Faculty-Student Sexual Harassment Case Study

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The Author

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Faculty-Student Sexual Harassment

Introduction

This Report provides details of Bethune-Cookman University’s (“B-CU”) response to faculty-student sexual harassment. Overwhelming evidence, including statements of both students and faculty members, prompted termination for-cause of four professors (“the four professors”) of the B-CU School of Social Sciences in May 2009. The purpose of this Report is to detail the events that transpired during the one-year period leading to the four professors' termination, steps taken to protect the rights of all parties affected by this incident and proposals for updating the Bethune-Cookman University Faculty Handbook. This Report also details the impact of sexual harassment on women who are the direct victims and the psychological damage to males who are the indirect victims in this instance. In addition, the Report explains how faculty-student sexual harassment undermines the integrity of a university and its protected rights.

This Report will highlight the substantive policy on sexual harassment and its definition under Title IX of the Educational Amendments of 1972. Next, this Report will compare the current B-CU sexual harassment policy with Title IX. Lastly, this Report will contrast B-CU’s sexual harassment policy with neighboring private and public university policies and provide suggestions for best practices at B-CU going forward.

Although the Report was commissioned by Bethune-Cookman University, the author enjoyed complete editorial control of the project, including the findings and recommendations.

Factual Background

Termination of Four Faculty Members Due to Sexual Misconduct

Early in 2009, in preparation to hire a new Vice President for Academic Affairs (“VPAA”), the University President, Dr. Trudie Kibbe-Reed, retained a human resources consultant to conduct university-wide interviews to obtain faculty input on the selection of the new VPAA. During the interview process, the consultant informed Dr. Reed that many faculty members confided to him that there was a major problem with the sexual harassment of students in the School of Social Sciences.

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1 The B-CU General Counsel graciously provided an early draft of this section. Some names were redacted to protect the privacy of those individuals.
The University responded by conducting interviews with approximately 20 faculty members. Statements in some of these interviews implicated four faculty members in the School of Social Sciences: Professor #1 and three faculty members - Professor #2, Professor #3 and Professor #4 (collectively referred to as the “four professors”). The faculty interviews further alleged that:

- The four professors had publicly identified themselves as the “Nigerian Mafia” (several faculty members remembered the four professors joking about this in a faculty meeting and at other public functions);

- The four professors had an off-campus apartment where they took female students to have sex; one or more of the four professors would take nude photos of the female students at the apartment and threaten to release the photos on Facebook if the students revealed their improper actions to the University’s administration;

- A faculty member in the School of Social Sciences, who reported a student’s complaint that Professor #3 had attempted to rape her at the referenced off-campus apartment, was called to testify at a hearing, conducted by the University’s former administration. The complainant was not advised of the outcome of the hearing.

The Social Sciences faculty members further revealed that there was an aura of intimidation by the four professors. The faculty members told the investigators that they were afraid to speak further about the situation in the School of Social Sciences for fear of retaliation. The faculty member who reported the alleged rape, and was called as a witness at the University hearing, stated that she did in fact suffer retaliation because she was not given adequate courses to maintain a full load and was intimidated from seeking opportunities for promotion.

In addition to the above faculty interviews:

- A Social Sciences student confided in her Philosophy professor that Professor #2 had continued to harass her sexually. She stated that this incident occurred in her classes with him in front of the other students as well as at clubs where Professor #2 would grab at her and ask her to go with him. The student also alleged that Professor #2 had asked her for sex and offered her an “A” in exchange for sex. The student felt so intimidated and harassed that she left B-CU and planned not to return. Upon speaking to her mother, she decided to return to B-CU and confront the sexual harassment.

- The Daytona Beach Police Department was called in by Dr. Reed to interview the above student. Based on her allegations, the Police Department suggested using a wire to record the conversations of Professor #2 when he next approached the
student. Dr. Reed called the student’s mother for her approval, and she agreed. A date was set for the police wire of the student but before the launch, the student informed the police that Professor #2 found out their plan from another female student who said she was having sex with Professor #1 and did not see anything wrong with having sex with the professors. Due to a concern for the student’s safety and Professor #2’s verbal insults the prior evening letting the student know that he was aware of the police’s plan, the police cancelled their plans.

