

**Report to The President's Council on Women
From the Work Group examining the university's policy on
Consensual sexual relations between faculty and students**

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Report To The President's Council On Women From The Work Group Examining The University's Policy On Consensual Sexual Relations Between Faculty And Students

Introduction

This workgroup of the President's Council on Women's Issues has been charged by the Council to explore whether the Council should recommend to the President that the university re-examine its policy on consensual sexual relationships between faculty and students. In carrying out this charge, the work group has considered the following: Ohio State's current policy, the AAUP's current policy recommendation, the policies of CIC and benchmark universities, the rationale supporting the policies that strongly discourage but do not prohibit consensual sexual relations between faculty and students, policies of other professions, the climate goals enunciated in both the Academic Plan and the Diversity Action Plan, considerations supporting strict policies on consensual sexual relationships between faculty and students, the human costs for students of such relationships, and the costs for the university, particularly in terms of fulfilling the goals as stated in the Academic Plan.

This workgroup concludes that it is time for the university to re-examine its current policy on consensual sexual relations between faculty and students and recommends that a committee be charged to undertake this task.

Ohio State's Current Policy (Appendix 1)

The Ohio State University's sexual harassment policy currently strongly discourages consensual and romantic relationships between supervisor and employee or between faculty and student, but does not prohibit such relationships. The policy prohibits anyone involved in such a relationship from having direct responsibility for evaluating the employment or academic performance or for making decisions regarding the promotion, tenure, or compensation of the other party to the relationship. The policy does note that "these relationships may be subject to concerns about the validity of consent, conflicts of interest, and unfair treatment of other students or employees." The current policy does not explicitly require the reporting of consensual relationships.

AAUP's Policy Recommendation (Appendix 2)

The American Association of University Professors' suggested policy is similar to Ohio State's current policy—it discourages, but does not prohibit consensual sexual relationships between professors and students. Like Ohio State's policy, the AAUP suggested policy recognizes that consensual relationships between faculty and students "are fraught with the potential for exploitation. The respect and trust accorded a

professor by a student, as well as the power exercised by the professor in an academic or evaluative role, make voluntary consent by the student suspect.”

Policies Of CIC And Benchmark Institutions (Appendix 3)

The 15 CIC and benchmark institutions take a variety of approaches to the issue of consensual sexual relations between faculty and students:

- Three prohibit such relationships between faculty and students over whom the faculty has some professional responsibility and discourage such relationships with other students (Iowa, Indiana, and Arizona).
- Five have policies similar to the OSU and AAUP policies—they strongly discourage but do not prohibit sexual relationships with students (Penn State, Michigan, Wisconsin-Madison, Minnesota, and Texas-Austin). However, all five of these institutions, unlike Ohio State, do require that such relationships be reported.
- Three neither discourage nor prohibit such relationships, but do require that they be reported if the faculty member has evaluative authority over the student so that that authority can be reassigned (Northwestern, Michigan State, and Illinois).
- Two caution in their policies that such relationships can be problematic but neither discourage nor prohibit them (Illinois-Chicago and Purdue).
- Two do not address such relationships in any way in their policies (UCLA and Washington).

Rational Supporting Policies That Discourage But Do Not Prohibit

The issue of regulating consensual sexual relations between faculty and students has been controversial throughout the country. Most colleges and universities have policies similar to that suggested by the AAUP and Ohio State’s policy—such relationships are strongly discouraged but are not prohibited.

The arguments against stricter prohibitions center on (1) the right of the student as an autonomous adult to engage in a relationship that is not prohibited by law; (2) preserving freedom of association for both sides of the relationship; and (3) implementation problems—how does an institution enforce such a policy? A number of articles summarize the arguments against strict prohibitions on such relationships. For more information see Appendix 4.

Climate Goals Enunciated In The Academic Plan And The Diversity Action Plan Support A Re-Examination Of OSU's Consensual Relations Policy

The last revision of Ohio State's sexual harassment policy occurred prior to the adoption of the Academic Plan and the Diversity Action Plan. Thus, the policy has not been considered within the context of the goals outlined in those plans. Such consideration is now appropriate.

The overarching premise of the Academic Plan is that "The Ohio State University aspires to become one of the world's great public research and teaching universities." The Academic Plan acknowledges that the environment in which we teach, learn, and research is critical to achieving our goal:

Academic excellence will be enriched by an environment that mirrors the diverse world in which we live. Within this environment, we will come to value the differences in one another along with the similarities, and to appreciate that the human condition is best served through understanding, acceptance, and mutual respect.

