of the problem that is acceptable to all those involved in the issue. The Ombudsman's Office is widely viewed within the University community as a neutral, credible, and effective vehicle for seeking a prompt, fair, and effective resolution of sexual harassment complaints. However, it is important to note that the Ombudsman does not intervene in situations involving unionized staff.

This potpourri of resource offices, coupled with whatever informal processes exist within the schools, respond to the need to maximize the accessibility and comfort level of those who seek assistance in dealing with sexual harassment. The decentralized approach also preserves the local autonomy of the schools and departments and, at least in theory, locates responsibility for preventing and redressing sexual harassment where it belongs—with the faculty and administration responsible for the education of the students.

However, a number of factors have limited the effectiveness of this decentralized system. First, all of the resource offices that have been given significant responsibilities for handling sexual harassment complaints reported a widespread pattern of reluctance on the part of reported victims of sexual harassment to seek assistance or take any action. Many students who report incidents of sexual harassment insist that no action be taken out of concern that they are at risk of retaliation. Counselors reported a general perception within the community that any procedures, including informal ones, will drag out, that nothing will happen even if an individual is found to have engaged in sexual harassment, that the proceedings will not remain private, that they will end up doing more harm than good. To some extent, this reported reluctance of harassment victims to seek any redress from the University reflects a predictable and wide-spread phenomenon common to sexual harassment. However, many of those who deal with sexual harassment complaints within the University indicated that the problem is worsened by a lack of confidence in the current procedures and follow-through, particularly if the allegations of harassment concern a faculty member.

Second, the resource offices charged with responsibility for handling sexual harassment problems for the community report that they are overworked and understaffed. The strain on staff resources is illustrated by the current staffing level of the Ombudsman's office. That office has only one full-time staff member. It currently lacks any clerical or other administrative support. Although there is a broad consensus that the Ombudsman's office should play a central role in the informal resolution of sexual harassment and other issues, the current levels of staffing and resources make it difficult for the office adequately to perform this role. Similar concerns have been expressed by the Office of Affirmative Action, Staff Relations, Labor Relations, the Penn Women's Center, and the counseling programs.

Third, individuals who need assistance in dealing with sexual harassment currently receive little guidance in choosing the appropriate resource

or process. Although the University did at one time institute Harassment Information Resources, individuals who were charged with responsibility for advising and referring students, faculty, and staff with sexual harassment complaints, that system has lapsed. In addition, questions were raised as to the HIR's effectiveness. Currently, there is no individual or office who is charged with responsibility for guiding students, faculty or staff in pursuing their informal (or formal) avenues of redress. Sometimes, individuals will pursue several channels of redress simultaneously, without the knowledge or cooperation of the various resource offices.

Fourth, the roles of the resource offices have never been adequately clarified. The current procedures leave open the possibility of role conflicts that can undermine the effectiveness, credibility, and fairness of the informal or formal processes. For example, the Ombudsman's office is charged with responsibility to provide impartial intervention designed to achieve a consensual resolution to problems. Yet, the current policies and procedures leave open the possibility that the University administration will use the Ombudsman's office to conduct investigations in connection with the prosecution of disciplinary claims against members of the community. Similarly, the Judicial Inquiry Office will attempt to reach an informal resolution of a claim, and if it is unable to do so, the current policy and procedures provide that the JIO should determine whether there are grounds to proceed with formal disciplinary charges and, if so, to assume the prosecutorial role. The role of the Affirmative Action Office in addressing sexual harassment complaints and in collaborating with other resource offices also suggests the possibility of role conflict.

Fifth, many of the schools and departments do not currently maintain visible informal processes for addressing sexual harassment complaints. Although Deans and Chairs bear administrative responsibility for attempting to resolve complaints where possible, the Working Group heard of many instances of gaps in administrative follow-through and accountability. Some schools do not have an established process specifically designated to address sexual harassment complaints. Many schools simply rely on existing general processes for addressing problems of students and staff. However, these processes are frequently inadequate to address the concerns of those involved in disputes concerning sexual harassment. Sexual harassment issues can be extremely sensitive, and their proper investigation and resolution often requires experience and expertise that may not be needed or available within the school or department's normal dispute resolution processes.

Finally, there is a huge gap between the counseling and advocacy services provided by the resource centers and the processes generally afforded by the various schools and departments for addressing sexual harassment. The Policies and Procedures Manual refers to a student grievance procedure for addressing complaints involving discrimination, but no such procedure currently exists in practice. The informal mechanisms for addressing staff complaints of sexual harassment may also require some revision. Staff relations, which currently provides assistance in informal resolution of sexual harassment complaints, faces structural limitations in its capacity to perform this function because the office's client is the administration. The office's primary responsibility to management may limit its effectiveness as a means of informal resolution of sexual harassment complaints.

The current process for addressing sexual harassment complaints by union members relies heavily on the union grievance procedure. About 1000 University staff are unionized. In addition to University policies and procedures, unionized staff are governed by the terms of the respective collective bargaining agreements. All collective bargaining agreements contain non-discrimination clauses. University staff who are unionized have been both complainants and respondents. The experience of the Office of Affirmative Action, Penn Women's Center, and Labor Relations indicates that, like many staff, unionized staff are sometimes reluctant to pursue claims through the resource offices or the negotiated grievance procedure. The union is the unionized staff members' exclusive representative, and it is perceived that some union representatives may not pursue contract violations involving sexual harassment.

There is also an informal process for addressing sexual harassment, by bringing the complaint to the attention of the Office of Labor Relations and/or Affirmative Action, which will then attempt to intervene where appropriate. The Office of Affirmative Action and the Department of Labor Relations have conducted joint investigations of harassment complaints. This informal process is not widely publicized.

It is important to explore the possibility of expanding the range of intermediate options, administrative solutions, and mediation as possible responses to sexual harassment claims.

Recommendations: Informal Processes

4a. *The appropriate administrative official, in consultation with the*

Sexual Harassment Oversight Committee or another appropriate body, should provide a clear and accurate description of the types of services provided by the various resource centers at Penn. Descriptions of the sexual harassment policy should guide members of the community in the use of these resources. Offices that provide counseling and advocacy should be treated separately from those that provide mediation and dispute resolution and from those that investigate and make determinations concerning sexual harassment.

