



VIA U.S. MAIL AND FACSIMILE (202.514.0293 and 202.453.6012)

June 6, 2013

Mr. Thomas E. Perez
Assistant Attorney General
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Ms. Russlynn Ali
Assistant Secretary for Civil Rights
Office for Civil Rights
United States Department of Education
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue SW
Washington, DC 20202

Dear Assistant Attorney General Perez and Assistant Secretary Ali:

We, the members of the Committee on Women in the Academic Profession of the American Association of University Professors, write in reference to the issuance on May 9, 2013, by the Department of Justice's Civil Rights Division and the Department of Education's Office for Civil Rights of the resolution agreement regarding the investigation of the University of Montana's handling of allegations of sexual assault and harassment at its Missoula campus. We wish to commend you for instructing the university to develop clear procedures to address sexual harassment and assault in order to create a more equitable campus environment for women.

We call your attention to our committee's recently issued policy statement, *Campus Sexual Assault: Suggested Policies and Procedures*, enclosed for your information, which addresses the growing problem of sexual assault on college and university campuses, and the dearth of effective, coordinated policies for adjudicating these cases. The statement incorporates our Association's longstanding view that the freedoms to teach and to learn are inseparable from the maintenance of a safe, hospitable campus climate, which in turn contributes to the reduction of campus sexual harassment and assault.

We are encouraged by your call for colleges and universities to use the University of Montana resolution agreement as a “blueprint” for creating equal-opportunity climates on campuses nationwide. We are deeply concerned, however, that the redefinition of sexual harassment proposed therein—“unwelcome conduct of a sexual nature [that] can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence”—eliminates the critical standard of “reasonable speech,” and, in so doing, may pose a threat to academic freedom in the classroom.

By contrast, the AAUP’s recommended standard, as set forth in our enclosed statement *Sexual Harassment: Suggested Policies and Procedures for Handling Complaints*, provides that “requests for sexual favors, and other conduct of a sexual nature” constitute sexual harassment when, among other criteria,

such speech or conduct is *reasonably regarded as offensive and substantially impairs the academic or work opportunity of students, colleagues, or co-workers*. If it takes place in the teaching context, *it must also be persistent, pervasive, and not germane to the subject matter*. The academic setting is distinct from the workplace in that wide latitude is required for professional judgment in determining the appropriate content and presentation of academic material. [emphasis added].

Faculty members who teach courses involving controversial subject matter, such as those in subjects related to gender and sexuality, require especially wide latitude for professional judgment in preparing and presenting their syllabi, and in classroom discussion. Here are three brief examples of controversial issues and topics that have arisen in the course of our gender-studies classes:

- During a discussion in a writing class on gender, a young woman describes an art exhibit she has seen where a woman paints by holding the brush in her vagina.
- After seeing a film on African culture during a class on African literature, students discuss attitudes toward breast-feeding and breasts.
- During art and art history courses, a department chair receives negative feedback from students who are concerned about nude images in photos, sculptures, and paintings taught in those courses.

Under the proposed redefinition of sexual harassment, each of these classroom topics, because they might offend student sensibilities, or create discomfort, could be construed as “verbal . . .

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conduct of a sexual nature” and thus be considered contributory to the creation of a “hostile environment” in the classroom.

While we represent a relatively small sample of women faculty, and while we teach at diverse institutions—from large state institutions to religiously-affiliated private institutions—our examples illustrate how content, which is indeed germane to our courses, could result in allegations being raised of “verbal, nonverbal . . . conduct of a sexual nature.” By removing the “reasonably regarded as offensive” clause, subjects such as breast feeding, abortion, and sexuality could easily become taboo in a range of classes where such content is appropriate—from disciplines as diverse as psychology and English, art history and health sciences.

While the work of the Department of Justice and the Office for Civil Rights is crucial for the elimination of hostile learning environments for all students, we ask you to consider how a broader definition of sexual harassment may limit academic freedom for the teaching of controversial subject matter. We urge you to clarify further your recent statement addressing criticism of the expanded definition of sexual harassment in order to emphasize the special protection due academic freedom in the classroom

We would welcome the opportunity to meet with you to discuss these issues further.

Sincerely,

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Professor Ann Green
St. Joseph's University
Chair, Committee on Women
in the Academic Profession

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Professor Donna Potts
Washington State University

Enclosure