TUESDAY, FEBRUARY 16, 1993
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CONCURRENT SESSION ONE

A Critique of the Handling of Sex Discrimination
& Sexual Harassment Charges on Campus:
Is a Separate Procedure Needed?

Faculty:

Wendy J. Thompson
Edward N. Stoner, II
Sheila Trice Bell
A CRITIQUE OF THE HANDLING OF SEX DISCRIMINATION & SEXUAL HARRASSMENT CHARGES ON CAMPUS: IS A SEPARATE PROCEDURE NEEDED?

PRESENTED BY:

Sheila Trice Bell
University Legal Counsel
Northern Kentucky University

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A CRITIQUE OF THE HANDLING OF
SEX DISCRIMINATION &
SEXUAL HARASSMENT CHARGES ON CAMPUS:
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Sheila Trice Bell, University Legal Counsel
Northern Kentucky University

I. Policy vs. procedure. Do separate policies necessitate separate procedures?

II. Models for procedures for handling charges of illegal discrimination:

A. Combined procedures for all charges of illegal discrimination, i.e. gender, race, national origin, religion, disability.

B. Separate procedures for gender, race, disability and other forms of illegal discrimination.

C. Hybrid model—Combined procedures for certain forms of illegal discrimination and separate procedures for others. Separation of procedures by distinguishing between procedures for charges of sex discrimination from sexual harassment.

III. Reasons for separate procedures. Examples:

A. The need to emphasize the nature and severity of the discriminatory behavior.

This is especially important in sexual harassment cases because of the nature of sexual harassment and the dramatic differences in likely victim’s and harasser’s perceptions of actions which constitute harassment—particularly those actions which create a hostile environment.

¹ NOTE: This outline assumes basic familiarity and experience with sexual discrimination and sexual harassment laws, case law, policies and procedures.
B. Customizing of procedures to address statutory and case law requirements for various forms of illegal discrimination.

C. Efforts to establish policies and procedures which minimize liability. For example, strong, explicit policies and procedures relative to sexual harassment may become evidence of efforts to create a welcoming, rather than hostile environment.

D. The belief that the facts involved in sexual harassment cases are such that they are dramatically different from the facts involved in other examples of sexual discrimination or other forms of illegal discrimination.

E. Collective bargaining agreement requirements.

F. The protocol of academe, i.e. separate procedures for students, faculty and staff.

IV. Reasons for joint procedures. Examples.

A. Reduction of confusion concerning:

1. What is the relationship between policies and procedures?

2. Which procedure applies? Is the procedure the same for students and employees (faculty, staff, and administrators)?


4. What happens if more than one form of illegal discrimination is alleged?

5. Who administers the policies and procedures? Does administration overlap? If so, do(es) the policy(ies) address overlapping instances of administration?

B. Consistency in policies and procedures.

C. Fairness--due process concerns.
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IV. Current legal environment for sexual discrimination cases.

A. Federal and State Statutes and Regulations—topical examples:

1. Federal Statutes:

   -- Title IX of the Education Amendments of 1972, 20 U.S.C. Section 1681 et seq.

   -- Title VII of the Civil Rights Act of 1964, as Amended, 42 U.S.C. Section 2000e et seq.

   -- Civil Rights Act of 1991, amends the Civil Rights Act of 1964, above, by providing for damages in cases of intentional employment discrimination, by clarifying matters concerning disparate impact cases and by addressing issues of unlawful harassment and intentional discrimination in the workplace.

2. Each state has its nondiscrimination laws and procedures. Obviously, designated representatives of the college/university must be familiar with the interaction between your state agencies and federal agencies.

B. Sexual Harassment

1. Franklin v. Gwinnett County Public Schools, 112 S.Ct.1028, (1992). In this landmark Title IX case, the United States Supreme Court held that a damage remedy was available to a female student in a secondary school who alleged continual sexual harassment and abuse by a male teacher. Through this holding the Supreme Court overruled the District and Appeals Courts dismissal of the complaint on the ground that Title IX does not authorize an award of damages.

2. Robinson v. Jacksonville Shipyards, Inc., et al., 760 F. Supp. 1486, (M.D. Fla. 1991). This is a Title VII case in which the District Court found that the defendants violated Title VII through the maintenance of a sexually hostile work environment and thereby discriminated against the plaintiff because of her sex. The court used the "reasonable
woman standard" for determining whether the defendants' actions created a hostile environment. This case also discusses sexual harassment policies and procedures and mandates that the defendant, company, implement certain policies and procedures which specifically address sexual harassment.

3. **Meritor Savings Bank, FSB v. Vinson**, 106 S.Ct. 2399, (1986). This landmark U.S. Supreme Court case held that sexual harassment is a form of sexual discrimination in the workplace which is prohibited by Title VII.

V. CONCLUSION

A. Review all of your discrimination policies and procedures to be certain how they actually work, particularly for formal complaints. Remember the Civil Right Act of 1991 and the Americans with Disabilities Act (ADA) and how they fit into the overall scheme of nondiscrimination policies and procedures.

B. Be certain that the policies and procedures are clear so that they can be understood by all members of the University community—whether students or employees.

C. Policies and procedures must do more than superficially notify the University of illegal discrimination. They must also entail education and include reasonable sanctions for illegal behavior.

D. While policies must articulate the nature of the illegal discrimination and the fact that it is unacceptable in the University community, try to standardize procedures as much as is appropriate and possible. Hopefully this will minimize confusion and to maximize fairness to the complainant and the alleged discriminator/harasser.

E. Prepare yourself for an extensive education process concerning the advantages of appropriately consolidating procedures and enjoy the collegial interaction.