



WARTBURG AAUP

"Committed to Academic Excellence"

NEWSLETTER

May 3, 1995

FACULTY DECISIVELY AFFIRMS NEW SEXUAL HARASSMENT POLICY

On April 6, a substantial majority of Wartburg College faculty voted in favor of the sexual harassment policy proposed by the Faculty Review Committee.

Approving the policy entailed making three separate amendments to the faculty handbook. The largest of these was Appendix E, a new handbook section detailing the procedures for resolving sexual harassment complaints against faculty. The second amendment created section 1.6.6, which describes the composition of the faculty committee that reviews complaints. The third amendment added a sentence to the definition of sexual harassment that already exists in section 2.4.3.2 (for more on this amendment, see stories on page 2).

ZEMKE PREDICTS BOARD WILL VOTE TO ADOPT FACULTY-APPROVED POLICY

"I think it will be clear to board members that the faculty, after serious and extensive dialogue, has formulated a policy that best serves the entire Wartburg community," said Wartburg AAUP president Warren Zemke. Zemke had been asked whether he thought the Board of Regents would approve the faculty-proposed sexual harassment policy at the May 15 board meeting.

"It should be obvious that it's gone through the system," added Zemke. "Faculty and administrators had the chance to criticize [drafts of the policy] at faculty forums and group meetings. Then a proposal was brought to the full faculty, where it was examined further. Finally, after substantial changes, the full faculty approved [the policy] by an overwhelming margin.

The administration and the board should respect the faculty's professional judgment in this matter, which involves issues related to teaching, faculty-student relations, and academic freedom."

PRESIDENT VOGEL ANSWERS AAUP LETTER ENDORSING NEW POLICY

"There are several areas where we at least have questions about the current proposal. The first commitment is a policy that works and is fair to all involved. And then we want to know if it is written as carefully as possible relative to legal matters," wrote President Robert Vogel in an April 10 letter to the Wartburg AAUP executive committee.

The chapter officers had written Vogel April 2 to outline the reasons for the chapter's support of the new policy, to offer AAUP's assistance in securing final approval by the Board of Regents, and to commend to his attention a letter from AAUP counsel Helen Irvin (see following story).

The officers pointed out that the new draft surpasses the earlier one in several significant ways: "It establishes a much more 'victim friendly' set of procedures, . . . it ensures that an elected [faculty] committee . . . reviews charges against faculty, it removes administrators in the 'personnel loop' from participation in formal hearings, it abolishes 'shadow files' of unsubstantiated allegations, it requires academic due process when severe sanctions are imposed, and it qualifies a dangerously vague and subjective notion of hostile environment."

They also noted that "the new version . . . conforms to the academic standards endorsed by the AAUP and a number of other educational and professional organizations."

They encouraged the administration and college counsel to seek further advice from the legal staff at AAUP's Washington headquarters.

ATTORNEY ADVISES CHAPTER ON AMENDMENT TO SEXUAL HARASSMENT DEFINITION

"The Supreme Court has long recognized the unique quality of the classroom," says Helen D. Irvin, AAUP associate counsel and associate secretary.

To ensure that the new sexual harassment policy would not pose any legal problems for the college, the chapter contacted AAUP's legal office with a question about the sentence added to the existing definition of sexual harassment in section 2.4.3.2. (For more on this sentence, see the following story.)

The question was whether the courts had ruled on the sentence's affirmation that "the classroom is distinct from the workplace in that wide latitude is required for professional judgment in determining the appropriate content and presentation of academic material."

Responding in a March 23 letter, Irvin quotes two Supreme Court cases, *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967) and *Sweezy v. New Hampshire*, 354 U.S. 234, 262 (1957).

In *Keyishian*, the Court described the nature of the classroom:

[A]cademic freedom . . . is of transcendent value to all of us and not merely to the teachers concerned. . . . *The classroom is peculiarly the marketplace of ideas.* The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues. . . . [Irvin's emphasis]

In subsequent rulings, the Court has "repeatedly" cited this paragraph, says Irvin.