The Diversity Action Plan (June 2000) also acknowledged the importance of the university environment when it listed as one of its six objectives creating "a supportive environment that is welcoming for all individuals" both in and outside of the classroom.

In considering how to achieve the climate goals specified in these plans, one must be mindful that inequalities of power exist among the individuals who comprise our university community. Unequal power creates vulnerability to abuse of power that can interfere with creating a climate characterized by understanding, acceptance, and mutual respect which is supportive and welcoming for all individuals. This inequality of power inherent with "consensual" sexual relations between faculty, staff, and students jeopardizes the development of our ideal environment.

Considerations supporting strict policies on consensual sexual relationships

One of the key considerations in determining whether The Ohio State University should adopt a stricter policy on consensual sexual relations between faculty and students is the issue of whether such a relationship can truly be consensual. For consent to exist, there must be the ability, the option, to say "no." If a student feels overwhelmed by the rank, prestige, or powerful position of the faculty member, then true consent may not exist.

True consent also may not exist in situations where the student is so influenced by the power, status, or prestige of the faculty or staff member that the student consents to the relationship only because of the power, status or prestige, and absent those would not consent.

For example, Professor David Archard (2001) examines the notion of “exploited consent”. Archard (2001) defines exploited consent as that which is “given because of the unequal nature of the relationship between two people”. The less powerful person consents to the relationship willingly and voluntarily, but only because of the position the more powerful person holds. If the more powerful person did not hold that position, the less powerful would not likely have consented. Archard (2001) describes the concept within the context of professional relationships:

I would suggest three characteristics of professional relationships that are relevant. The first is an ethos of intimacy, closeness, trust, openness, and confidence. The second is the relative dependence and vulnerability of the client. The third is the esteem, respect, and admiration that the client has for the professional. All of these dispose the client to be more open and receptive to the proposals of the professional.

If, Archard (2001) asks, the less powerful person would not have consented to the relationship absent the position held by the more powerful person, can this be true consent?

Professors and students, particularly graduate and professional students, share the same three characteristics that Archard (2001) attributes to professional relationships. Thus, one can question whether students truly can consent to a sexual relationship with a faculty or staff member.

An imbalance of power is inherent in the teacher-student relationship, as well as the relationship between a student and a staff member. The student may defer to the teacher or staff person as an expert, a respected figure whose authority is unassailable. This power imbalance can be further exacerbated by the existence of other factors such as race, gender, sexual orientation, international student/scholar status, command of the English language, and previous sexual victimization.

The age difference that might be encountered in a faculty/staff and student relationship might also indicate a vast imbalance of power based on the cognitive and psychosocial development level of the student. A number of models of development of students during the college years raise questions about developmental issues that might interface with a traditional undergraduate student’s decision to engage in, and the experience of, a consensual relationship with a faculty member (Chickering & Reisser ; Sanford; Perry).

In Perry’s model, for example, most first- and second-year college students are found to be in the Dualism stage. The hallmark of this stage is a deferral to “authorities,” who are assumed to know the answers to all questions. It is the role of the authority to teach the student the answers and the role of the student to soak up all the information held by these authorities. The “classic” authority at the university is the professor, who is

seen as older, wiser, and the possessor of all knowledge in the field (at least all knowledge that is currently known).

For a student who is a Dualist, and who is invited into a consensual relationship with a faculty member, a normal and natural conclusion might be to assume that the faculty member knows best and, thus, that the relationship is desirable and good for the student. Additionally, the Dualistic thinker might believe that such an informed and esteemed professor must see something “special” in the student such that the professor would even initiate such a relationship. A normal and natural Dualistic response would be to defer to the greater wisdom and knowledge of the authority figure. This view of the position of the professor and the role of the student necessarily compromises the student’s ability to analyze the situation at the same level as the professor. At this stage, the student is *cognitively unable* to process information at a higher level, which would allow for the questioning of the authority’s position and the testing of various perspectives (Hornsby, 2004).

In addition to relative cognitive development, we must not lose sight of other aspects of the “uneven playing field.” We would be naïve to think that characteristics of race/ethnicity, class, gender and sexual orientation do not affect the relative power that individuals bring to any interaction. Many authors and educators have extensively examined how these characteristics affect an individual’s ability to influence and be influenced, to exploit and to be exploited (Kivel, 1996; McIntosh, 1988; hooks, 1994).