- Another Social Sciences’ student sent an email to Dr. Reed expressing concerns, including: “…I am concerned about the complaints about the professor in our department/school who is having inappropriate relations with students. I would like to know what is going to be done about it and about the other professors/instructors who are exhibiting this type or other types of behavior that are harmful to the learning of our students. Many students are skeptical to come forward with their complaints because they feel that it will affect their grades or hinder their matriculation. But I have heard enough about this particular professor and others who are not doing their jobs and hurting students.”

- The University’s Vice President for Assessment conducted a survey of the students in the School of Social Sciences. The survey revealed that the students felt there was a problem with sexual harassment in their School and the written comments made general references to allegations of sexual harassment and specific reference to Professor #2.

- The Director of Human Resources reviewed the personnel file on Professor #2 and reported that a female student had filed a claim of sexual harassment against Professor #2 in 2005. This student's allegations are consistent with the types of unwarranted sexual advances and conduct alleged by the above-referenced Social Sciences student.

- Based on the comments in a senior exit survey, which alleged sexual misconduct by the four professors, Dr. Hiram Powell, the Associate Vice President for Academic Affairs conducted interviews with each professor. Dr. Powell stated that the survey identified them as participating in the sexual harassment of students. Each denied the allegations although Professor #4 admitted that he would invite the top student in his class (which he admitted was always a female student) for dinner at the apartment. Professor #4 was asked if he invited anyone else to attend the dinner and he said no. Dr. Powell advised the four professors that they should discontinue the practice of inviting female students to their apartment without a female faculty member in attendance.
• In total, seven women students, the targets of sexual harassment, revealed that various of the four professors pressured them to trade sex for grades. One of the seven women students reported receiving sexually explicit text messages and an email with depictions of sexual photographs from Professor #2. This same student also reported being accosted by him at an off-campus venue. Another reported demeaning, sexually explicit jokes told during class.

• Based on the above, the University suspended the four professors in May 2009, pending a review.

• Upon review of all relevant data and evidence, the University’s outside counsel recommended that the University terminate the four professors based on the allegations of sexual misconduct and their violation of the University’s Mission Statement, Statement of Academic Integrity and the Faculty Contract. The four professors were informed of their termination shortly thereafter and they appealed this decision.

In response to the appeal, the Administrative Review Committee, composed of three tenured faculty members who were not affiliated with the School of Social Sciences (the Chair of the Committee is the current President of the Faculty Senate), reviewed the evidence presented by the University and also conducted interviews, including the four professors. The Committee upheld the University’s decision to terminate the four professors based on allegations of sexual misconduct. The Review Committee members were selected by President Reed, and their integrity has not been questioned.

Rights of Students

Impact on Young Women

According to the American Association of University Women (AAUW),\(^2\) of the total number of students sexually harassed, about seven percent of harassed students have been harassed by professors.\(^3\) Moreover, AAUW states that while faculty/staff-to-student sexual harassment is atypical, faculty or other college personnel of colleges sexually harass roughly half a million undergraduate students every year.\(^4\) AAUW adds that sexual harassment by faculty can be especially traumatic because the harasser is in a position of authority or power.\(^5\) Thus, AAUW asserts

\(^2\) The American Association of University Women is a national advocacy organization that promotes women’s rights in the fields of education and politics. AAUW “advances equity for women and girls through advocacy, education, philanthropy, and research.” More information is available at www.aauw.org.


\(^4\) Id.

