

On sexual harassment policy

Professors' group charges Obama administration with undermining academic freedom and due process

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A recent report by the American Association of University Professors (AAUP) lifts the veil—or a portion of it—on the reactionary activities of the sexual harassment industry on university campuses, backed and incited by the Obama administration.

The report, “The History, Uses, and Abuses of Title IX,” argues that the Office of Civil Rights (OCR) of the Department of Education (DOE) has “broadly defined sexual harassment in ways that undermine academic freedom and due process.”

Title IX is a portion of the federal Educational Amendments Act of 1972, which mandates that no one shall, on the basis of sex, be excluded from participation or discriminated against under any education program or activity receiving federal financial assistance.

As the AAUP study indicates, discrimination on the basis of sex was extended to sexual harassment in the late 1970s. It was then generally applied to employees being subjected to demands for sex in exchange for favorable treatment, or the creation of an environment that unreasonably interfered with an individual’s ability to work. The courts began applying this standard to students as well in the 1980s.

In 1999 the US Supreme Court held that educational institutions could be liable in private damage suits for student-to-student sexual harassment if the behavior was sufficiently severe, pervasive and objectively offensive. The Department of Education’s OCR argued that the court’s “hostile environment definition” was consistent with its own definition used in enforcement of Title IX.

The AAUP authors note that the issue of what constitutes a “hostile environment” in terms of sexual harassment has been a contentious one, “particularly when speech rather than conduct is in question.” The study notes that concerns about subjecting speech to the same regulations as assault, about balancing an interest in preventing sexual harassment and academic freedom, about exercising care to protect equal rights and safety without violating rights of free speech were “central to Title IX enforcement in the last decades of the 20th century; this has not been the case at least since 2011.”

In fact, the Obama administration, in conjunction with the identity politics mafia, has launched a sustained attack on freedom of speech and due process.

The ludicrously named Office of Civil Rights, the report explains, “now conflates conduct and speech cases.” It “broadly defines sexual harassment under Title IX as ranging from the most serious conduct of ‘sexual violence’ ... to speech-based hostile environment.” The OCR

“does not include any statements or warnings about the need to protect academic freedom and free speech in sexual harassment cases, including hostile environment allegations. With this conflation of sexual violence (which is also criminal conduct) and sexual harassment (including hostile environment based on speech), protections of academic freedom and free speech seem to have been relegated to the background or ignored completely.”

The broadening of the definition of sexual harassment, to “unwelcome conduct [including speech] of a sexual nature,” writes the AAUP, “creates a seemingly limitless definition of harassment.”

The study points out that the OCR “has given only limited attention to the due process rights of those accused of misconduct.” Central to this was the decision taken by the OCR in 2011 to shift the evidentiary standard calling for “clear and convincing” (highly probable or reasonably certain) evidence to “a preponderance of evidence” (more likely than not) in assessing sexual violence claims “and *all* sexual harassment claims.”

Jeannie Suk, one of the 28 Harvard law professors who protested in 2014 against the Draconian sexual harassment regulations implemented at that university, warned about enthroning “the tenet that an accuser must always and unthinkingly be fully believed. It is as important and logically necessary to acknowledge the possibility of wrongful accusations of sexual assault as it is to recognize that most rape claims are true.”

In May 2014, the OCR, in line with the Obama administration’s “Task Force to Protect Students from Sexual Assault,” announced investigations of 55 universities (a list that later swelled to 169 colleges and universities) for possible violations of Title IX in handling sexual violence and harassment complaints, holding over them the possibility of cutting off federal funding. The AAUP study points out, again, that various OCR letters contained “no warnings ... about the need to protect academic freedom and almost no concerns expressed about due process for the accused.”

Not only is the withdrawal of federal money an issue, but “Universities’ increased corporate and consumer-based approaches and their hiring of risk management consultants fuels their fear of possible OCR scrutiny and encourages university administrators to act precipitously in response to potential or actual OCR investigations.” The result is “a frenzy of cases in which administrators’ apparent fears of being targeted by OCR have overridden faculty academic

freedom and student free speech rights.”

The AAUP proceeds to detail a number of preposterous cases, which, in reality, represent only the smallest tip of the iceberg. In one case, a female sociology professor was essentially forced into retirement for having her students perform role-playing exercises in regard to course material involving the global sex trade. Another female faculty member, in early childhood education, was charged with sexual harassment and violating the Americans with Disabilities Act because of her alleged use of “salty language.”

Cowardly, cowed university administrations have increasingly acted to censor material that might “unsettle students.” As the AAUP study notes, “This state of affairs extends to areas such as criminal law, where faculty increasingly decide to omit rape and sexual assault law units from their courses, fearing some students may experience the content as too emotionally distressing.” Harvard’s Suk “contends that, ironically, after long feminist campaigns to include rape law in the law school curriculum, the topic of rape has once again become difficult to teach.”