4b. *The Sexual Harassment Oversight Committee or some other body constituted by the President should, in consultation with the resource offices, clarify the roles of the resource offices in providing counseling, advocacy, investigation, and pursuit of sexual harassment complaints. The Committee should consider the desirability of centralizing responsibility for addressing sexual harassment complaints. Some other Universities have established sexual harassment panels or committees that respond University-wide to complaints of sexual harassment. Others maintain some degree of decentralized responsibility for addressing sexual harassment. The Working Group heard arguments in favor of both greater centralization and maintaining local autonomy. This issue warrants greater scrutiny by a representative Committee.*

4c. *The Sexual Harassment Oversight Committee or some other body constituted by the President should investigate the adequacy of the current informal procedures for resolving complaints of students involving sexual harassment. This inquiry should coordinate with other efforts within the University to address the issue of providing adequate support, counseling and intervention to students. It should address the issue of the appropriate role of the JIO in providing mediation and other informal resolution of sexual harassment issues. It should also consider whether and to what extent specialized processes should be created to address sexual harassment complaints.*

4d. *The Sexual Harassment Oversight Committee or some other body constituted by the President should investigate the adequacy of the current informal procedures for addressing complaints of staff involving sexual harassment. In particular, it should consider the adequacy of the informal processes currently offered by staff relations and the need to provide greater visibility and accessibility to the informal processes conducted by the Office of Labor Relations. The role of Labor Relations in addressing sexual harassment needs to be included in all relevant publications.*

4e. *The Sexual Harassment Oversight Committee or some other body constituted by the President should develop a process for assuring that each school and department develop and maintain an effective informal system for addressing complaints of sexual harassment. This system should provide both for in-house resources to refer those in need of assistance to appropriate resources and for informal methods of dispute resolution. In reaching its recommendations, the Committee should consider ways of assuring the effectiveness of the system established and yet maintaining to the greatest degree possible the autonomy of the schools and administrative units.*

4f. *The Sexual Harassment Oversight Committee or some other body constituted by the President should consider whether to recommend the use of mediation, either by individuals employed by the University and trained as mediators, or by outsiders retained by the University as an available alternative in appropriate cases involving sexual harassment. This consideration requires attention to such questions as the circumstances and timing under which mediation of sexual harassment conflicts may be appropriate, the extent to which the parties involved should determine the appropriate initial process of resolution, the relationship between mediation and more formal processes, and the appropriate individuals to perform the mediation role. The goal should be to develop a system that allows referral to informal processes at the appropriate time and in the appropriate case.*

4g. *The Sexual Harassment Oversight Committee or some other body constituted by the President should recommend the appropriate body to serve as the Title IX grievance mechanism. Existing resource offices, such as the Affirmative Action Office or the Vice Provost for University Life, should be considered as candidates for fulfilling this responsibility.*

4h. *Deans, chairs, administrators, and others with supervisory responsibility should be regularly advised by those to whom they report concerning their role in affording informal processes for addressing sexual harassment complaints. The Sexual Harassment Oversight Committee should consider methods for assuring that these informal processes are maintained and made accessible.*

5. Confidentiality

The confidentiality issue poses several important and competing problems in developing an effective system for addressing sexual harassment. On one hand, the ability to assure confidentiality is an essential element of a fair and

workable system. Individuals seeking assistance in handling sexual harassment frequently fear exposure and retaliation. Their willingness to talk about an incident of sexual harassment depends on credible assurance that their statements will not be disclosed to anyone else without their permission.

Individuals accused of sexual harassment also have a strong and legitimate interest in assurances that the University will take steps to maintain the confidentiality of unproven accusations, consistent with the necessity of conducting an effective investigation. Disclosure of sexual harassment allegations can affect the reputation and relationships of individuals accused of such conduct. Although such disclosure may be warranted in certain circumstances where the University has found harassment to have occurred, fairness requires that unproven allegations not be disseminated.

The current policy and practice does take some steps to preserve the confidentiality of complainants and respondents. The resource offices generally have adopted an informal policy of preserving confidentiality of sexual harassment complaints, unless the individual expressly consents to an investigation. If individuals desire complete confidentiality, the resource offices cannot take any action on the complaint, other than to provide confidential counseling. Individuals insisting on complete confidentiality generally are asked by resource offices to sign a waiver stating their desire to maintain confidentiality and their understanding that the University cannot proceed to investigate or resolve their complaint as a result.

This informal policy of confidentiality has never been formally adopted by the University, and is not reflected clearly in Policies and Procedures. There are also several reported exceptions to this approach to confidentiality. The Hospital of the University of Pennsylvania does not provide any assurances of confidentiality. General Counsel's Office, as the representative of the University, will not provide an assurance of confidentiality, and informs individuals of that fact. They discourage confidential communications by either complainants or respondents, and refer individuals to the appropriate resource office for confidential intervention. The Working Group also learned of some concern that Staff Relations is not perceived as maintaining the confidentiality of complaints involving sexual harassment, and that the office's primary allegiance to management may create incentives to act on confidential information. Instances were described in which staff relations gave guarantees of confidentiality and then proceeded with an investigation.

These strong interests in preserving confidentiality can conflict with the University's interest in obtaining the information necessary to prevent recurrences of sexual harassment and to intervene in instances of individuals, schools, or administrative units with a pattern of sexual harassment. The Working Group heard of numerous instances in which members of particular schools or administrative units learned of conduct that violates the sexual harassment policy but failed to use that knowledge, even in considering whether an individual should assume a position that entailed enforcing the sexual harassment policy. Resource office staff have a wealth of information concerning patterns of complaints against particular individuals, schools, or departments, but this information does not reach administrators who are in a position to take preventive steps.

In addition, the concern to maintain confidentiality frequently prevents the University from informing the community of established violations of the sexual harassment policy and of the University's response to this conduct. This failure to disclose findings of harassment and University sanctions even in serious instances of harassment reinforces the perception of those resisting the sexual harassment policy that sexual harassment does not in fact occur on campus. It also undercuts the perception that the University will vigorously enforce its rules prohibiting sexual harassment. The University needs to grapple with the issue of the circumstances under which it should disclose to the University proven violations of sexual harassment, along with any sanctions imposed.

Recommendations: Confidentiality

5a. *The University should adopt a formal policy on confidentiality of communications concerning sexual harassment, and this policy should be included in any official presentations of the sexual harassment policy. The University should clarify the extent to which confidentiality will be assured by the General Counsel's Office, Staff Relations, and the Hospital, and then communicate its confidentiality policy to those seeking assistance from these offices.*

5b. *As part of the inquiry into appropriate responses to sexual harassment, the Oversight Committee should consider and make recommendations concerning the circumstances under which findings of sexual harassment and sanctions imposed should be communicated to the University community.*

6. Investigation

Proper investigation of complaints of sexual harassment is another essential component of an effective system. Institutions that fail to conduct prompt, thorough, impartial, and sensitive investigations limit their capacity to respond constructively and expose themselves to liability. In addition, in situations where an investigation is conducted by an individual with inadequate expertise, the process of investigation can itself unnecessarily breach the confidentiality and privacy of individuals involved in a sexual harassment issue. Inexperienced investigators may convey information unnecessarily to individuals in the course of conducting an investigation. They may also conduct an investigation that unduly expands the scope of the issue, for example, by initially questioning everyone in the organization concerning any observations they might have. The process of investigating complaints of sexual harassment is one that requires sensitivity, experience, and expertise.

It is also important to recognize and preserve the distinction between formal and informal investigation. Investigations are part of both the informal and the formal mechanisms for responding to sexual harassment. An individual seeking to achieve a consensual resolution to a sexual harassment complaint frequently must conduct some investigation to inform the negotiations, create a common factual understanding, and frame the range of possible resolutions. Individuals may be willing to cooperate in such an informal investigation if they have assurances that disclosures made in connection with efforts to mediate a voluntary resolution will not be used in formal prosecutions of sexual harassment violations. Investigations used to determine whether the University should bring formal disciplinary charges against an individual tend to require more a thorough, formal, and adversarial process.

