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Contested campus sex code

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Contested campus sex code
 By LOU MARANO

WASHINGTON, June 1 (UPI) -- Reflecting similar tensions on other North American campuses, the president of George Washington University and one of its noted law professors are at loggerheads over a proposed sexual harassment code.

The twist in this case is that the Faculty Senate has unanimously rejected the proposal -- a development the administration plays down.

GWU has had an interim policy in place since 1999. In May 2000, the senate suggested changes that would give professors more protection. This January, after seeking outside legal counsel, university President Stephen Joel Trachtenberg sent a revised draft to all faculty members.

At the end of January, the senate resolved to reject the revised draft. On April 13, the senate received a code with more changes, but rejected it on April 27 by a vote of 15 to 0.

At the time of the vote, GWU Law School Professor John Banzhaf drew up a five-page, 12-point set of problems he saw with the policy as proposed. One of his chief objections is that the new code would include classroom speech, which is expressly exempted in the interim policy.

In a telephone interview, Trachtenberg confirmed that he has the discretion to implement the code unilaterally, but he said that the notion of tension between the faculty and the administration is a misperception. The tension is within the faculty, he said, and "I, myself, am waiting for them to sort it out."

The president told United Press International that faculty members "are going to keep nibbling at each other until they get closer and closer to a compromise, and when I conclude that they have truly and honestly exhausted themselves, and that the language that they're all proposing has nothing but



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a tiny bit of light between it, we'll work it all out."

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This should take place "with all deliberate speed," he said. "The proposals are meant to perfect the interim plan. But having lived for a couple of years without perfection, I can live a little longer if I have to."

Asked about Banzhaf's objections, Trachtenberg replied: "I find Professor Banzhaf's objections objectionable. From my point of view, he's kind of a headline chaser."

Trachtenberg declined to address what he called the "bill of particulars" of Banzhaf's document.

"The code protects us from the outside world," the president said. "(It) is a defensive device which allows us to say to federal and municipal interrogatories, 'Yes, the university has a code. It is accountable to itself, it is policing itself and does not take these issues lightly.'

"The question, of course, is not to strangle yourself with the protection."

Trachtenberg said only "one or two" significant points of disagreement remain and he looks forward to approving a code that most of the university community can live with.

Banzhaf told UPI that he strongly favors the idea of a strong and effective sexual harassment policy, but a code without the requisite protections for those accused of violating it would result in convictions being overturned on appeal.

If the rights of the accused are ensured, he said, the accused are more likely to submit to GWU proceedings rather than challenging the university in the courts.

"As a lawyer, I would advise anyone accused under such a code to run immediately to court, to sue the university, the complainant, the witnesses and the people on the panel. That, in my way of thinking, is more likely to deter (potential victims) from coming forward," he said.

University officials have maintained in recent months that the law requires the school to have a sexual harassment policy. Banzhaf, however, said this question "has been glossed over in all discussions so far."

He drew the distinction between employer-employee relations, where a school "pretty much has to show it has an effective code and encourages victims to come forward," with "a simple student-faculty relationship, where the law is very, very different."

In the leading case dealing with student-faculty relationships," Banzhaf told UPI, the school did not suffer because it had no such code. The court

held that the school was covered unless it was "deliberately indifferent" to the issue.

The employer-employee relationship doesn't involve freedom of speech, the law professor said, but the proposed code would apply to what goes on in the classroom. "This is the very essence of academic freedom -- the right of the professor, or the student, to say provocative things."

Under the proposed GWU code, Banzhaf said, the accused is denied the right to a copy of the complaint; to know the identity of the complainant; to review evidence; to have a hearing before the imposition of a sanction; to have an independent, impartial decision-maker; or to have a copy of the verdict.

Banzhaf described possible abuses.

He said a student could file a complaint and the faculty member would not even know about it. "Somebody could make a secret investigation, and you might never find out," he said. "They might put into the file that Professor Jones indeed said this, we've investigated it, we think it's marginal, so we're not going to do anything about it now."

"But these things could accumulate, and you can really be in big trouble." A professor could be passed over for a promotion or a raise and not even know why. And if he or she is formally charged at a later date, "you've got a record."

"Assuming you find out, the university doesn't have to tell you the context of the remarks you are alleged to have made," Banzhaf said. "A finding can be made by a rather lower-level person, and that finding can be the basis of discipline."

"Under our proposed code, you could request a hearing, but in doing so, you have to file a written document saying what's wrong with the determination down below. So you've got to attack a copy of a document you've never seen based upon a complaint the contents of which you don't know, and this committee then decides whether you're entitled to a hearing."

"If you get a hearing, you have no right to bring in witnesses on your behalf. Hearsay testimony by parties unknown to you can be used against you, and you are unable to explain the context in which you are supposed to have used the proscribed speech," Banzhaf said.

"Once the panel is chosen to hear your case, the university administration can remove anybody from that panel for any or no reason up until the moment of verdict."

"You don't have the right to a copy of the verdict, but in order to appeal it to the president and university trustees, you have to show in writing why the decision is wrong -- but you don't know what the decision is," Banzhaf concluded.

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