\(^5\) Drawing the Line, supra note 3.
that the teacher-student relationship requires zealous protection against sexual harassment and sex discrimination in the educational environment.\(^6\) Clearly, an environment free from sexual harassment is essential for the students to reach their full intellectual and social development;\(^7\) however, 62% of female college students and 61% of male college students report having been sexually harassed at their university with important differences between men and women centering on the types of sexual harassment.\(^8\) Women are reportedly more likely to be the victims of sexual harassment by physical contact and receiving sexual comments, jokes, gestures or looks.\(^9\)

At B-CU, one of the seven targeted women students decided to leave the school after being sexually harassed, repeatedly. Other women students found it difficult to break the silence and tell what happened to them. The scars left behind from the calculated acts of these four professors will adversely affect the lives of the female victims. Such damage can include health effects, psychological and physiological harm that ranges from depression, traumatic stress, and feelings of betrayal and/or being violated to headaches, thoughts of suicide, and long-term sexual dysfunction.\(^10\) Sexual harassment also results in increased absenteeism by students to avoid harassment and increased student turnover as students leave to escape harassment.\(^11\) Moreover, decreased productivity and performance and decreased participation in school activities may occur as students must focus on, and strategize about, ways to deal with the harassment.\(^12\)

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\(^6\) See Ronna Greff Schneider, *Sexual Harassment and Higher Education*, 65 Tex. L. Rev. 525, 551 (1987) (explaining that "[a] sexually abusive environment inhibits, if not prevents, the harassed student from developing her full intellectual potential and receiving the most from the academic program"); Neera Rellan Stacy, *Note, Seeking A Superior Institutional Liability Standard Under Title IX For Teacher-Student Sexual Harassment*, 71 N.Y.U.L. Rev. 1338, 1356 (1996) (discussing the distinctions and similarities of sexual harassment in the work place regarding employees and educational institutions regarding students and noting that a higher standard is placed on schools to ensure a learning environment free of sexual harassment).

\(^7\) Schneider, *supra* note 6, at 551. See also *James Rapp, Education Law*, Ch. 11, §11.01(5)(b)(ii), (Matthew Bender) (2010) (stating that a "student’s right to learn in a civil and unthreatening environment trumps any instructor’s defense that the First Amendment or right to academic freedom protects the instructor’s boorish behavior"); Richard Fossey & Nathan M. Roberts, *Academic Freedom and Uncivil Speech: When May a College Regulate What an Instructor Says in the Classroom*, 168 Ed. Law Rep. 549 (2002); Richard Fossey & Joseph C. Beckham, *University Authority Over Teaching Activities: Institutional Regulation May Override a Faculty Member’s Academic Freedom*, 228 Ed. Law Rep. 1 (2008).

\(^8\) *Drawing the Line*, *supra* note 3, at 17-18.

\(^9\) *Id.*

\(^10\) Sexual Harassment Support, *Effects of Sexual Harassment on the Victim*, available at http://www.sexualharassesmentsupport.org/effects.html (last visited May 16, 2010). See also AAUW, *Sexual Harassment Statistics*, available at http://www.aauw.org/act/laf/library/harassment_stats.cfm (last visited June 24, 2010) (stating that students experience a wide range of effects from sexual harassment that impact their academics including having trouble sleeping, loss of appetite, decreased participation in class, avoiding a study group, thinking about changing schools, changing schools, avoiding the library, changing major, or not visiting a professor/teaching assistant’s office; and that students may experience multiple effects or just one).

\(^11\) *Id.*

\(^12\) *Id.*
of the university can occur leading students, staff, parents, and the general public can lose respect for, and trust in, the institution, and confidence in the accuracy of grades conferred on students if nothing is done to improve the situation.\textsuperscript{13}

\textit{Impact on Young Men}

A victim of sexual harassment does not have to be the person harassed but could be anyone affected by the offensive conduct.\textsuperscript{14} There were not any reports of B-CU men students being sexually harassed by any of the professors in question, however, a few men witnessed the events in classrooms, first-hand. Men students reported receiving significantly less attention in class and denial of assistance upon speaking up about the stark disparities in educational support given from the four professors. One young man reported that the four professors allowed female students to cheat openly on tests and with unfounded anger confronted any men students that complained. These young men, many of them without father figures or strong male role models, came to college to expand their minds and move beyond their circumstances to better lives. However, the treatment of women that they witnessed left appalling impressions of how professional men should conduct themselves.