One of the most outrageous cases referred to by the AAUP involves Laura Kipnis, a professor of filmmaking at Northwestern University. Kipnis got into hot water after her piece, “Sexual Paranoia Strikes Academe,” was published in the *Chronicle of Higher Education* in February 2015. Kipnis’s amusing, bemused article, in her own words, “argued that the new [sexual harassment] codes infantilized students while vastly increasing the power of university administrators over all our lives.”

In the course of her article, Kipnis referred even-handedly to the example of a philosophy professor at Northwestern who had been accused of “unwelcome and inappropriate sexual advances” by an undergraduate, who later sued the school. For referring to this case and others in her article, Kipnis found herself the target of a Title IX investigation that student activists petitioned the university to pursue, as well as protests on the campus. Her essay was accused, among other things, of having a “chilling effect” on students’ ability to report sexual misconduct.

Kipnis detailed her ordeal in a subsequent article, “My Title IX Inquisition,” where she explains how she “plummeted into an underground world of secret tribunals and capricious, medieval rules [no right to a lawyer, no right to record the hearing, etc.],” about which “I wasn’t supposed to tell anyone.” During her “kangaroo court” session, she remarks, her “Midwestern Torquemadas” doubled as “judge and jury.”

Kipnis was eventually exonerated, thanks no doubt in part to her decision *not* to remain silent as instructed, but to expose and denounce the process.

She writes in her second piece about the truly “chilling effect” the new sexual conduct regulations and the generally repressive atmosphere are having.

“Most academics I know—this includes feminists, progressives, minorities, and those who identify as gay or queer—now live in fear of some classroom incident spiraling into professional disaster. ... A tenured professor on my campus wrote about lying awake at night worrying that some stray remark of hers might lead to student complaints, social-media campaigns, eventual job loss, and her being unable to support her child.”

Kipnis explains that her tenured status at Northwestern permitted her to comment more freely on the issues and to take advantage of the academic freedom associated with that status, something “fast disappearing in the increasingly corporatized university landscape,

where casual labor is the new reality.”

As a consequence, faculty are practicing self-censorship more and more: “With students increasingly regarded as customers and consumer satisfaction paramount, it’s imperative to avoid creating potential classroom friction with unpopular ideas if you’re on a renewable contract and wish to stay employed.”

She continues: “When it comes to campus sexual politics, however, the group most constrained from speaking—even those with tenure—is men. No male academic in his right mind would write what I did. Men have been effectively muzzled, as any number of my male correspondents attested.”

The AAUP study, along with accounts such as Kipnis’s, point to the truly dreadful climate that prevails on American college and university campuses. This material confirms the assessment we made in November 2014, in the wake of the Harvard law professors’ protest.

At the time we commented on the type of privileged social layer, without the most elementary concern for democratic rights or due process, a layer drawing ever closer to the establishment and “increasingly comfortable with authoritarian forms of rule.” For such people, obsessed with gender and racial politics, “the election of an African American to the White House in 2008 was a ‘transformative’ moment ... it accelerated their return to the bourgeois fold.”

For the Obama administration, pontificating about sexual violence serves the purpose of diverting attention from its crimes in the Middle East and Central Asia and the social disaster in America, providing itself—in certain eyes—with a “progressive” veneer and shoring up its support within the affluent identity politics crowd, including the pseudo-left groups such as the International Socialist Organization. The ISO is firmly in the camp of the “rape culture” advocates and has been at the center of numerous atrocities on campuses, including the antics of “mattress girl” Emma Sulkowicz at Columbia University.

It may seem at times that merely irrational impulses are motivating those prosecuting the campaign “on the ground,” so to speak, on American colleges and universities. That would be a very shallow conclusion. The frenzy over gender and race is a peculiar variant of American bourgeois politics. The “sexual violence” activists are spreading ideological reaction at the same time as they aim to extract concessions (programs, fellowships, grants, publications, etc.), intimidate administrations, destroy academic rivals and advance their own careers. These social elements are conducting a ferocious type of intellectual civil war, obsessed as they are with their own social standing and privileges.

Drone attacks and the deaths of thousands, mass devastation in Libya, Syria and Yemen, the advanced preparations for a police state and systematic attacks on democratic rights, the immiseration of ever wider layers of the American population—none of that keeps this upper middle class constituency awake at night. But losing a professorship or a lucrative research project ... well, that makes them see red. A healthier atmosphere on college campuses will only come about when these forces are exposed as the right-wingers they are, and politically routed.



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