In *Sweezy*, Justice Frankfurter stated, "A university is characterized by the spirit of free inquiry, its ideal being the ideal of Socrates—to follow the argument where it leads."

In the same case, Chief Justice Warren noted, "The essentiality of freedom in the community of American universities is almost self-evident." He added, "Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise, our civilization will stagnate and die."

Irvin points out that "language like that could not conceivably be applied to the ordinary workplace."

"We can see," she adds, "that the classroom is distinct from the automobile factory, the insurance office, the fast-food restaurant. The statement that 'wide latitude is required for professional judgment in determining the appropriate content and presentation of academic material' . . . is 'almost self-evident,' as the Supreme Court stated in *Sweezy*."

SENTENCE ADDED TO SEXUAL HARASSMENT DEFINITION MEETS WOMEN'S CONCERNS

The sentence added to the definition of sexual harassment in handbook section 2.4.3.2 comes from a compromise reached only a few months ago by two national AAUP committees—Committee A on Academic Freedom and Tenure, and Committee W on the Status of Women in the Profession.

As reported in the September-October issue of *Academe*, Committee A has long been opposed to applying the hostile environment clause of the EEOC definition to the academic setting. That clause prohibits sex-related "verbal conduct" that creates "an intimidating, hostile, or offensive . . . environment."

Committee A (composed mainly of law professors) viewed the clause as having a "chilling effect" on academic freedom because it bans speech based on its content. Committee A also noted that its subjectivity makes it possible for claims of sexual harassment to be established solely on the basis of a complainant's feelings, a characteristic fraught with danger, as many recent cases have illustrated.

(AAUP associate secretary B. Robert Kreiser identified these same concerns when he reviewed the original draft of Wartburg's sexual harassment policy. See "AAUP Identifies Problems in Proposed Sexual Harassment Policy," in the February *AAUP Newsletter*.)

For these reasons, Committee A initially proposed doing away altogether with the concept of hostile environment.

Committee W, however, insisted that a hostile environment can exist for women in an academic setting and refused to scrap the notion.

On the weekend of February 6, the two committees agreed on a compromise statement satisfactory to both groups. Since then, the AAUP National Council has also approved the language, and it is expected that the new statement will become Association policy at the organization's annual meeting in June, ending several years of uncertainty regarding the AAUP position on hostile environment.

The essence of the A&W compromise is a single sentence appended to the hostile environment clause. The added sentence reads, "If [such conduct] takes place in a teaching context, it must also be persistent, pervasive, and not germane to the subject matter, because the classroom is distinct from the workplace in that wide latitude is required for professional judgment in determining the appropriate content and presentation of academic material."

The sentence satisfies both committees because it (1) qualifies an otherwise dangerously vague and subjective definition of environmental harassment and (2) recognizes the possibility that a hostile learning environment can be created in the classroom.

The amended portion of section 2.4.3.2 of the Wartburg faculty handbook is printed below, with the A&W sentence in italics:

"Sexual harassment" is defined as unwelcomed [sic] or unwanted sexual advances, requests for sexual favors, and other verbal and physical conduct that is of a sexual nature when:

1. submission to or rejection of such conduct is made explicitly or implicitly a term or condition of an individual's employment or status in a course, program, or activity; or
 2. submission to or rejection of such conduct is used as a basis for employment or academic decisions regarding the individual; or
 3. such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or of creating an intimidating, hostile, or offensive work, academic, or social environment.
- If such conduct takes place in a teaching context, it must also be persistent, pervasive, and not germane to the subject matter, because the classroom is distinct from the workplace in that wide latitude is required for professional judgment in determining the appropriate content and presentation of academic material.*

GROSSED-OUT MALE STUDENT SUES FEMALE PROF. AND UNIVERSITY FOR \$2.5 MILLION

According to the March 7 *Wall Street Journal*, a 33-year-old father of two is suing California State University (Sacramento) and a lesbian professor for sexual harassment based on the school's prohibition of sexual speech that creates a "hostile, offensive, or otherwise adverse learning environment."

