

TO: Members of the Council of the Princeton University Community (CPUC)

FROM: *Rights, Rules* Committee

DATE: July 29, 2020

SUBJECT: Changes in Title IX and University Sexual Misconduct Grievance Procedures

At the CPUC meeting on August 3, 2020, the *Rights, Rules* Committee will be recommending changes to the University's Title IX Sexual Harassment and University Sexual Misconduct grievance procedures.<sup>1</sup> Title IX prohibits discrimination based on sex in education programs and activities, and applies in sexual misconduct cases that include sexual harassment, sexual assault, stalking, and dating violence.

The *Rights, Rules* Committee has devoted a substantial amount of time to these changes. We bring them to you now, with the Committee's unanimous recommendation, because the University must act promptly to bring its policies and procedures in this area fully into compliance with recent regulations promulgated by the U.S. Department of Education (the federal agency responsible for enforcing Title IX). As President Eisgruber emphasized in a recent meeting of the faculty, a failure by the University to bring its policies and procedures into compliance with the new regulations would make any University resolution of a Title IX misconduct complaint subject to a legal challenge on grounds of noncompliance with federal regulations.

### **Materials Attached**

We attach the following proposed items:

- (1) A new Title IX Sexual Harassment policy ("Title IX policy") – we have highlighted in yellow the sections that require your approval.
- (2) A new University Sexual Misconduct policy, which you will see is very similar to the new Title IX policy. Again, we have highlighted in yellow the sections that require your approval, and we have used red ink to note key differences between the Title IX policy and the University Sexual Misconduct policy.
- (3) A revised policy on Retaliation (section 1.7.3 of *Rights, Rules, Responsibilities*) (these changes correspond to the changes made to the Retaliation policy in the University Sexual Misconduct policy).

### **Background**

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<sup>1</sup> On July 27, 2020, the full faculty approved the non-highlighted portions of the policies that fall outside the scope of the CPUC. These sections included changes to the grievance processes under both policies, including separation of the investigation/adjudication roles, use of hearings, and the University providing a certain, predetermined amount of financial assistance for all parties who wish to engage attorneys to serve as their advisers in the grievance process.

The U.S. Department of Education issued new Title IX regulations on May 6, 2020. These regulations, which are over 2,000 pages long including the preamble and which have the force of law, require that the University be in compliance by August 14, 2020. To accomplish this, we are presenting changes that require approval of the CPUC at our August 3, 2020 meeting.

## **Recommendations**

Title IX applies to all members of the campus community (students, faculty, and staff), and the new policies we are presenting would apply in all student, faculty, and staff sexual misconduct cases, including cases involving sexual harassment, sexual assault, stalking, and dating violence. The changes do not apply to cases involving academic matters; policies and procedures in those cases remain unchanged.

**It is important to note that conduct that previously constituted a violation of University policy will continue to constitute a violation of University policy; however, such conduct may be adjudicated under different grievance procedures.**

We are recommending four major changes to the areas that require approval by the CPUC, as described below.

### **1. Two Policies**

We support the University's decision to have two policies addressing sexual misconduct: (1) the Title IX policy and (2) the University Sexual Misconduct policy. The Title IX policy will apply to all conduct which falls under the new Title IX regulations, and the University Sexual Misconduct policy will apply to all impermissible conduct of a sexual nature which: (a) does not fall under the definition of Title IX, or (b) does not meet the jurisdictional requirements of Title IX (see below for additional explanation). The effect of the new Title IX regulations has been to tighten the scope of conduct that falls under Title IX. The University Misconduct policy ensures that such conduct that now falls outside Title IX is still covered by University policy.

While these two policies will have overlapping sections relating to reporting, resources, and some grievance procedures, we believe that having two separate policies will be easier for our campus community to grasp and will make it simpler for us to modify our policies if the federal government or litigation were to undo the new regulations.

The scope of the Title IX policy is limited under the regulations to the following: (1) conduct that occurs within the United States; *and* (2) conduct that occurs within the University's education program or activity (as further defined in the policy). When those two parameters have been met, the Title IX Sexual Harassment policy applies to allegations of Quid Pro Quo Sexual Harassment, "Title IX Sexual Harassment,"<sup>2</sup> Sexual Assault, Domestic Violence, Dating

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<sup>2</sup> "Title IX Sexual Harassment" under the Title IX Sexual Harassment policy is a narrow definition of sexual harassment that includes only conduct that is "so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the University's education program or activity." "University Sexual

Violence, Stalking, and Retaliation.

The University Sexual Misconduct applies to allegations of Quid Pro Quo Sexual Harassment, Title IX Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, Stalking, and Retaliation that do not fall under the parameters of the Title IX Sexual Harassment policy. Therefore, the University Sexual Misconduct policy may apply to: (1) conduct that occurs in the local vicinity (e.g., an eating club) but outside of a University program or activity; or (2) conduct that occurs outside of the United States when the conduct is associated with a University-sponsored program or activity, such as travel, research, or internship programs; or (3) conduct that involves the use of the University's computing and network resources from a remote location, including but not limited to accessing email accounts. In addition, the University Sexual Misconduct policy applies to certain forms of sexual misconduct that do not fall under the scope of the Title IX Sexual Harassment policy, including Sexual Exploitation, Improper Conduct related to Sex, and University Sexual Harassment.

## **2. Definitions**

The new regulations require that we use certain specific definitions with respect to sexual harassment, sexual assault (including rape, "fondling," etc.), stalking, dating and domestic violence, and retaliation, which are included in the proposed new policies.

## **3. Informal Resolution Process**

In a departure from long-standing Department of Education guidance, the new regulations permit universities to facilitate the resolution of sexual misconduct cases through an informal process, within certain parameters. We propose adopting an informal resolution process which would provide the option (requiring agreement of both the complainant and the respondent to pursue this path) for informal resolution (upon approval by the Title IX Coordinator and both parties) in cases brought under both new policies.

### Next Steps

If approved by the CPUC, these new policies will be incorporated into the University's comprehensive sexual misconduct policy.

### ***Rights, Rules Committee***

Professor Christopher Chyba, Astrophysical Sciences & Public Affairs, Chair  
Professor Margot Canaday, History  
Professor Harriet Flower, Classics  
Professor Sanjeev Kulkarni, Dean of the Faculty  
Kathleen Deignan, Dean of Undergraduate Students  
Alain St. Pierre, University Library

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Harassment" (referenced below and covered under the University Sexual Misconduct policy) is more broadly defined and includes conduct that is severe *or* pervasive.

Christopher Hale, Graduate Student, Population Research  
Kate Liu '23  
Mayowa Oke '22  
Nathaniel Shields '21