The University currently tends to merge responsibility for informal and formal investigation, frequently to the detriment of both processes. University Policies and Procedures contributes to this confusion and merger of responsibilities by designating the Ombudsman, the Office of Affirmative Action, the Office of Staff Relations, or the Office of Labor Relations all as offices that will investigate charges of sexual harassment at the request of a Department Chair or Dean. *University Policies and Procedures*, p. 7. The JIO bears responsibility for investigating in connection with seeking a settlement as well as investigating in connection with a prosecution of disciplinary code violations. The Office of the Ombudsman has been called upon by the administration to assist in conducting a formal investigation in cases that were investigated in connection with the office's efforts to achieve a voluntary resolution. Staff Relations and Labor Relations also merge the formal and informal investigatory responsibilities. The Office of Affirmative Action sometimes conducts joint investigations with resource offices whose primary function is to seek informal resolution of sexual harassment issues.

This tendency to rely on resource offices to conduct both formal and informal investigations may stem from the fact that the University currently lacks adequate resources to conduct formal investigations. The Office of Affirmative Action currently performs this investigatory function primarily for violations concerning staff. Although it conducts investigations, it does not issue written findings. There is no office with the responsibility and capacity to conduct formal investigations concerning faculty violations of the sexual harassment policy. Although the Affirmative Action Office technically could conduct such investigations, administrators have not generally relied on that office to investigate faculty, and there is some question as to whether faculty would insist that faculty misconduct be investigated by other faculty members, rather than administrative staff. Other universities have responded to this status issue by designating and training particular faculty members to serve as investigators in sexual harassment cases.

Recommendations: Investigation

6a. *An appropriate administrative official, in consultation with the Oversight Committee, should develop a University protocol for investigation to assist in conducting thorough, fair, and effective investigations.*

6b. *The Sexual Harassment Oversight Committee or some other body constituted by the President should thoroughly assess the current mechanisms for conducting formal investigations of sexual harassment cases, giving specific consideration to the desirability of separating informal and formal investigatory responsibilities, clarifying the investigatory roles of existing resources, providing adequate training of those charged with investigative responsibility, and designating a credible individual or office to conduct investigations of allegations involving faculty.*

6c. *An appropriate University official, in consultation with the Over-*

sight Committee, should rewrite University Policies and Procedures, the staff handbook, and the Handbook for Faculty and Staff Administrators to clarify responsibilities for investigation and to provide adequate guidance on investigations to those involved in sexual harassment issues.

7. Formal Procedures

Prompt, fair, and credible formal procedures are a cornerstone of an effective system for addressing sexual harassment. They constitute the most visible and scrutinized aspect of the system, and frequently determine the community's perception of the University's commitment to its sexual harassment policy. Complainants' willingness to proceed with charges, even for serious violations, often depends on their perception of the adequacy of the formal complaint mechanism. Even those who seek informal resolution base their decision whether to place their confidence in the process at least in part on their sense of the adequacy of the avenue of last resort - formal hearings. This is particularly true because deans, department chairs, and supervisors bear responsibility for implementing both formal and informal processes for addressing sexual harassment. Only if formal procedures are functioning well are community members likely to be willing to trust informal, voluntary processes to handle less serious claims.

The Working Group identified several important components of an effective formal system. First, a formal system must function and be perceived as an unbiased decision-maker. Second, it must act promptly. Third, it must treat the participants in the dispute with respect and offer them adequate opportunities to participate. Fourth, it must be provided with adequate resources and expertise to obtain and analyze information. Fifth, it must provide principled decisions.

The formal systems in place at Penn vary widely in their adequacy in handling sexual harassment complaints. There is currently no active centralized formal process specifically for addressing sexual harassment complaints. The status of the accused individual, the decision of the complaining party, the severity of the charges, and the response of the responsible administrative official determine the procedure used in a particular case. Each school or department is charged with the responsibility of establishing procedures for handling charges of sexual harassment. Deans, department chairs, and supervisors have overall responsibility to determine whether to proceed with sexual harassment complaints against a faculty member or staff. There are separate processes used for charges against faculty, staff, and students.

A. Faculty

Complaints brought to the Dean or departmental chair against faculty that are serious enough to raise the possibility of suspension or termination proceed through the just cause procedures. A faculty member seeking redress for sexual harassment may also file a grievance under the Faculty Grievance Procedure. In theory, a complaint involving sexual harassment may also be brought to the Faculty Senate Committee on Conduct, a standing committee of the faculty. However, the Working Group found no evidence that the Committee on Conduct has been utilized.

The linchpin to the success of the formal process is the responsible administrative official. The department chairs and deans must strike an appropriate balance between formal and informal processes, conduct a proper investigation, and exercise appropriate discretion in determining whether to pursue formal charges. The Working Group learned that, in areas where deans and department chairs have acted promptly and fairly, the formal system has worked well. However, the response of deans and chairs varies widely. The Working Group learned of cases in which Department Chairs have defined their role primarily in terms of protecting their faculty. Many department chairs and deans feel vulnerable and in the dark as to how to handle these cases. Staff, students, and many faculty perceive that faculty members will be protected, regardless of the conduct. There is also some fear on the part of those responsible for conducting investigations that they will not receive necessary support from higher levels in the administration. Additional guidance and administrative support in handling these cases is crucial.

Recommendation: Formal Procedures (See also Recommendations 3c.)

7a. *The University should institute a mechanism for providing support and accountability to Deans, Department Chairs, supervisors and others responsible for conducting the formal procedures for handling sexual harassment complaints. Options include relying on the Oversight Committee, the Provost's Office, or some combination of the two.*

The Working Group also gave preliminary consideration to the pros and cons of our decentralized formal system for handling sexual harassment

complaints against faculty. A decentralized system, or one that gives the accused party or the school control over its jurisdiction, may make it difficult for individuals to obtain redress in schools or departments that do not take the issue of sexual harassment seriously. Individuals may be reluctant to complain if their only avenue of recourse is a school, department, or chair whom they perceive as unresponsive. Small schools face particular challenges in providing a fair process that does not completely tear apart the community. Also, a decentralized system assures that no committee will develop the expertise and experience that is so important in sexual harassment proceedings. The chairs and committees rotate regularly, and sexual harassment complaints requiring formal procedures arise infrequently enough to preclude these committees from developing familiarity and expertise with the issues. Decentralization also leads to wide variation in enforcement and uneven standards of conduct and sanction.

Indeed, some high level faculty and administrators expressed the view that general school committees are not set up well to deal with sexual harassment. These individuals supported moving to a University committee to address all complaints of sexual harassment, comprised of a representative group of people widely respected in the community, with the provost as the complainant. Many other universities and colleges, such as Yale College, Brown University, University of Chicago, Duke University and Harvard College, have opted for a centralized system for processing complaints involving sexual harassment. The Working Group understands that a proposal to move to a University-wide system for imposing any sanctions on faculty generated considerable controversy. See "Proposed Procedures Governing Sanctions Taken Against Members of the Faculty," *Almanac Supplement* February 9, 1993. We have learned of a new proposal that would give the respondent control over the forum choice. The Working Group has reservations concerning the adequacy of such an approach in cases of sexual harassment, in light of the University's legal obligation to provide an effective mechanism for stopping sexual harassment.