A consequence of witnessing sexual harassment is the potential that some of these men may treat women in a similar manner that results in perpetuating across generations patterns of sexual harassment. Potentially lifelong emotional and mental scars may affect the men students that witnessed sexual harassment by these four professors.

\textit{Sexual Harassment under Title IX of the Educational Amendments of 1972}

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in any education program or activity receiving Federal financial assistance.\textsuperscript{15} Since the enactment of Title IX, sexual harassment in education includes any unwanted and unwelcome sexual behavior that significantly interferes with a student's access to educational opportunities.\textsuperscript{16} Title IX considers environmental sexual harassment and \textit{quid pro quo} sexual harassment reprehensible in an academic arena.\textsuperscript{17} Sexual harassment in the academic arena inhibits an atmosphere of free learning and a development of complete academic achievement free from

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\textsuperscript{13} \textit{Id.}
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\textsuperscript{14} U.S. Equal Employment Opportunity Commission, \textit{Sexual Harassment Fact Sheet, available at} http://www.eeoc.gov/eeoc/publications/upload/fs-sex.pdf (last visited June 24, 2010) (explaining that sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964 for employers with 15 or more employees, including state and local governments, employment agencies and to labor organizations, as well as to the federal government).
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\textsuperscript{15} \textit{Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.; Public Law 92-318); 34 C.F.R. §§106.1, 106.31(a)(b).}
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\textsuperscript{17} \textit{Title IX of the Education Amendments of 1972, supra note 15.}
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encumbrances. Examples include making a sexual comment, leering, or inappropriately touching a student(s); making offensive sexual advances toward a student(s); soliciting or coercing sexual acts from a student(s) by promising to grade the student highly if s/he complies or by threatening to fail the student if she does not; and rape or sexual assault.  

The Supreme Court has confirmed that schools have an obligation under Title IX to prevent and address harassment against students, whether perpetrated by peers or by employees of the school system. Title IX is intended to authorize preventive measures for sexual harassment in schools to ensure a safe environment in which students can learn.

**Grievance Procedures under Title IX**

Title IX allows students to take various avenues to receive remedies for violations of their rights. Moreover, it indicates that the potential claimants’ rights should include awareness of whether the complaint must be written or oral, what information should be contained in the grievance, the person or persons with whom a grievance can be filed, and the specific procedural steps which must be taken.

An institution attempting to develop and implement a grievance procedure should first identify external factors that may have an effect on the structure of the procedure. Next, state discrimination laws and regulations, state statutes or regulations regarding students’ rights, collective bargaining agreements, and other existing institutional grievance procedures that may have implications for any Title IX grievance procedures should be taken into account.

In B-CU’s case, the University conducted its own inquiries via an independent student survey prompted by reports of sexual misconduct from faculty members and uncovered major problems of sexual harassment. The student survey revealed that the four professors were engaging in sexual misconduct with the students. Thus, there were no complaints, filed by students, that would have required the University to initiate Title IX procedures regarding investigation of complaints of sexual harassment.

**A Comparison of B-CU’s Current Policy and Title IX**

In the B-CU Faculty Handbook, sexual harassment is defined as unwelcomed sexual advances, requests for sexual favors, or other verbal

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18 Stacy, supra note 6, at 1339.

19 Aurelia Davis, as next friend of Lashonda D., Petitioner v. Monroe County Board of Education et al., 526 U.S. 629 (1999). See also TitleIX.info website, TitleIX.info website, supra note 16.

20 Title IX of the Education Amendments of 1972, supra note 15.

21 Id.
or physical conduct of a sexual nature, when:\textsuperscript{22}

1. Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic success;

2. Submission to or rejection of the conduct by an individual is used as a basis for employment or academic decisions affecting the individual; or

3. A reasonable person would find that the conduct has the purpose or effect of interfering with an individual’s work or academic performance or creating an intimidating, hostile or offensive work or academic environment.

The policy also includes sexual assault, rape, or other similar actions that are unlawful pursuant to the state and federal law.

