

PRACTICAL ADVICE FOR WOMEN IN ENGINEERING ADMINISTRATORS: WHAT TO DO WHEN AN ALLEGATION OF SEXUAL HARASSMENT WALKS IN YOUR DOOR

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INTRODUCTION

Sexual harassment law has its basis in the Civil Rights Act of 1964 - Title VII. Title VII states that an employer may not discriminate against employees in hiring, firing, and with respect to terms and conditions of employment on the basis of sex. While Title VII does not explicitly prohibit sexual harassment, courts apply it on the theory that sexual harassment would not occur "but for" the sex of the victim.

For education, Title IX of the Education Amendment mirrors Title VII, thereby prohibiting sexual harassment in the academic context. This gives students the ability to take action in the case of sexual harassment.

These statutes are enforced by the Equal Employment Opportunity Commission (EEOC), Office of Civil Rights, and the U.S. Department of Education, Civil Rights Division, respectively. There are also state statutes that prohibit sexual harassment, and they are enforced by state agencies.

Two forms of sexual harassment have been identified:

- Quid Pro Quo ("this for that") occurs when submission to or rejection of unwelcome sexual conduct is used implicitly or explicitly as a basis for academic or employment decisions affecting the individual. It involves a power differential between the parties (e.g., faculty to student, supervisor to supervisee).

The law is clear, but courts may interpret the law differently in specific cases.

- Unwelcome sexual conduct: Truly consensual relationships are generally okay. Merely voluntary relationships are not necessarily okay. Voluntary does not mean welcome. In disputes, an individual accused of harassment must demonstrate proof of "welcomeness" of the conduct. Judgements may be based on the testimony of witnesses. Often the courts will examine how

provocative the complainant was at work, in dress and speech.

- Paramour preference: Others in an office or a class may complain they were denied benefits (not evaluated or graded fairly) because the supervisor or professor showed favoritism to the person with which he/she was involved in a relationship. Courts have not ruled consistently in these cases.
- Strict Liability: The employer is automatically liable, whether or not it knew or should have known and failed to take remedial action.
- Hostile Environment occurs when unwelcome sexual conduct is sufficiently severe or pervasive that it alters the conditions of employment or education and creates an environment that a reasonable person would find intimidating, hostile, or offensive.
 - Perpetrators: Hostile environment sexual harassment may be perpetrated by co-workers, students, subordinates, supervisors, and third parties, such as alumni/donors, vendors, contractors, and research sponsors
 - Liability: Employer is liable if it knew or should have known about harassment and failed to take prompt remedial action. An individual harasser may be personally liable.

The legal definition seems fairly clear, but there is a large gray area with which courts and juries struggle in determining what is unwelcome and what is pervasive.

POLICIES AND PROCEDURES

All universities are required by law to have policies defining sexual harassment and describing procedures to file both informal and formal complaints. Some universities have developed their own policies, while others have hired consultants to assist them. Many share common features, while each has specific policies and resources for its own academy. You should obtain a copy of your University's sexual harassment policy. It is also helpful to compare yours with others from like institutions.

WHY PEOPLE DON'T REPORT HARASSMENT

How many times have you heard, "Why didn't Anita Hill report sexual harassment when it happened? Why did she wait 10 years?" While we cannot pretend to know what Ms. Hill was going through or thinking, we do know there are a number of reasons people do not come forward with reports of sexual harassment:

- Embarrassment

- Belief that the behavior will end if ignored
- Fear of losing one's job or status
- Fear of retaliation
- Fear of being blamed for inviting the harassment
- Concern about not being believed
- Concern about being labeled a troublemaker
- Fear of harmful rumors and loss of privacy
- Conviction that nothing will be done about the problem
- Fear that the complaint process could be worse than the harassment.

NINE MYTHS ABOUT SEXUAL HARASSMENT

With experience, good or bad, people develop their own beliefs about sexual harassment. It is important to consider and debunk the following myths about sexual harassment:

- If the "harasser" didn't intend for the complainant to feel uncomfortable, it isn't sexual harassment.
- Everyone understands the difference between "sexual harassment" and what behaviors are "flattery."
- If a person who feels uncomfortable doesn't tell the alleged harasser she/he wants a particular behavior to stop, the alleged harasser cannot be held responsible for committing sexual harassment.
- Everyone knows the difference between "sexual harassment" and flirting.
- When a woman is treated unfairly by a man in a work or academic environment, sexual harassment has occurred.
- Overly-sensitive people can now complain about sexual harassment and receive large cash settlements.
- For sexual harassment to occur, the behavior must be initiated by a heterosexual man against a heterosexual woman.
- There is an "outbreak" of women filing false, malicious charges of sexual harassment.
- One person must have institutional authority or power over another for sexual harassment to occur.

WHAT CAN AND SHOULD YOU DO?

The Educator's Guide to Sexual Harassment (Sandler and Paludi, 1994) gives the following seven guidelines for handling sexual harassment complaints:

- **Take the report seriously.** Assure the person that the complaint or problem is being taken seriously and that the institution will respond to the problem promptly.
- **Listen, sympathize, but don't judge.** Listen to what the person has to say, sympathize, but make no judgement or commitment regarding allegations or how the investigation will be conducted. Do assure the



person that the institution takes sexual harassment seriously and will not tolerate it.