The Working Group also learned of advantages to a decentralized system of handling sexual harassment complaints. Most important, the decentralized system properly places responsibility for enforcing sexual harassment norms within the relevant community. The Working Group heard forceful arguments that the faculty must take direct responsibility for these issues, and that will happen only if schools and departments bear direct responsibility for handling sexual harassment issues. Also, many members of the University community have no contact with anyone outside their school or department, and may be reluctant to go outside their community with their complaint. A move toward centralization of processing sexual harassment complaints may in some instances make it more difficult to resolve these issues constructively within the school and department, and may undermine the internal incentives to prevent these problems from occurring.

The Working Group's preliminary sense is that some combination of centralized and decentralized processes may be an improvement over the current system. This could include some central oversight over the functioning of school or departmental committees, a centralized investigatory mechanism, and some more active alternative, centralized formal procedure, such as the Senate Committee on Conduct, that could be triggered in appropriate circumstances. However, the Working Group did not perceive itself to be the appropriate body to resolve this issue of the appropriate balance between decentralized and centralized formal processes and to make specific recommendations concerning the formal procedures. However, this issue should be addressed immediately in the fall by the Oversight Committee on Sexual Harassment.

7b. *The Oversight Committee on Sexual Harassment should consider the adequacy of the current formal procedures for addressing sexual harassment complaints and make appropriate recommendations, including recommendations concerning how to improve the capacity of school and departmental committees to handle sexual harassment complaints and whether to make greater use of a centralized process such as the Senate Committee on Conduct.*

A third major concern with the current procedures for handling sexual harassment complaints against faculty involves the delay in processing these complaints. Faculty committees that do not meet regularly are quite difficult to convene, and this is particularly true for committees that only meet in the event a problem arises. In addition, faculty members conducting the proceedings lack experience in handling these cases. They may lack adequate staff support and guidance in how to proceed. This, coupled with the tendency of lawyers involved in the process to delay proceedings, sometimes results in protracted proceedings that undermine the credibility of the process and work to the detriment of the parties. Time frames for proceeding with

investigations and formal proceedings are an important aspect of fair processes. At the same time, imposing time frames without providing adequate resources to meet them will only exacerbate the problem. Time frames can be disastrous from a resource perspective, because current offices bearing responsibility for investigating and processing formal complaints report that they are understaffed. If several cases are filed simultaneously, these offices cannot provide adequate services and still meet deadlines. Thus, adoption of any recommendation to impose time limits on investigation and formal proceedings should be linked with an increase in administrative support and resources to handle sexual harassment complaints.

7c. *The Oversight Committee should develop reasonable time limits for investigations and formal proceedings in sexual harassment cases involving faculty, staff and students. Its consideration should take into account resource issues that may result from the imposition of such deadlines, and link its recommendations concerning time limits with adequate provision of resources to those responsible for processing formal complaints.*

A final concern that surfaced in considering the formal faculty procedures concerns the lack of clarity concerning the roles of the various participants in the proceedings. Advisors to the complainant and the respondent receive little guidance concerning their roles, and informal reports suggest unevenness in advisors' role definition and performance. Complainants' involvement in the formal process remains unclear, and this confusion can accentuate the difficulty inherent in bringing a sexual harassment complaint against a faculty member. The role of lawyers and the University's involvement in providing counsel has not been adequately communicated. Even those with formal responsibility for the complaints, such as deans, chairs and committee members, lack adequate guidance as to their role.

7d. *The Sexual Harassment Oversight Committee or some other body constituted by the President should clarify the roles of the advisor, the participation of the complainant, and the roles and responsibilities of committee members and deans in conducting formal processes. This information should be included in the sexual harassment policy and procedures where appropriate, as well as in the manual for deans and chairs described in Recommendation 3c. The Oversight Committee should also recommend ways of insuring that this information is communicated on a regular basis to those responsible for carrying out the University's sexual harassment procedures.*

B. Staff

Sexual harassment complaints against a staff member are handled by the supervisor of the person complained against. If the supervisor is unable to resolve the complaint informally, he or she may proceed with an investigation, either internally or with the assistance of the Office of Affirmative Action. Generally, the Office of Affirmative Action will assist in the investigation of sexual harassment complaints. The supervisor bears responsibility for determining whether the conduct actually occurred and, if so, the appropriate sanction. Unionized staff are disciplined through the four step process set forth in the collective bargaining agreement. A staff member dissatisfied with administrative action may file a grievance under the staff grievance procedure or, where appropriate, the union grievance procedure.

The Working Group did not fully explore the adequacy of the procedures for addressing sexual harassment complaints involving staff, the adequacy of union procedures to address sexual harassment complaints, the relationship between formal and informal responsibilities for handling sexual harassment complaints involving staff, and the role of the Office of Affirmative Action in addressing complaints of sexual harassment by staff. There is the risk that issues involving staff will be inadequately addressed by the community, because of the tendency to overlook and undervalue the role of staff in the University. The Oversight Committee should devote careful attention to this issue.

In general, the Working Group observed that the adequacy of the administrative response depends on the particular supervisor responsible for acting on the complaints. There were reports of supervisors who lacked adequate understanding of their responsibilities to enforce the sexual harassment policy, and who conveyed the sense that complaints would not be taken seriously. This was particularly true in areas where women are underrepresented, such as the trades. However, in instances where serious breaches of the sexual harassment policy were found, there appears to be a willingness to discipline staff. There was also concern expressed about the lack of time limits for investigations conducted by the Office of Affirmative Action.

Recommendations (See also Recommendations 3c and 7c.):

7e. *The Oversight Committee or some other body constituted by the President should more fully evaluate the adequacy of existing procedures*

for addressing complaints of sexual harassment against both unionized and non-unionized staff, and make recommendations for improving the enforcement of the sexual harassment procedures for staff.

C. Students

The existing procedures for filing a formal complaint against a student for violations of the sexual harassment policy are somewhat confusing. *University Policies and Procedures* provides that sexual harassment complaints against students may be filed under the Charter of the University Student Judicial System, or the analogous body in a graduate or professional school. Policies and Procedures also states that students may file sexual harassment complaints with the Office of the Vice Provost for University Life, in accordance with the Student Grievance Procedure set out in *Penn Policies and Procedures*. That grievance procedure is not then described in a clear and accessible manner. Instead, it is buried on p. 44 of *Policies and Procedures*. More importantly, this grievance procedure does not currently exist in practice. The Working Group was unable to locate any individual who claimed responsibility for overseeing this grievance procedure. This discrepancy between policy and practice must be remedied. It creates considerable confusion and hoop jumping for students already in distress. It also may create some legal exposure. This phantom grievance procedure is designated as the University's procedure for complying with its Title IX mandate to provide effective grievance mechanisms for students with claims involving discrimination. Some mechanism that affords students with an avenue for seeking redress for sexual harassment and other discrimination complaints must be provided.