The B-CU policy lists examples of conduct that constitute sexual harassment to include:

(a) sexual flirtation, advances, or propositions;
(b) sexually explicit statements, questions, or jokes;
(c) displays of sexually explicit material (whether audio or visual);
(d) inappropriate personal comments, staring, or touching
(e) remarks of a sexual nature about a person’s body, clothing, or sexual behavior; or
(f) direct or implied threats that submission to sexual advances will be a condition of employment, promotion, or academic advancement.

B-CU and Title IX define sexual harassment similarly. B-CU’s definition, however, is more detailed as to the nature of the sexual harassment while Title IX focuses on the protection of the institutional environment.

Students often have a trusting relationship with professors and feel more comfortable confiding in other students or a professor than reporting personal matters to university officials. Currently, B-CU’s policy instructs students to report the allegations of sexual harassment to their faculty advisors; however, because a student typically does not have an ongoing, engaging and often daily relationship with an advisor, students who believe they may only look to advisors for redress may be less likely to report harassment.

The Recommendations section of this Report suggests additional avenues for students to report sexual harassment.

\textsuperscript{22} Bethune-Cookman University Faculty Handbook 52-54 (21st ed.) ("B-CU Faculty Handbook"), available at http://www.cookman.edu/documents/acad_docs/BCUFacultyHndbk.pdf (last visited May 2, 2010).
Rights of the University

Academic Integrity

Bethune-Cookman University, founded by Mary McLeod Bethune in 1904, holds a time-honored legacy of overcoming the seemingly impossible. It has changed the lives of countless youths who otherwise might not have received a degree in higher education. The conduct of the four former professors stained the University’s legacy.

The University empathizes with victims of sexual harassment and believes that its academic integrity has been tarnished by the experience described in this Report. The students’ confidence in the University’s guidance and protection has been undermined. Federal, state, and private funding for the school have been put at risk. Moreover, the numbers of prospective students taking an interest in the University could decrease, leading to additional losses in funding and educational offerings and opportunities.

Academic Freedom

As an educational institution, B-CU enjoys academic freedom.23 The U.S. Supreme Court has recognized “the four essential freedoms of a university – to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted as students.”24

At private educational institutions, the constitutional foundation of academic freedom generally does not apply.25 The exercise of academic freedom by professors is dependent upon the institution providing an education for the students and the infrastructure for research.26 Thus the rights of academic freedom for faculty must necessarily be in harmony with those of the educational institution.27 As such, institutional academic freedom may counter-balance, even outweigh, the academic freedom that may be attributed to faculty.28

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23 Education Law, supra note 7, at Ch. 11, §11.01(2)(a).

24 Id. (quoting Sweezy v. New Hampshire, 354 U.S. 234, 263, 77 S. Ct. 1203, 1 L. Ed. 2d 1311 (1957) (Frankfurter, J., concurring)).

25 Id. at Ch. 11, §11.01(3)(d).

26 Id. at Ch. 11, §11.01(2)(a) (quoting Sweezy, 354 U.S. 234, 263).

27 Id. at Ch. 11, §11.01(5)(a).

28 Id. See also Richard H. Hiers, Institutional Academic Freedom vs. Faculty Academic Freedom in Public Colleges and Universities: A Dubious Dichotomy, 29 J.C. & U.L. 35 (2002) (tracing the development of this issue and arguing that "[g]iven the importance of academic free speech, courts arguably should apply close or ‘exacting’ scrutiny to claims by government, whether external, political or internal administrative, that speech interferes with the college's or university's effective performance of its services to the public"). But see Education Law, supra note 7, at Ch. 11, §11.01(5)(a) ("Academic freedom is not a license to disregard applicable law. An educational institution may not adopt a rule that conflicts with a state law that applies to the institution [or anti-discrimination laws]; however, the state actor paradigm generally does not apply to private universities. Academic freedom, arguably, should be available to preclude state governing forces from using "their power of the purse to politicize education;">
Recognition of individual academic freedom only within the context of an institution's mission is particularly critical where religious institutions are involved, as is the case for B-CU, a private Christian university. This principle applies here because the four professors stated that their cultural values about women factored into their termination. These professors reported that in a meeting with Dr. Reed they stated “...where we come from, the people have no respect for women....”

