

MEMORANDUM
May 1, 2014

To: University Cabinet

From: Faculty Senate

Re: Statute of Limitation in the Sexual Harassment Draft Policy

The Senate is quite pleased with the development of the Sexual Harassment Draft Policy ("SHDP"). We appreciate that we were consulted in the development of this Policy and the flexibility of Administration in engaging with our representatives. We are confident that the current SHDP is a better policy for the collaboration that has taken place. And our extensive involvement in its development better ensures faculty buy in when this policy is formally adopted.

There is one matter that representatives of the Administration (University Counsel)-and the Faculty Senate were unable to resolve. That concerns whether there should be a statute of limitations on complaints under this policy. As you probably appreciate, statutes of limitation impose a specified period of time after which claims are barred. Statutes of limitations are ubiquitous in criminal and civil law (although North Carolina has an anomalous rule, more on that later) throughout the United States.

The Faculty Senate appreciates that students subject to sexual harassment will be reluctant to come forward for a variety of reasons. We fully endorse the idea that that reluctance needs to be accommodated in any statute of limitations employed in the SHDP. Thus, we have advocated a statute of limitations of two years but *which would not begin to run until the student involved had separated from the University*. We put forth that constraint on our proposal because our sense is that most of the reluctance of student-victims to come forward is a result of their being on campus where the accused is likely in the same sphere as the student-victim and may hold power over the victim as well as concern about peer reaction. With the statute of limitations clock not beginning to run until separation, the student-victim should be more comfortable about coming forward. This rule might result in claims about conduct as much as five-plus years ago being adjudicated.

It is the case that North Carolina (along with one other state) has no statute of limitations for felonies. It does, however, employ a two-year statute of limitations for misdemeanors. We have previously suggested that if the Administration desired, the faculty would consider a statute of limitations in the SHDP of two years for all conduct that would not constitute a felony (likely applicable to most sexual misconduct) and eliminate any statute of limitations for conduct that would be felonious under North Carolina criminal law (this would encompass rape and second-degree sexual offense, which require an unconsented sexual act). The Faculty Senate believes this would be a reasonable compromise between its views and that presented by University Counsel.

We understand that University Counsel is concerned about its potential liability if it does not pursue old claims should they arise. First, we believe that old claims are most likely to arise because there is a current well-publicized claim that draws prior victims out of their quiescence. Even if the statute of limitations had expired on those claims, we recognize that the University would be able to use evidence of these older claims to support its prosecution of the accused for the current claim. The only thing that would be barred would be a prosecution for the older claim. Moreover, greater protection for the University against it being found liable has the cost of increasing the risk of innocent faculty being found guilty because the passage of time resulted in the deterioration of evidence.

Finally, we have been urged in discussions with University representatives to have faith that the University's grievance process will ultimately find the truth. Yet, across civil and criminal law in the United States we employ limitations periods despite having an adversarial process designed to reach the truth.