Recommendations:

7f. *Immediate steps should be taken to create or reconstitute a mechanism affording students with an avenue for seeking redress for sexual harassment and other discrimination complaints. The University's Policies and Procedures concerning the Student Grievance Procedure should be clarified, including its relationship to the Student Judicial System.*

7g. *The Sexual Harassment Oversight Committee or some other body constituted by the President should consider and make recommendations concerning the appropriate mechanism for meeting the University's Title IX obligation to afford effective dispute resolution mechanisms for addressing sexual harassment and other discrimination complaints.*

The Working Group did not conduct a comprehensive examination of the formal processes for addressing sexual harassment complaints against students. Its inquiry did, however, reveal several additional concerns. The Working Group perceived that there is a huge gap between informal responses to sexual harassment and formal procedures pursued by the Judicial Inquiry Officer. As a result, there were reports that some cases that should have been addressed more informally ended up being processed through the formal system. Also, even though the Judicial Inquiry Officer is charged with the function of pursuing the possibility of settlement, the JIO's capacity to proceed informally is undercut by its investigative and prosecutorial functions. The necessity of preparing a formal charge in every case heightens the prospect that the case will ultimately be resolved through formal procedures. Also, because the JIO bears prosecutorial responsibility, settlement discussions necessarily are constrained by the recognition that statements made to the JIO in the informal process can be used in the formal process. The Working Group also learned of considerable problems of delay in the conduct of proceedings of the Student Judicial System. Concern was expressed that specialized expertise beyond the capacity of the Hearing Board may be required in cases of sexual harassment.

The Working Group is aware that other committees are examining the Charter of the University Student Judicial System. However, it is crucial that the particular concerns surrounding sexual harassment be taken into account in this evaluation. This is true not only because the University may be exposed to legal liability if it fails to provide adequate procedures. It is also important to consider whether there are particular concerns surrounding sexual harassment cases that warrant separate or supplementary procedures.

Recommendation (See also Recommendations 3c and 7c.):

7h. *The Oversight Committee on Sexual Harassment or some other body constituted by the President should consider whether to separate formal and informal responsibility for handling complaints against students. It should also consider whether there is a need for particular expertise or skills in handling sexual harassment complaints, and if so, the appropriate way to provide them. Finally, the Oversight Committee should consult with the committee evaluating the Charter to discuss the implications of their work for the University's ability to respond effectively to sexual harassment complaints.*

8. Interventions and Sanctions

One of the most difficult and important aspects of the sexual harassment issue involves determining the appropriate institutional response to violations of the sexual harassment policy. In situations where sexual harassment has been found to have occurred, the law requires the University to take steps to assure that this conduct stops and does not recur. Moreover, responses to violations of the policy are opportunities to educate the community, to intervene in areas that present recurring problems, and to move forward from a conflict that can preoccupy and divide the community.

The Working Group identified several problems that impede the University from attaining a fair and effective set of sanctions. First and foremost, there is tremendous variability in the sanction imposed for similar types of conduct. Violations of comparable seriousness have triggered no response in one department and non-renewal of a faculty contract in another. Conduct that results in the dismissal of staff members is simply ignored in some circumstances when the accused individual is a faculty member. In addition, individuals responsible for determining the appropriate sanction for sexual harassment lack any guidance in reaching this decision. There is little or no common law of sanctions. Many cases that resulted in some University response or intervention were kept confidential. No one has ever grappled with the question of the appropriate range of sanctions or interventions to address particular types of conduct.

Second, the range of sanctions and interventions currently available to responsible officials is much too narrow. Frequently, Deans and Chairs see themselves as faced with a choice between a "slap on the wrist" and just cause proceedings leading to suspension or dismissal. Similar extremes face administrators and supervisors responsible for dealing with staff and students. The lack of intermediate types of sanctions or interventions tends to polarize the response to sexual harassment and to prompt reluctant administrators to avoid completely the imposition of sanctions.

Finally, the University has not taken full advantage of the opportunity to respond creatively to instances of harassment, by developing group as well as individual responses to sexual harassment, and by linking education and prevention with the imposition of sanctions. These steps are crucial to the effective integration of prevention and remediation.

Recommendations: Interventions and Sanctions

8a. *The Oversight Committee or another representative committee designated by the President should develop guidelines for interventions and sanctions for violations of the sexual harassment policy. It should consult with individuals with experience in imposing such sanctions and interventions, such as chairs, deans, general counsel, the ombudsman, the Office of Affirmative Action, Staff Relations, Labor Relations, and the JIO. In preparing these guidelines, the Committee should consider the possibility of expanding the range of intermediate responses to sexual harassment and the possibility of combining sanctions with education and prevention and with group interventions.*

8b. *The guidelines on interventions and sanctions should be incorporated in the manual for chairs, deans, administrators, and other supervisors responsible for enforcing the University's sexual harassment policy, which is described in Recommendation 3c. It should also be part of the training of individuals who will bear institutional responsibility for enforcement.*

9. Retaliation

Fear of retaliation constitutes a major reason why many of those subjected to sexual harassment refuse to seek help or redress. The problem of retaliation is a difficult one, because retaliation frequently takes subtle forms that are difficult to detect or prove. It is crucial that the University take steps to articulate a clear non-retaliation policy and a strategy for minimizing the risks of retaliation. The current policy includes one sentence buried in the middle of the definition stating that "acts of retaliation will be subject to the same range of disciplinary actions." It is important that the policy separately define and prohibit retaliation, and specify the forms that retaliation may take. It is also important that training and written manuals cover the issue of retaliation, including proactive steps that can be taken to avoid or minimize retaliation and to take prompt and effective steps when it occurs.

Recommendations: Retaliation

9a. *The Sexual Harassment Policy should be revised to create a separate category of prohibited conduct designated as "retaliation" and to provide greater specificity and guidance as to the meaning of retaliation and ways of preventing it from occurring.*

9b. *The Oversight Committee or another appropriate designee should develop a protocol for preventing retaliation or, where possible, perceptions of retaliation when a complaint is filed. This protocol should then be disseminated as part of manuals, training materials and educational materials.*

10. Reporting

Reporting is an important element of an effective system for preventing and redressing sexual harassment. It helps in educating the community about the scope and nature of the problem of sexual harassment. It informs the community of the University's response to proven violations of sexual harassment policy. It flags to the community and to responsible administrators possible trouble spots and patterns of sexual harassment that require proactive intervention.

At the same time, reporting can conflict with the University's legitimate and essential concern with preserving the confidentiality of individuals who desire to avoid disclosure of their complaint and of individuals who have not been proven to have violated the sexual harassment policy. To balance these competing concerns, the University adopted a reporting policy that requires all of the resource offices, with the consent of the complainant, to report to the Ombudsman about sexual (and racial) harassment complaints that have been handled through mediation or counseling. This information is intended to enable the Ombudsman "to identify patterns in a particular location and the frequency of such incidents in a given area." The Ombudsman is also to receive summary reports of formal charges of harassment that have been adjudicated and records of their disposition. Finally, "the Ombudsman is to 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 their resolution by September 15. This report will be shared with the University community early in the semester." University Policies and Procedures, p.7.