Rights of the Accused

Academic Freedom of Professors and Special Rights for Tenured Professors

Academic freedom refers to the freedom of university professors and the university administrators to function autonomously, without interference from the government. In addition, it refers to the freedom of individual teachers not to suffer interference by the administrators of the university. Although these two freedoms can come into conflict, the academic institution enjoys a position of supremacy. Conversely, academic freedom is not a license permitting conduct internally destructive to the proper function of the university or disruptive to the education process.

Termination after Obtaining Tenure

In the academic arena, tenure is a status granted, usually after a probationary period, under statute, contract or policy to continue employment subject to dismissal only for adequate cause or where required due to staff reductions, program changes or financial exigency. Contrary to popular misimpression, tenure is not a guarantee of permanent employment; rather, it confers on the tenured faculty member an expectation that termination, should it occur, will be for cause and will not be undertaken lightly.

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29 Education Law, supra note 7, at Ch. 11, §11.01(5)(a). See also James D. Gordon III, Individual and Institutional Academic Freedom at Religious Colleges and Universities, 30 J.C. & U.L. 1 (2003) (concluding that religious colleges and universities may limit faculty academic freedom to assure that teaching is consistent with the ideals and principles of the sponsoring religion).


31 Id.

32 Id. (citing Keen v. Penson, 970 F.2d 252, 257 (7th Cir. 1992)).


34 Education Law, supra note 7, at Ch. 6, §6.06(1) (citing Hulen v. Yates, 322 F.3d 1229, 174 Educ. L. R. 657 (10th Cir. 2003)).

35 See Education Law, supra note 7, at Ch. 6, §6.06(1).
Due Process

Procedural Due Process Standards in Faculty Dismissal Proceedings

Due process is a flexible standard that affords varying degrees of procedural protections according to the precise nature of the governmental function and the private interest involved. Further, procedural standards required in criminal cases may not be required in civil or administrative proceedings.

There is a strong societal interest in the education of young adults and the prevention of harassment of students by those entrusted with their social and educational development. Consequently, sexual misconduct may warrant a prompt response by an educational institution compared to other circumstances in termination proceedings. Nonetheless, at the minimum, those accused of sexual harassment at a private educational institution are entitled to basic due process rights: notice, opportunity for a hearing before a panel whose members’ objectivity and fairness are beyond reproach, consideration of all evidence presented, and a right of appeal. Here, the University needed to act very quickly in light of the health and safety issues involved in the matter. Thus, the University’s handling of the allegations should be judged by whether, at the end of the day, it afforded the four professors these basic due process rights.

There are procedures to protect both the due process rights of the accused and alleged victims of sexual harassment in termination proceedings. The first step is an investigation. If, an investigation reveals that there is just cause to terminate a teacher’s employment, the investigating body may recommend that the school’s administration do so. The administration did so for B-CU.

The second step is triggered by the teacher. If a teacher feels that the recommendation is unsupported by adequate evidence, he or she may

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36 Keating v. Board of Sch. Directors, 513 A.2d 547, 550 (Pa. Cmwlth. 1986) (affirming, in the face of a due process objection, the Pennsylvania Secretary of Education’s decision to dismiss a tenured professor for reasons of immorality, persistent and willful violation of school laws by engaging in sexual harassment of a student).

37 Keating, 513 A.2d at 550. See also Education Law, supra note 7, at Ch. 6, §6.14(13)(b)(ii) (citing Tonkovich v. Kansas Bd. of Regents, 254 F.3d 941, 155 Educ. L. R. 58 (10th Cir. 2001) (Tonkovich II) (holding that dismissal was warranted because of sexual encounter by law professor with student that occurred after grades discussions)).