The student, Craig Rogers, attended a session of his Psychology 100 course in December to find Professor Joanne Marrow guest lecturing on female masturbation, complete with slides. Marrow also made disparaging remarks about men, male genitalia, and childbirth.

Offended, Rogers left the class, but returned when reminded that he would be held accountable for the material on the final exam.

According to *Journal* reporter Asra Nomani, Rogers claims that Marrow's lecture was "crude, unadulterated male-bashing combined with lesbian proselytizing that left him feeling 'raped and trapped.'" He also claims that the university was "insensitive to his feelings" when it "declined to exempt him from five questions on a final exam that stemmed from the lecture."

The professor's defenders admit that she "may have gotten carried away," but view her as a courageous defender of gay rights. They also point out that Marrow, who teaches human sexuality, warned students to leave if they "found x-rated materials offensive."

Nevertheless, the California Board of Control, which screens all complaints against the state, has ruled that Rogers may go ahead with his \$2.5 million lawsuit against Marrow and the university.

This story illustrates several ironic twists in the evolution of sexual harassment policies in the academic community:

- Increasingly, men are filing complaints, even though sexual harassment policies were originally written to provide special protection for women.
- A surprising number of students filing complaints of the "hostile environment" type belong to conservative religious and political groups.

Many of the original advocates of sexual harassment policies tended to be politically left-of-center and feminist—like Professor Marrow. It is unlikely that they ever imagined that such a policy would be invoked by conservative male students in complaints against liberal female professors. Ironically, at California State, the person most likely to have agitated for such a policy has become a victim of it, and the person least likely to have supported such a policy is employing it to his possible advantage.

—Greg Scholtz

FACULTY SALARIES ON THE RISE, SAYS REPORT

Nationally, faculty salaries rose 3.4 percent in 1994-95, a 0.7 percent increase over last year, according to "The Annual Report on the Economic Status of the Profession," published in the March-April *Academe*. This year's increase represents the first time since 1989-90 that real salaries grew two years in a row.

The following table, derived from the report, compares 1994-95 Wartburg salaries with average salaries nationally; with average salaries nationally for institutions like Wartburg (church-related general baccalaureate colleges); and with average salaries at Grinnell, Luther, and Simpson:

	Wartburg	All Schools	All Church-Related Liberal Arts	Grinnell	Luther	Simpson
Professor	46,700	63,450	46,770	69,300	49,200	49,300
Associate	38,500	47,040	38,470	54,800	41,700	37,700
Assistant	32,600	39,050	32,550	42,700	36,700	33,900
Instructor	29,400	29,680	26,980	-----	30,400	30,600

If you're not an AAUP member and wish to learn more, *Academe* is available in the faculty reading section in the library or from any AAUP colleague.

ZEMKE ELECTED PRESIDENT OF IOWA AAUP

Warren T. Zemke, president of Wartburg AAUP, is the new president of the Iowa Conference. The election took place at the spring meeting, held April 15 in Iowa City. Jacqueline Wilkie, professor of history at Luther College, was elected secretary. The term of office is two years.

SCHOLTZ NAMED TO NATIONAL INVESTIGATING TEAM

The AAUP has appointed Gregory F. Scholtz, secretary of the Wartburg chapter, to an *ad hoc* committee charged with investigating the administration of the College of the Ozarks (Missouri) for alleged violations of standards of academic freedom, tenure, and due process.

ALL FACULTY INVITED TO SECOND ANNUAL AAUP PICNIC

AAUP invites all faculty and their families to a picnic at 6:00, Thursday, May 18, in Susan and Jerry Vallem's backyard, at 1201 Park Avenue, Waverly. Food and beverages (including draft beer) will be provided. Let's celebrate each other's accomplishments and the end of another successful academic year.