This reporting system is, in most respects, sound in theory. The most serious problem with it is that it is not being implemented. Most resource offices have not provided the Ombudsman with the data required by the University policy. No administrative official has followed up, and the Ombudsman's efforts to obtain the necessary information have not been successful. As a result, the Ombudsman's office has been unable to fulfill its central reporting duties. Some of the difficulties in meeting the reporting responsibilities have been attributed to inadequate resources and staff. Some of the problem appears to stem from a lack of awareness that reporting is required. Some stems from the legitimate concern of the counseling resources to preserve the confidentiality of their communications and from reluctance to ask clients for their consent to reporting their complaint.

In addition, the Policy currently charges the Ombudsman with the task of conducting an investigation necessary to determine whether University regulations are being violated. The Working Group has some concerns over whether this function would interfere with the Ombudsman's capacity to maintain the unbiased, neutral posture crucial to performing its mediating mission.

The Working Group developed a preliminary sense that the Oversight Committee on Sexual Harassment, along with the Provost, could play a useful role in fulfilling the reporting and monitoring functions currently housed with the Ombudsman. They could also meet informally with the resource offices on an annual basis to learn of problems and patterns that might prompt an administrative response, without posing the same risk of breaching confidentiality posed by reporting details in individual, unproven cases.

Recommendations: Reporting

10a. *The Oversight Committee or some high level administrative official, should assume responsibility for obtaining and following up on information currently provided to the Ombudsman. This function should be performed in close consultation with the Ombudsman.*

10b. *Resources necessary to assemble, analyze and present the information required by the reporting provisions should be provided by the University.*

10c. *The Oversight Committee should meet at least annually with members of the resource offices to discuss the status of compliance with the sexual harassment policy generally and to assess the need for administrative interventions to facilitate compliance.*

11. Graduate Education

The Working Group heard over and over of the particular challenges involved in addressing the problem of sexual harassment in graduate education. The problem was repeatedly described as one of changing the culture of graduate education. The particular vulnerability of international students also emerged prominently in discussions of graduate education. International members of the University community face particular challenges in understanding the University's sexual harassment norms and policies, especially if their home countries do not acknowledge sexual harassment as a problem. Communication between international and "American" members of the community is frequently hampered by cultural or language

barriers, a lack of interaction, and an undercurrent of hostility, intolerance, and neglect that sometimes marginalizes the concerns and experiences of international individuals.

It became clear that some of the difficulties stem from structural aspects of graduate education: dependence on one individual, the longevity of the relationship, the close working relationship frequently involved etc. The Working Group also learned that the issue of sexual harassment is a subset of a broader issue gaining prominence among graduate educators: the reciprocal responsibilities and roles of graduate professors and their advisees/mentees/ researchers. The Working Group's recommendations stem from its perception that an approach that targets the more general concern of ethical and responsible relationships between professors and graduate students is likely to be more successful in promoting the cultural change necessary. They also reflect the sense that peer group support and graduate student involvement in implementing the sexual harassment policy will help tremendously in addressing the issue.

Recommendations: Graduate Education

11a. *The Vice Provost for Graduate Education should develop a program whereby professors and graduate students meet as part of the orientation process to discuss the dynamics and pitfalls of the advising relationship. This discussion could cover a broad range of issues, but should clearly cover the issue of personal and sexual relationships. The discussion should take place both in larger groups of faculty and students and in groups consisting of a professor and his or her advisees.*

11b. *Incoming graduate chairs should be instructed about how they should respond to concerns about sexual harassment. They should also be instructed to include sexual harassment issues in their orientation of graduate fellows and teaching assistants.*

11c. *The Oversight Committee should explore ways of encouraging peer group involvement support and involvement in the area of sexual harassment.*

Presentation of Recommendations

Creation of the Sexual Harassment Oversight Committee

1a. The President should establish a Sexual Harassment Oversight Committee to monitor and facilitate the University's compliance with the sexual harassment policy, to gather and share information concerning the incidence of and response to sexual harassment, and to increase the accountability of those responsible for implementing the sexual harassment policies and procedures. The committee should consist of those within the community who bear ongoing administrative responsibility for implementing the sexual harassment policies and procedures, along with at least one representative of the faculty, staff and undergraduate, graduate, and professional students. The Oversight Committee should include a high level administrator designated by the President as bearing overall administrative responsibility for implementing the sexual harassment policy. The Sexual Harassment Oversight Committee should report directly to the President.

1b. The Sexual Harassment Oversight Committee should work closely with the administrators responsible for developing and revising University manuals and policies and procedures to assure that appropriate revisions concerning sexual harassment and hostile environment harassment are made.

Clarification of University Policy on Hostile Environment Discrimination Based on Sex or Sexual Orientation

2a. The Working Group recommends that the University revise the *Policies and Procedures* manual, as well as other publications setting forth University policy, to inform the University community that hostile environment discrimination targeting individuals based on their sex or sexual orientation violates the University's nondiscrimination policy, and that recourse is available to those subjected to hostile environment discrimination. These publications should be developed as part of an overall initiative by the University to develop a comprehensive approach to informing the community about the scope and applicability of the non-discrimination policy to various types of conduct.

Clarification of Policy on Sexual Relationships Between Teachers and Students

2b. The Working Group recommends that the President designate an appropriate group to consider and recommend to the President whether University policy should explicitly prohibit sexual relationships between a teacher (including anyone with supervisory responsibility over a student's academic work) and a student currently under that person's academic

12. The Need for Further Deliberations

This Working Group covered an extremely wide subject area involving every constituency of the University. The Working Group was not designed as a fully representative group, but rather as a body with direct expertise and involvement in addressing sexual harassment. Because of breadth of issues covered in a relatively short time period and the limited participation of students, faculty and staff, there were some issues that the Working Group decided would be more appropriately addressed by a fully representative committee. Some of the Working Group's recommendations involve more technical changes that could be implemented immediately. However, those recommendations that involve more structural or long-term reforms affecting the community would best be addressed by a committee that reflects the range of interests involved. There is a need for a more fully representative committee to follow up on a number of the recommendations of this report.

Recommendation: Establishing a Committee to Complete the Deliberations about the University's Response to Sexual Harassment

12a. *The President should immediately convene a representative committee to consult with the University community and make further recommendations concerning the implementation of the University's sexual harassment policies and procedures. This Committee should consult and coordinate with other committees charged with responsibility for revising the general University procedures involving complaints against faculty, staff, and students. Efforts should be made to have continuity with this year's Working Group to make most effective use of the work already done. The committee should be convened and begin work in the fall of 1994.*

Conclusion

The Working Group on Sexual Harassment Policy Implementation stands ready to provide the new administration with any assistance needed to move forward on the recommendations presented in this Report.

supervision. This Committee should consider who should be permitted to file charges for violations of this policy. It should also consider whether the policy, if adopted, should be included as part of the Sexual Harassment Policy or as part of a more general code of conduct for faculty.

Presenting a Distinct and Comprehensive Statement on Sexual Harassment Policies and Procedures

2c. The University should develop a separate section of the Policies and Procedures that clearly and fully explains the policies and procedures for addressing sexual harassment. In considering any revisions to the sexual harassment procedures, administrators, in consultation with appropriate committees, should assess whether there is a need for procedures or resources designed specifically to address complaints or problems involving sexual harassment. It should also consider the issue of how best to deal with cases involving both sexual harassment and other forms of discrimination. The University should develop a comprehensive approach to addressing discrimination issues and complaints.