38 Keating, 513 A.2d at 550.

39 Education Law, supra note 7, at Ch. 6, §6.14(13)(a).


41 B-CU Faculty Handbook, supra note 19, at 53.

42 Hlubek v. Pelecky, 701 N.W.2d 93, 98 (Iowa 2005).

43 Id.

44 Id.
request a hearing. At the hearing, the administrative hearing body presents evidence and calls witnesses to prove that just cause for termination exists. The teacher may attend this hearing and produce his or her own evidence. Further, if the teacher is convinced that his or her termination was unjustified, the teacher may appeal the administrative hearing decision; however, if the decision is upheld by the appeals committee, the termination stands.

In a case of sexual harassment, the name of a student alleging the offense may be withheld to protect the student and promote any future reporting by students to the university. A teacher’s right of notice is trumped by a student’s right to be free of the stigma, fear and potential retaliation attendant to public testimony or disclosure of her identity.

In the case of B-CU, at the conclusion of an investigation prompted by the University’s survey of Social Sciences faculty, outside counsel recommended termination of the four professors, which the administration agreed was justified. The University granted the professors’ request for a Faculty Administrative Hearing, and a written summary of its findings as well as a letter confirming the decision to uphold the termination were provided to each professor. Thus the four professors received all the necessary safeguards of their due process rights.

Best Practices of Other Florida Colleges and Universities

**Nova Southeastern University**

Nova Southeastern University (NSU) has several compartments to its sexual harassment policy. It describes sexual harassment as a violation of Title IX and Title VII of the Civil Rights Act of 1964. It defines sexual harassment in accordance with the Equal Employment Opportunity Commission's promulgated guidelines, which specify that unwelcomed sexual advances, unwanted requests for favors of a sexual nature, and any other unwanted verbal or physical conduct of a sexual nature are considered sexual harassment if:

1. Explicit or implicit submission to sexual overtones is made a term or condition of employment or academic program status.

2. Employment or academic program status decisions are made on the basis of whether submission to or rejection of sexual overtones occurred.

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45 Id.

46 Id.

47 Id.

48 See Education Law, supra note 7, at Ch. 6, §6.06(1).

3. A sexually intimidating, hostile, or offensive atmosphere unreasonably interferes with an individual’s work or academic program status performance.

NSU’s definition of sexual harassment is very similar to B-CU’s. The policies pertaining to reporting allegations are comparable because at NSU and B-CU, students are prompted to report their allegations to the Director of Human Resources or designee. Both schools require the complaints to be also reported to the Office of Student Affairs and an investigation must be conducted upon receipt of an allegation.

NSU’s and B-CU’s policies differ on their investigation procedures. At NSU, the Office of Human Resources conducts a thorough investigation. If the allegation involves only students, the complaint will be forwarded to the Office of Student Affairs for investigation and resolution. At B-CU, the procedure is more detailed because the University establishes a Committee to investigate any complaint of sexual harassment or, due to a recent revision of its policy, B-CU may now utilize an outside investigator to conduct the investigation. If the University elects to convene a Committee, B-CU’s Equal Employment Opportunity Officer selects and chairs the Committee.

NSU’s policy also discusses types of student-faculty relationships that are and are not permissible, ranging from classifications that include interpersonal relationships with students, romantic relationships, other socializing with students, non-social, and non-classroom interactions. As noted in the Recommendations infra, B-CU should consider adopting definitions of permissible and non-permissible relationships to reduce any ambiguities in dealing with boundaries between faculty and students.

Florida Memorial University

At Florida Memorial University (FMU), sexual harassment is defined as unwelcomed sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature, when such conduct is made implicitly a term or condition; or has the purpose or effect of interfering with work or scholastic performance, or creating an otherwise hostile, intimidating or offensive working, living or academic environment.50 Florida Memorial’s policy does not provide clear definitions regarding complaints, sanctions, and termination like B-CU’s policy does. It does not specify requirements or guidelines for dismissal or termination once an allegation is confirmed. B-CU, on the other hand, has clearly stated that this type of violation will result in termination for cause; it provides sanctions, and protections against retaliation.

At FMU, any employee or student who feels that he/she is a victim of sexual harassment should immediately report to the reporting department at FMU Office of Human Resources. This policy is similar to NSU’s policy.