Power, and hence the ability to give uncoerced consent, is also affected by the international status of the parties involved. It seems obvious that a student, coming to the United States from another country, with family and friends perhaps thousands of miles away, might feel less powerful than a United States citizen. Furthermore, student visas are often dependent on academic status and enrollment in specific programs of higher education, creating a strong motivation on the part of the student to try to please those who have the power to permit or deny such academic status. In addition, the ability to communicate clearly and to understand the English language, as well as American cultural customs, can also impact a student’s ability to recognize manipulative behavior and respond effectively.

Finally, if the student has a history of previous sexual victimization, this can influence the student’s ability to recognize and react effectively against sexual exploitation. Lowered self-esteem, feelings of disempowerment and the adoption of faulty coping skills are some of the negative psychological and behavioral outcomes associated with sexual victimization. These outcomes, paired with increases in high risk behaviors are often seen in college students who have survived sexual abuse, and can negatively impact the student’s ability to deal with the manipulative behavior of an authority figure (Miller, Moeller, Kaufman, DiVasto, Pathak, Christy, 1978; Finkelhor, 1984).

Personal Cost to Students and Impact on Educational Experience

In addition to the issue of exploited consent, a strong argument supporting a stricter policy is the cost to students who are involved in such relationships. Archard notes in his article that “what studies there have been suggest that the vast majority of students who enter into affairs with their lecturers suffer as a consequence. They do not subsequently report that they were glad to have had the experience. Quite the contrary” (Archard, 2001).

While many faculty and staff know of cases where a faculty/staff/student sexual relationship ended amicably, many of us also know of cases where the relationship ended in disaster with long-lasting negative consequences for the student, department, or institution. In addition, the offices to which students turn for support are aware of some instances where particular faculty have engaged in a pattern of short-term sexual relationships over the years with a number of students, many of which have ended in disaster for the students. In some of these cases, the relationship did not appear to be the result of spontaneous attraction, but rather the outcome of the premeditated targeting, seduction and exploitation of a vulnerable student. At the end of such relationships, these students often experience severe emotional and psychological consequences, depression, and even suicidal behavior. Students may come to question their own academic accomplishments, wondering if their grades are the result of hard work and talent, or merely the “reward” for their sexual relationship with their professor. They may change majors or drop out of school altogether, sacrificing years of investment in their education and career.

Moreover, it is not just the student in the relationship who is affected. Other students frequently feel negatively impacted by “consensual” sexual relationships between faculty and students:

Whether or not there is favoritism in awarding of grades, financial assistance, or special opportunities, there may be the *perception* or *suspicion* of favoritism when a consensual relationship is present. This perception or suspicion can impact the extent to which other students in a class or program choose to apply for such opportunities or the level at which they engage in their program or the class (Hornsby, 2004).

Thus, for both the student in the relationship and for other students in the class or program, the quality of the educational experience is negatively impacted by such relationships. In addition, in cases where the relationship ends badly, the faculty and staff, and even the reputation of entire programs and departments, can be negatively impacted. This can affect the ability of the institution to recruit and retain both students and faculty, as well as the ability of the institution to raise funding, both public and private, that is essential for continuing success.

Finally, existing research on the prevalence and consequences of consensual sexual relationships supports the assessment, discussed above, of the damage students

can suffer as a result. Existing research primarily investigates relationships involving a graduate student and a faculty member, including instructors, advisors, clinical supervisors, and research advisors. There does not appear to be any empirical research regarding consensual relationships between undergraduate students and university faculty or staff, excluding relationships between collegiate athletes and coaches. Almost all existing research focuses on consensual sexual relationships between female students and male faculty or staff members.

Studies by Pope, Levenson, and Schover (1979) and Glaser and Thorpe (1986) had similar findings, indicating that 17% of females with graduate psychology degrees had sexual contact with at least one faculty member during their graduate training. In the study conducted by Pope et al. (1979), one in four women who received a Ph.D. within six years prior to the study had sexual contact with an educator. Glaser and Thorpe found that two-thirds of these sexual contacts occurred before or during an ongoing working relationship between the faculty member and student. In a survey sampling female graduate students across academic disciplines, male faculty members asked 22% of graduate women on dates, and 60% of these women dated the faculty member. In this sample, 13% of the entire sample dated a faculty member at least once during graduate school (Schneider, 1987). Fitzgerald, Weitzman, Gold & Ormerod (1988) found that 26% of male faculty members across academic departments reported sexual involvement with female students.