Providing Information, Training, and Opportunities for Constructive Discussion

3a. (1) The President should designate an individual or organization with sufficient authority, credibility and resources to develop and oversee a program for informing and educating the University community.

(2) The Sexual Harassment Oversight Committee along with the designated administrator should bear oversight responsibility for assuring that the University is adequately educating the community and the administrative staff concerning sexual harassment.

3b. Publicizing Sexual Harassment Policies:

(1) The appropriate administrative official, in consultation with the Oversight Committee, should revise the *University Policies and Procedures*, the staff handbook, the *Human Resources Policy Manual*, and other formal University publications to correct inaccuracies in the current policy, to lay out the policies and procedures in their entirety, and to present a clear and user-friendly description of resources, options, and procedures. This section should be designed to enable complainants, respondents, and those responsible for handling sexual harassment complaints to make informed choices and to find the appropriate resources and procedures to address the problem.

(2) The sexual harassment policy should be published in *Almanac, The*

Daily Pennsylvanian, *The Compass*, and other University publications twice each academic year, at the beginning of each semester.

(3) The sexual harassment policy and procedures should, as a matter of policy, be included in Penn Info, the *Human Resource Manual*, the *Policies and Procedures* manual, the staff handbook, the student handbook, and other regularly distributed written materials. Provisions should be made to insure that the manuals and the on-line presentation of University Policies are regularly updated. The University should consider whether and when these publications need to be republished to reflect the changes discussed in this Report, and should assure that future changes in policy are incorporated into subsequent republications.

(4) Informal, accessible articles presenting the sexual harassment policies, procedures, and resources should be published regularly in *The Compass* and *Almanac*. Efforts should be made to seek regular publication of articles in *The Daily Pennsylvanian* and *Vision*. Articles from the General Counsel, the Provost, the Ombudsman, the Penn Women's Center, and the Office of Affirmative Action, among others, should be solicited.

3c. Orientation, training and education:

(1) The issue of sexual harassment should be included in the orientation for incoming students. Effective orientation programs for new staff and faculty should be developed. The individual or office designated as responsible for overseeing the educational effort (see recommendation 3a) should work with those planning the orientation programs to develop an effective strategy for educating students, staff, and faculty concerning sexual harassment.

(2) Training concerning approaches to sexual harassment should be given to all newly appointed staff supervisors, chairs of departments, graduate and undergraduate chairs, deans, school or departmental ombudsmen, and others with administrative responsibility for addressing complaints of sexual harassment. This training should be done with the direct involvement of those to whom these individuals report.

(3) Graduate chairs, departmental chairs, Deans, and others responsible for overseeing graduate fellows, administrative fellows, residential advisors, and teaching assistants should be required to include in each orientation session for those with any supervisory responsibility a presentation and discussion concerning the sexual harassment policy, procedures, and dynamics. They should also instruct graduate fellows and teaching assistants concerning the school-based and campus wide resources and processes available for addressing sexual harassment so that graduate students are prepared to refer students who seek their counsel in sexual harassment cases.

(4) A manual for chairs of departments and deans on how to deal with sexual harassment should be developed by a committee appointed by the President that includes former chairs and deans with experience in addressing sexual harassment complaints. The committee to develop the manual should also include a present or former ombudsman and someone with expertise in the sexual harassment area. The manual should address issues such as what to tell graduate students, how to change a culture that tolerates harassment, what to do when a complaint arises, how to investigate, what are the procedural options, and what are the range of responses and sanctions available for various types of conduct.

(5) The President, Provost or other high level administrator should provide consistent leadership in orienting newly appointed chairs, deans and others with responsibility for supervising faculty and staff in their responsibilities for addressing issues of sexual harassment. This orientation should include information about the policy and procedures and guidance concerning the range of appropriate responses to sexual harassment complaints. It should also include, if possible, discussions with past holders of an analogous position with experience in addressing similar issues and with General Counsel.

(6) The President and Provost should instruct Deans and Chairs annually concerning their responsibilities to inform their faculty, staff and students concerning the sexual harassment policies and procedures.

(7) Adequate resources should be provided to enable educational and training programs to be developed and offered on a regular basis.

Informal Processes

4a. The appropriate administrative official, in consultation with the Sexual Harassment Oversight Committee or another appropriate body, should provide a clear and accurate description of the types of services provided by various resource centers at Penn. Descriptions of the sexual harassment policy should guide members of the community in the use of these resources. Offices that provide counseling and advocacy should be treated separately from those that provide mediation and dispute resolution and from those that investigate and make determinations concerning sexual harassment.

4b. The Sexual Harassment Oversight Committee or some other body

constituted by the President should, in consultation with the resource offices, clarify the roles of the resource offices in providing counseling, advocacy, investigation, and pursuit of sexual harassment complaints. The Committee should consider the desirability of centralizing responsibility for addressing sexual harassment complaints. Some other Universities have established sexual harassment panels or committees that respond University-wide to complaints of sexual harassment. Others maintain some degree of decentralized responsibility for addressing sexual harassment. The Working Group heard arguments in favor of both greater centralization and maintaining local autonomy. This issue warrants greater scrutiny by a representative committee.

4c. The Sexual Harassment Oversight Committee or some other body constituted by the President should investigate the adequacy of the current informal procedures for resolving complaints of students involving sexual harassment. This inquiry should coordinate with other efforts within the University to address the issue of providing adequate support, counseling and intervention to students. It should address the issue of the appropriate role of the JIO in providing mediation and other informal resolution of sexual harassment issues. It should also consider whether and to what extent specialized processes should be created to address sexual harassment complaints.

4d. The Sexual Harassment Oversight Committee or some other body constituted by the President should investigate the adequacy of the current informal procedures for addressing complaints of staff involving sexual harassment. In particular, it should consider the adequacy of the informal processes currently offered by staff relations and the need to provide greater visibility and accessibility to the informal processes conducted by the Office of Labor Relations. The role of Labor Relations in addressing sexual harassment needs to be included in all relevant publications.

4e. The Sexual Harassment Oversight Committee or some other body constituted by the President should develop a process for assuring that each school and department develop and maintain an effective informal system for addressing complaints of sexual harassment. This system should provide both for in-house resources to refer those in need of assistance to appropriate resources and for informal methods of dispute resolution. In reaching its recommendations, the Committee should consider ways of assuring the effectiveness of the system established and yet maintaining to the greatest degree possible the autonomy of the schools and administrative units.

4f. The Sexual Harassment Oversight Committee or some other body constituted by the President should consider whether to recommend the use of mediation, either by individuals employed by the University and trained as mediators, or by outsiders retained by the University as an available alternative in appropriate cases involving sexual harassment. This consideration requires attention to such questions as the circumstances and timing under which mediation of sexual harassment conflicts may be appropriate, the extent to which the parties involved should determine the appropriate initial process of resolution, the relationship between mediation and more formal processes, and the appropriate individuals to perform the mediation role. The goal should be to develop a system that allows referral to informal processes at the appropriate time and in the appropriate case.