University of Miami

The University of Miami (UM) prohibits sexual harassment and mandates both the University and its faculty to commit to a work environment free of sexual harassment. At UM, sexual harassment is defined as unwelcome sexual conduct, such as unwelcome advances, requests for sexual favors, or other conduct of a sexual nature when:

1. Such conduct is engaged in under circumstances implying that one’s response might affect academic or personnel decisions that are subject to the influence of the person engaging in that conduct; or
2. Such conduct is directed at an individual or a group, and:
   a. is either abusive or would be considered severely humiliating by a reasonable person at whom it was directed, or persists despite the objection of the person(s) targeted by the conduct; or
   b. the conduct is so clearly unprofessional that it creates a hostile environment that may substantially impair the work or academic performance of colleagues, coworkers or students.

The first kind of sexual harassment, often referred to as “quid pro quo” harassment, includes implied or overt threats or pressure for sexual favors. UM’s sexual harassment policy goes into detail in each of its elements explaining the nuances behind each section because it includes Title IX’s quid pro quo violations expressly.

UM also prohibits physical contact, such as outright assault, other forms of inappropriate or embarrassing touching, such as brushing up against another’s body, unwanted hugging, pinching or patting. Also prohibited is conduct, other than physical conduct, such as suggestive or insulting sounds, gestures, leers or stares.

UM’s policy addresses ethical matters associated with sexual harassment and expressly defines what constitutes a hostile environment. A hostile environment includes verbal conduct, such as unwelcome sexual propositions that are made by a supervisor, coworker, or individual with authority at the University over the status of the complainant, which persists despite the objections of the person to whom they are made. It also includes sexually explicit statements, innuendoes, comments, questions and jokes, as well as remarks of a sexual nature about a person’s clothing or body, remarks about a person’s sexual activity, or speculations about the previous sexual experience of that person. In its Recommendations, this Report suggests that UM’s definition of a hostile environment should be incorporated in B-CU Faculty Handbook so that faculty members and staff are aware of the precise prohibited behavior the University will not tolerate.

Recommendations for Bethune-Cookman University

The author of this Report concludes that B-CU’s handling of the incidents involving the four professors needed to be expedited for reasons of student health and safety. Once President Reed learned of the allegations, she set in motion a process that was rapid, appropriate, and ethical. It afforded the four professors the process they were due.

More should be done, however, to repair the climate of fear and intimidation that kept these incidents quiet for several years. The author respectfully offers these four recommendations:

1. **Expressly define harassment, hostile environment, and relationship restrictions.** The B-CU Faculty Handbook should address in more detail the types of relationships that are acceptable and not acceptable, so that any ambiguities dealing with boundaries in faculty-student relationships are clear and faculty and staff members are aware of the precise prohibited behavior the University will not tolerate. The University of Miami Employee Handbook and its definition and discussion of a hostile environment might serve as a useful template in this regard.

2. **Facilitate anonymous complaints.** Since many students are fearful of the humiliation associated with bringing sexual harassment claims forth, B-CU should consider creating, or associating with other local colleges and universities in an anonymous hotline. The hotline could also be available to handle instances of rape, including date rape, depression, drug abuse, and a handful of other issues that can inhibit academic success and impair personal health, safety and security.

3. **Use professors, student leaders, and a human relations expert as confidants.** B-CU should encourage students to speak in confidence with professors, student leaders, or others with whom they are especially comfortable. Before such a policy is adopted, a designated human resources professional (the “Gender Equality Mentor”) should train professors, counselors and student leaders on how to handle and report instances or allegations of harassment.

4. **Provide students with enhanced knowledge and an opportunity for open dialogue.** The “Gender Equality Mentor” (see above) should give frequent lectures and class visits on the full range of issues germane to the empowerment of women and men, particularly including all forms of sexual harassment, rape including date rape, and discrimination in the workplace. She could also bring to campus bi-annual distinguished lecturers to address harassment and rape, and thus educate students about prevention methods, alternatives and risks.