

AAUP

American Association of University Professors UNH Chapter

Title IX and Mandatory Reporting

9/13/16

On September 7, AAUP-UNH filed a chapter grievance against President Huddleston for his September 1 “Welcome Back” message, which indicates that tenure-track faculty must now report “any and all instances of sexual assault that are disclosed to them.” The AAUP takes seriously the problem of sexual violence on campus and insists that faculty should play a key role in creating policies and procedures to address it.

However, we are intensely concerned about this announced policy of mandated reporting—crafted without meaningful faculty input—as a potential threat to faculty-student confidentiality. President Huddleston’s interpretation of Title IX is not unique, but follows a new nationwide trend that threatens to abridge student safety, academic freedom, and shared governance. It is our position (also following nationwide conversations) that the control of the release of confidential information offered to faculty members by (adult) student victims of sexual harassment and/or sexual violence should be the right of the victim.

We filed our grievance on contractual terms, based on section 5.1.6.1 of our Collective Bargaining Agreement, which states

When the University contemplates policy changes that do not conflict with the provisions of this agreement but that may affect the terms and conditions of employment of the bargaining unit faculty, the University will supply a draft to the AAUP

And section 5.1.6.2, which states

The Chapter will respond within 60 calendar days. If the University and Chapter agree that the draft policy change requires bargaining, negotiations will begin within 30 calendar days.

On the most basic level, then, President Huddleston's missive represents a change in our terms and conditions of employment, and as such, we argue, it must be negotiated through our collective bargaining process.

President Huddleston is articulating a recent (and highly contested) interpretation of Title IX as designating all faculty as "mandated reporters." Many university administrations are presenting this interpretation as though it were a legal fact. It is not. Our grievance is in keeping with the national AAUP report, [The History, Uses and Abuses of Title IX](#) (2016), which tells us:

1. Title IX itself does not actually say anything about mandatory faculty reporting. The sweeping definition of "all university employees" as mandated reporters comes instead from a 2011 "guidance" letter issued by the Department of Education's Office of Civil Rights (OCR). This interpretation of Title IX has been adopted by university administrations eager to protect themselves from litigation and reputational risk, but it is just that—an interpretation, not a law.

2. This interpretation of Title IX does nothing to ensure due process for faculty or students who may be accused of harassment or assault. In fact the national AAUP documents a number of cases where due process has been violated, including one on our own campus (*Silva v. Univ. of N.H.*, 1994).

3. Mandated reporting may be an infringement on academic freedom. Syllabi that are forced to define instructors as reporters may have a chilling effect on student-teacher trust, especially in some of the fields meant to address the spirit of Title IX most directly—e.g., Women's and Gender Studies, where issues of sexual violence are of thematic intellectual concern. The AAUP has already documented cases of Title IX administrative censorship in research and teaching.

4. This is a violation of shared governance. Again, the AAUP takes seriously the problem of sexual violence on campus, proposing that "faculty members and staff can and should play a key role in creating sexual-harassment policies," rather than new "administrative excess [that] frustrates meaningful recognition of the goals of Title IX by prioritizing liability risks over the realities of sexual and other inequalities on campus" (p. 89). By calling on UNH to negotiate new sexual harassment policies (as required by our CBA), we are calling on the administration to involve us actively in the creation of meaningful practices and procedures that can protect all members of our campus community.

To be very clear: we consider the existence of sexual harassment and violence on this campus to be intolerable, and we put the safety of our students and colleagues first and foremost. For these reasons, as well as the glaring violation of the contract, we object to the implementation of the mandated reporter rule.