4g. The Sexual Harassment Oversight Committee or some other body constituted by the President should recommend the appropriate body to serve as the Title IX grievance mechanism. Existing resource offices, such as the Affirmative Action Office or the Vice Provost for University Life, should be considered as candidates for fulfilling this responsibility.

4h. Deans, chairs, administrators, and others with supervisory responsibility should be regularly advised by those to whom they report concerning their role in affording informal processes for addressing sexual harassment complaints. The Sexual Harassment Oversight Committee should consider methods for assuring that these informal processes are maintained and made accessible.

Confidentiality

5a. The University should adopt a formal policy on confidentiality of communications concerning sexual harassment, and this policy should be included in any official presentations of the sexual harassment policy. The University should clarify the extent to which confidentiality will be assured by the General Counsel's Office, Staff Relations, and the Hospital, and then communicate its confidentiality policy to those seeking assistance from these offices.

5b. As part of the inquiry into appropriate responses to sexual harassment, the Oversight Committee should consider and make recommendations concerning the circumstances under which findings of sexual harassment and sanctions imposed should be communicated to the University community.

Investigation

6a. An appropriate administrative official, in consultation with the Oversight Committee, should develop a University protocol for investigation to assist in conducting thorough, fair, and effective investigations.

6b. The Sexual Harassment Oversight Committee or some other body constituted by the President should thoroughly assess the current mechanisms for conducting formal investigations of sexual harassment cases, giving specific consideration to the desirability of separating informal and formal investigatory responsibilities, clarifying the investigatory roles of existing resources, providing adequate training of those charged with investigative responsibility, and designating a credible individual or office to conduct investigations of allegations involving faculty.

6c. An appropriate University official, in consultation with the Oversight Committee, should rewrite University Policies and Procedures, the staff handbook, and the Handbook for Faculty and Staff Administrators to clarify responsibilities for investigation and to provide adequate guidance on investigations to those involved in sexual harassment issues.

Formal Procedures (See also Recommendations 3c.)

7a. The University should institute a mechanism for providing support and accountability to Deans, Department Chairs, supervisors and others responsible for conducting the formal procedures for handling sexual harassment complaints. Options include relying on the Oversight Committee, the Provost's Office, or some combination of the two.

7b. The Oversight Committee on Sexual Harassment should consider the adequacy of the current formal procedures for addressing sexual harassment complaints and make appropriate recommendations, including recommendations concerning how to improve the capacity of school and departmental committees to handle sexual harassment complaints and whether to make greater use of a centralized process such as the Senate Committee on Conduct.

7c. The Oversight Committee should develop reasonable time limits for investigations and formal proceedings in sexual harassment cases involving faculty, staff and students. Its consideration should take into account resource issues that may result from the imposition of such deadlines, and link its recommendations concerning time limits with adequate provision of resources to those responsible for processing formal complaints.

7d. The Sexual Harassment Oversight Committee or some other body constituted by the President should clarify the roles of the advisor, the participation of the complainant, and the roles and responsibilities of committee members and deans in conducting formal processes. This information should be included in the sexual harassment policy and procedures where appropriate, as well as in the manual for deans and chairs described in Recommendation 3c. The Oversight Committee should also recommend ways of insuring that this information is communicated on a regular basis to those responsible for carrying out the University's sexual harassment procedures.

7e. The Oversight Committee or some other body constituted by the President should more fully evaluate the adequacy of existing procedures for addressing complaints of sexual harassment against both unionized and non-unionized staff, and make recommendations for improving the enforcement of the sexual harassment procedures for staff.

7f. Immediate steps should be taken to create or reconstitute a mechanism affording students with an avenue for seeking redress for sexual harassment and other discrimination complaints. The University's Policies and Procedures concerning the Student Grievance Procedure should be clarified, including its relationship to the Student Judicial System.

7g. The Sexual Harassment Oversight Committee or some other body constituted by the President should consider and make recommendations concerning the appropriate mechanism for meeting the University's Title IX obligation to afford effective dispute resolution mechanisms for addressing sexual harassment and other discrimination complaints.

7h. The Oversight Committee on Sexual Harassment or some other body constituted by the President should consider whether to separate formal and informal responsibility for handling complaints against students. It should also consider whether there is a need for particular expertise or skills in handling sexual harassment complaints, and if so, the appropriate way to provide them. Finally, the Oversight Committee should consult with the committee evaluating the Charter to discuss the implications of their work for the University's ability to respond effectively to sexual harassment complaints.

Interventions and Sanctions

8a. The Oversight Committee or another representative committee designated by the President should develop guidelines for interventions and sanctions for violations of the sexual harassment policy. It should consult with individuals with experience in imposing such sanctions and interventions, such as chairs, deans, general counsel, the ombudsman, the Office of Affirmative Action, Staff Relations, Labor Relations, and the JIO. In preparing these guidelines, the Committee should consider the possibility of expanding the range of intermediate responses to sexual harassment and the possibility of combining sanctions with education and prevention and with group interventions.

8b. The guidelines on interventions and sanctions should be incorporated in the manual for chairs, deans, administrators, and other supervisors responsible for enforcing the University's sexual harassment policy, which is described in Recommendation 3c. It should also be part of the training of individuals who will bear institutional responsibility for enforcing the sexual harassment policy.

Retaliation

9a. The Sexual Harassment Policy should be revised to create a separate category of prohibited conduct designated as "retaliation" and to provide greater specificity and guidance as to the meaning of retaliation and ways of preventing it from occurring.

9b. The Oversight Committee or another appropriate designee should develop a protocol for preventing retaliation or, where possible, perceptions of retaliation when a complaint is filed. This protocol should then be disseminated as part of manuals, training materials and educational materials on the issue of sexual harassment.

Reporting

10a. The Oversight Committee or some high level administrative official, should assume responsibility for obtaining and following up on information currently provided to the Ombudsman. This function should be performed in close consultation with the Ombudsman.

10b. Resources necessary to assemble, analyze and present the information required by the reporting provisions should be provided by the University.

10c. The Oversight Committee should meet at least annually with members of the resource offices to discuss the status of compliance with the sexual harassment policy generally and to assess the need for administrative interventions to facilitate compliance.

Graduate Education

11a. The Vice Provost for Graduate Education should develop a program whereby professors and graduate students meet as part of the orientation process to discuss the dynamics and pitfalls of the advising relationship. This discussion could cover a broad range of issues, but should clearly cover the issue of personal and sexual relationships. The discussion should take place both in larger groups of faculty and students and in groups consisting of a professor and his or her advisees.

11b. Incoming graduate chairs should be instructed about how they should respond to concerns about sexual harassment. They should also be instructed to include sexual harassment issues in their orientation of graduate fellows and teaching assistants.

11c. The Oversight Committee should explore ways of encouraging peer group involvement support and involvement in the area of sexual harassment.

Establishing a Committee to Complete the Deliberations about the University's Response to Sexual Harassment

12a. The President should immediately convene a representative committee to consult with the University community and make further recommendations concerning the implementation of the University's sexual harassment policies and procedures. This Committee should consult and coordinate with other committees charged with responsibility for revising the general University procedures involving complaints against faculty, staff, and students. Efforts should be made to have continuity with this year's Working Group to make most effective use of the work already done. The committee should be convened and begin work in the fall of 1994.