



## The Chronicle Review

From the issue dated June 15, 2001

SEARCH THE SITE

SITE MAP

### SECTIONS:

- [Front Page](#)
- [Today's News](#)
- [Information Technology](#)
- [Distance Education](#)
- [Teaching](#)
- [Publishing](#)
- [Money](#)
- [Government & Politics](#)
- [Community Colleges](#)
- [Students](#)
- [Athletics](#)
- [International](#)
- [People](#)
- [Events](#)
- [The Chronicle Review](#)
- [Jobs](#)

### FEATURES:

- [Colloquy](#)
- [Colloquy Live](#)
- [Magazines & Journals](#)
- [New Grant Competitions](#)
- [Internet Resources](#)
- [Facts & Figures](#)
- [Issues in Depth](#)
- [Site Sampler](#)

### LETTERS TO THE EDITOR

## More Than One Kind of Sexual Harassment

To the Editor:

A major reason why my institution -- George Washington University -- and so many others seem to be having problems drafting policies to deal with sexual harassment is a failure to realize that there are two very different types of harassment, and that they are covered by two different laws with two different legal standards ("[George Washington Professors Reject Harassment Policy](#)," May 18).

Sexual harassment between a supervisor and a subordinate employee (e.g., when a professor harasses a secretary or a paid student assistant) is fundamentally very different from sexual harassment of a student by a professor in a classroom, campus debate, etc., and the law treats them very differently.

The first type (professor and subordinate) is governed by Title VII of the Civil Rights Act of 1964 and *Faragher v. City of Boca Raton*. Under that U.S. Supreme Court decision, the employer, to avoid liability, must prove that it took reasonable steps to prevent harassment of employees by supervisors -- usually by having an effective sexual-harassment policy -- and that it encouraged harassed employees to come forward.

The second type (professor and student) is governed by Title IX of the Education Amendments of 1972 and *Gebser et al. v. Lago Vista Independent School District*. Under that U.S. Supreme Court decision, students can sue a university only when it had actual notice of the harassment and was "deliberately indifferent" -- in the court's words -- to it. Here, there is no requirement for a sexual-harassment policy. ...

Thus the procedures for dealing with each type of sexual harassment can -- and arguably should -- be very different. A supervisor's harassing statements to an employee usually occur in private and are individualized. What was said can be a matter of great controversy. ... Such statements usually do not implicate academic freedom.

## CHRONICLE IN PRINT:

[This Week's Issue](#)

[Back Issues](#)

[Related Documents](#)

## SERVICES:

[About The Chronicle](#)

[How to Contact Us](#)

[How to Register](#)

[How to Subscribe](#)

[Subscriber Services](#)

[Change Your User Name](#)

[Change Your Password](#)

[Forgot Your Password?](#)

[How to Advertise](#)

[Corrections](#)

[Privacy Policy](#)

[Feedback](#)

[Help](#)

In contrast, statements made in a classroom are public and usually not individualized. Because so many people hear them, they are not subject to much uncertainty. Finally, they go to the heart of academic freedom and freedom of speech.

For all these reasons, universities are under no legal obligation to include course content in their procedures for investigating and punishing sexual harassment. Instead, to help assure academic freedom and freedom of speech, universities may wish to handle allegations of sexually inappropriate speech in the classroom with the same stringent procedural protections they currently use to handle other alleged classroom improprieties by faculty members: drunkenness, unpreparedness, using a classroom to proselytize, etc.

If a university seeks to include classroom content in its sexual-harassment code, it should -- to avoid any chilling effect upon academic freedom and freedom of speech for both faculty members and students -- be sure to provide sufficient due-process protections, including a right to be informed about a complaint and to have a hearing. Indeed, it was the failure of George Washington University's administration to include any of these fundamental protections that led our Faculty Senate to unanimously condemn the policy. ...

John F. Banzhaf III  
Professor of Law  
George Washington University  
Washington

---

<http://chronicle.com>  
Section: The Chronicle Review  
Page: B21

---



[Easy-to-print](#) version



[E-mail](#) this article

---

[Copyright](#) © 2001 by The Chronicle of Higher Education

Find that *book* and *buy it*  
[chronicle.com/books](http://chronicle.com/books)