OSU staff that counsel students who have been involved in such relationships report many disastrous outcomes for the students. This assessment is supported by research that indicates numerous negative consequences for students who have consensual relationships with university faculty or staff members. Negative consequences include feeling coerced or exploited (Irvine, 1997; Plaut, 1993; Schneider, 1987), feeling that there was a “conflict of interest” or ethical problem with the relationship (Glaser & Thorpe, 1986; Jacobs, 1991; Tabachnick, Keith-Spiegel, & Pope, 1991), emotional and psychological consequences (Plaut, 1993), a compromised ability to get the most out of the learning experience (Conroe & Schank, 1989; Plaut, 1993), negative repercussions for one’s academic career after the relationship ended (Irvine, 1997) and in some cases, dropping out of the graduate program or transferring to another program or university, due to the negative impact of the relationship (Schneider, 1987). Other negative impacts on students were dealing with perceptions of favoritism from classmates, having difficulty establishing professional independence, and having disrupted the “ability to acquire those skills that are necessary to become an autonomous professional” (Conroe & Schank, 1989). Women who said “no” to social invitations from professors experienced negative consequences as well, such as receiving fewer opportunities for academic advancement (Conroe & Schank, 1989; Glaser & Thorpe, 1986; Irvine, 1997). Schneider (1987) found that 46% of women who were asked or pressured to date a faculty member “were fearful of jeopardizing their academic futures.” Glaser and Thorpe (1986) asked women to evaluate their feelings about the relationship at the time that it happened, and at the time that they were surveyed. While only 28% felt coerced at the time of contact, 51% agreed with this statement later. Likewise, 36% saw an ethical conflict with the relationship at the time, but 55% agreed with this statement

later. Ultimately, 30% of women who had intimate relationships with professors felt somewhat or very coerced, and 33% believed that the sexual relationship “greatly hindered” the working relationship.

It is important to note that several important gaps exist in the research. Existing studies sample women with graduate degrees, or women currently enrolled in graduate programs. It is impossible to determine how many women discontinue graduate studies after such a relationship ends. A few articles and chapters give anecdotal or case examples, but few use quantitative research, and those that do rarely look at impact. For example, no study asked women who were in consensual relationships if they received a lower grade, had slower academic progress on thesis or dissertation activities, or had other specific consequences.

In spite of the gaps in the research, however, both the experiences of our Ohio State professionals who counsel students as well as scholarly research that does exist show the costs to students of being involved in sexual relationships with faculty members.

Policies of Other Professions (Appendix 5)

Most licensed professionals in Ohio have stricter standards with respect to consensual sexual relations than we have for our faculty. Most professionals are governed by codes of conduct or ethics that prohibit consensual sexual relationships with clients.¹ Some also prohibit sexual contact or relationships with former clients/patients, with key third parties associated with the client/patient, and some prohibit sexual contact even after the client/patient relationship has ended.

Counselors, Social Workers, Therapists

The most restrictive codes are for counselors. Counselors, social workers, and marriage and family therapists are prohibited from the following:

- a. engaging in sexual activities or sexual contact with current clients, even consensual relationships,
- b. engaging in sexual activities or sexual contact with former clients within two years after terminating the therapeutic relationship,
- c. counseling persons with whom they have had a sexual relationship, and
- d. engaging in sexual activities or sexual contact with a client’s relatives or other individuals with whom clients maintain a close personal relationship when there is risk of exploitation or potential harm to the client.

¹ Dentists and accountants have no policies prohibiting consensual sexual relations with clients, although it is recommended that dentists avoid relationships that could impair their professional judgment or risk the possibility of exploiting the confidence placed in them by their patients.

Pastoral counselors are prohibited from engaging in sexual behavior with current clients, even when the client invites or consents to such behavior; the prohibition extends to such behavior with former clients with no time limitation on the prohibition.

Attorneys

The American Bar Association Model Rules of Professional Conduct prohibits attorneys from having a sexual relationship with a client unless a consensual relationship existed before the client-lawyer relationship commenced. An Ohio task force is currently considering a draft of a conflict of interest policy that would adopt the ABA Model Code.

Medical Providers

The American Medical Association's Code of Ethics prohibits sexual contact, including consensual contact, with current patients. It also prohibits sexual contact with former patients if the physician uses or exploits trust, knowledge, emotions, or influence derived from the previous professional relationship. Physicians further are prohibited from engaging in sexual or romantic relationships with "key third parties."