●**Don't delay.** If you are not the individual designated to process sexual harassment complaints, tell the complainant who *is* responsible and offer to help contact that person. If that person is not immediately available, tell the complainant you will follow through immediately after the interview. Then do it as soon as possible. Delays of even a few days can make investigations difficult and may send a signal to the complainant that the institution is not taking the complaint or problem seriously.

●**Respond to Concerns.** If the complainant expresses or indicates fear, assure the person that the institution will do everything in its power to ensure confidentiality (*but make no promises*), prevent retaliation and stop further harassment. If you are the person designated to process complaints or investigate them, answer any questions about the complaint process that will not jeopardize the investigation. If you are not the appropriate person to process a complaint, assure the complainant that his or her questions will be answered by the appropriate person.

●**Document.** Write a detailed summary of what the complainant told you, including your observations of the person's demeanor. Submit it to the individual who will be processing the complaint.

●**Follow up on the complaint.** Check with the complainant the next day to ensure that he or she is getting needed assistance.

●**Avoid using "Dangerous Words,"** such as "It's just teasing - no big deal." (See next section for complete list of dangerous words.)

In addition, I offer the following suggestions:

●**Understand that once you are told of a potential sexual harassment problem, you are legally liable to act.** Even if you wanted nothing to do with sexual harassment complaints, you now must act, or both you and the university may be held liable for inaction.

●**Remain Neutral.** You must entertain the thought that the complainant is correct. You must also entertain the possibility that there is another side of the story. However, it is NOT your job to investigate or question others about the complaint.

●**Let the student know that there IS a sexual harassment policy at your University and that sexual harassment is not tolerated.** This is a good time to give the student a copy of your university's sexual harassment policy.

●**Indicate to the student that there are both informal and formal options to resolve sexual harassment complaints.** Explain that if the student just wants the behavior to stop, then an informal process might be appropriate. If punishment or sanctions are desired, then in most cases, the formal process MUST be employed.

●**Let the student know that you will attempt to keep the complaint**



confidential, but that you cannot guarantee confidentiality. There should be offices on your campus that can guarantee confidentiality.

●**Encourage the student to keep a log of incidences of harassment, including making a list of witnesses.**

●**Do not attempt to investigate or resolve the complaint on your own.** There should be people on your campus who are trained and authorized to resolve sexual harassment complaints. Trying to run your own, perhaps biased, investigation could jeopardize the University's legal position, and it can cause you both personal and professional grief.

●**Do not discuss the complaint with colleagues or other students.** You may discuss the complaint with your Ombuds office or other designated offices on campus. Remember, there ARE procedures for determining whether or not something is harassment, and public discussion before a finding is NOT appropriate.

DANGEROUS WORDS

In the Educator's Guide to Sexual Harassment (Sandler and Paludi, 1994), you are warned to be careful of what Bernice Sandler and Michelle Paludi call "Dangerous Words." They recommend specifically, "When responding to a complaint, be careful that these words don't come out of your mouth:"

- It's just teasing - no big deal.
- The people in our school would never do ...
- I know he/she didn't mean anything like that.
- It's your fault for dressing so provocatively.
- You need to learn to handle these things.
- Just ignore it.
- He puts his arms around everyone.
- Why can't you learn to accept a compliment?
- You must have wanted it, otherwise you would have told him no.
- That's how they do things where he comes from.
- It's just a joke. Lighten up.
- No one's filed a charge, so our hands are tied.
- We've never had a complaint, so we don't have a problem.
- This kind of behavior is all part of growing up.
- It's a matter of hormones; we can't control that.
- If we had to discipline every student who used bad language we'd never get anything else done.
- It's just a prank that got out of hand.
- Oh well, boys will be boys.

TRAINING

While many faculty respond well to good training programs, there is resentment on the



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part of some faculty when such training is "mandated." Each institution's politics and leadership determine whether such a process will work effectively. However, we believe that strong and effective leadership on a grassroots level can help eliminate sexual harassment in individual units, and ultimately at a university.

Regardless of whether or not training is mandated on your campus, be sure you are trained. Know what to do and who to talk to when the inevitable complaint walks in the door. Know your responsibilities and know who is responsible to make sure something happens with the complaint.

Whether your Women in Engineering Program should be responsible for improving the campus climate by helping to stop sexual harassment is certainly a philosophical question. Most would agree that your university's administration should have that responsibility. However, some need help, and we advocate your getting involved in the process and providing your input. Be sure that your training addresses issues on a college campus, and provides explicit information about the complaint handling process. Find out what action your university takes if it finds that sexual harassment is happening, and how it protects its students and employees from retaliation.

CONCLUSIONS

It is important to acknowledge and understand that sexual harassment case law is evolving. A jury may make a decision tomorrow, which could affect the sexual harassment policy on your campus. Furthermore, each case will present itself such that something that worked in one case might not work for the next. However, always keep in mind the good practices recommended here: NEVER attempt to investigate and resolve sexual harassment complaints on your own. ALWAYS get help from someone on your campus who is trained and authorized to handle these issues. ALWAYS maintain neutrality and confidentiality.

I recommend that you purchase The Educator's Guide to Controlling Sexual Harassment, from which selected material in this document was taken, or a similar book. The CU-Boulder campus has found the Guide to be an invaluable resource.

REFERENCES

Sandler, Bernice and Michelle Paludi. The Educators Guide to Controlling Sexual Harassment, Thompson Publishing Group, 1994.

Thompson Publishing Group, 1725 K Street N.W. Suite 200, Washington, DC 20006, 1-800-677-3789.

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