Osteopaths are prohibited from having sexual contact with any current patient as well as with any patient upon whom a medical or surgical procedure has been performed.

For podiatrists, sexual intimacy with patients, students, residents, or employees is inappropriate unless the personal relationship precedes the professional one.

Physicians' assistants are prohibited from becoming sexually involved with patients and it may be considered unethical to become sexually involved with former patients or key third parties.

For chiropractors, sexual intimacies with patients are considered unprofessional and unethical.

Massage therapists are prohibited from engaging in any sexual conduct or sexual activities with their clients.

Coaches: From UNITED STATES OLYMPIC COMMITTEE COACHING ETHICS CODE

Exploitative Relationships (a) Coaches do not exploit athletes or other participants over whom they have supervisory, evaluative, or other authority. (b) Coaches do not engage in sexual/romantic relationships with athletes or other participants over whom the coach has evaluative, direct, or indirect authority, because such relationships are likely to impair judgment or be exploitative.

Philosophy Prohibiting Sexual Relationships

Thus, Olympic coaches, counselors, including pastoral counselors, therapists, social workers, attorneys, doctors, osteopaths, podiatrists, physicians assistants, chiropractors, and massage therapists are held to a higher standard than are professors at The Ohio State University, if one views students as analogous to patients/clients.

The philosophy supporting all of these prohibitions is the recognition that the power in the relationship is almost always unequal, with the client/patient frequently being in a vulnerable position and hence subject to unfair exploitation, even in situations where the client/patient consents to the relationship.

The professional relationships described above are primarily one-on-one relationships, rather than with groups such as classes of students. However, many would argue that students stand in much the same relationship to their professors as do clients/patients to their lawyers, doctors, and therapists. Graduate and professional students, in particular, frequently work one-on-one with their professors, and undergraduate students have ample opportunities for one-on-one relationships. More importantly, students are in the same vulnerable position with their professors and staff as are clients and patients with other professionals, and hence students are equally subject to unfair exploitation.²

A reasonable person could question why we have lower standards for our faculty regulating sexual relations with our students than the standards governing virtually all licensed professionals in Ohio.

Costs for the University

The costs to the university are clear. Permitting consensual sexual relations between faculty and students threatens our ability to create and sustain the climate that both the Academic Plan and the Diversity Action Plan view as essential if Ohio State is to attain status as one of the great public research and teaching universities.

Recommendations

1. The President should appoint a committee with the charge of examining the current consensual sexual relation policy to determine if the policy should be revised.

² We note, however, that the need for regulation does exist even in group settings such as classes. Sexual relationships between the faculty member and a student in the class can potentially poison the group learning dynamics for the other students in the class.

2. In addition to any issues the committee determines need to be examined, the following issues should be considered:
 - a. What should be the standard governing consensual sexual relations between faculty and students?
 - i. Retain the current strongly discourage standard.
 - ii. Prohibit such relationships when the faculty member has some professional responsibility for the student and strongly discourage such relationships with other students (following Iowa, Indiana, and Arizona).
 - iii. Prohibit such relationships with all students even when the faculty member has no professional responsibility.
 - a. Undergraduate only.
 - b. Undergraduate, graduate, and professional.
 - b. Prohibitions regarding minors—clarify that this is illegal
 - c. Regardless of the standard that is adopted, should faculty be required to report to their supervisors or other university officials (and should it be reported in writing) consensual sexual relationships with students?
 - i. Privacy concerns, particularly with respect to same-sex relationships.
 - d. Should the same rule be applied to staff who supervise students?
 - e. Should the consensual sexual relationship policy be separate from the sexual harassment policy?
 - f. What are the sanctions for violating whatever policy is adopted?
 - g. Should students involved in these relationships be subject to sanctions?
3. The make up of the committee should include the following:
 - a. Appointees from the following University Senate committees: Steering, Council on Academic Freedom & Responsibility, Council on Student Affairs, Diversity Committee,
 - b. At least one faculty member with expertise on student development,
 - c. Representatives from the AAUP, the President's Council on Women, Office of Human Resources, Rape Education and Prevention Program, Counseling and Consultation Service, the Student Advocacy Center, and
 - d. Three students – graduate, professional, and undergraduate.
4. The committee should conclude its work by submitting its written recommendations to the president by June, 2005.

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