THE LEGAL ASPECT OF FACULTY/STUDENT RELATIONSHIPS IN HIGHER EDUCATION

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ABSTRACT

For as long as institutions of higher learning have existed, issues have arisen as to how to handle the delicate subject of faculty/student relationships. Numerous questions currently exist on the topic of the appropriateness of such relationships, whether consensual or not. Does the issue fall under sexual harassment? How do these relationships occur? Are the students permanently "damaged" by such relationships"? What exactly are the legal aspects of such relationships? In an attempt to answer some of the questions, the author will delve into the laws pertaining to faculty/student relationships. In doing so, one must realize that laws occur because of an idea that something needs to be changed or corrected. However, only Congress can introduce the idea as a bill. It then goes through many processes before being signed into law by the President (Arie, B., 2011). These laws can result from or be the basis for cases that occur between individuals. Additionally, policies are adopted within universities based on laws. The purpose of this paper is to take a closer look at the legal aspect of relationships between faculty and students in higher education, in which laws, as well as cases and policies will be analyzed.

INTRODUCTION

According to Ei and Bowen (2002), there are five types of faculty/student relationships that could exist. They are "sexual, group activities, doing favors, spending time alone with a faculty member, and business relationships" (Ei & Bowen, 2002). The appropriateness of these relationships were analyzed and documented in their study of 480 undergraduate students from a medium-sized Midwestern university, and the results indicated that students viewed the sexual relationships as the most inappropriate. The second area considered inappropriate was the aspect of students and faculty members exchanging favors such as borrowing money. Spending time alone with faculty was actually a neutral zone in the mind of these students in the survey, while group relationships with the faculty were deemed most appropriate followed by business relationships such as a student babysitting or doing some other type of work for the faculty member (Ei & Bowen, 2002). The scope of this paper will focus more on the sexual aspect of faculty and student relationships which is not only an ethical issue but has a legal scope involved.

As documented by Jafar (2005), the sexual aspect of faculty student relationships causes very strong emotions when discussed. Relationships such as these bring up the issue of ethics and morality, and people question how this situation could occur when faculty is generally deemed to be the adult or parent figure in the relationship. In most cases, the relationship involves a female who is a student and a male who is the faculty member. The analogy given by Jafar (2005) is that the female is often portrayed as being "naïve and wary", a "Little Red Riding Hood" type. Since this image is the public perception of these types of relationships, they fall under the category of potentially being coercive and abusive, often exploiting the student. This perception will bring the relationship to the status of being "sexual harassment" (Jafar, 2005).

TITLE VII

Sexual harassment in general falls under the guidelines of Title VII of the Civil Rights Act of 1964. The Civil Rights Act was Public Law 82-352 (78 Stat. 241), and it prohibited the hiring, firing, or promoting of individuals based solely on sex, race, religion, color, or national origin. The Equal Employment Opportunity Commission (EEOC) was established under Title VII of the act to enforce the law (Teaching with documents, 2011). Courts and employers generally use the definition of sexual harassment contained in the guidelines of the U.S. Equal Employment Opportunity Commission (EEOC). This language has also formed the basis for most state laws prohibiting sexual harassment (Sexual harassment, 2005).

In this context, the legal definition for sexual harassment is:

> Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when
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> 1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
> 2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals, or
> 3. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. (29 C.F.R. § 1604.11 [1980]) (Sexual harassment, 2005).

TITLE IX

The way that Title VII applies to sexual harassment at the university level is because it is applicable to employees, even student workers. In regard to sexual harassment of students in general, Title IX is the statute under which these cases would be considered. Title IX was enacted in 1972 as an Educational Amendment which was implemented by the Office for Civil Rights (OCR) (Dziech & Weiner, 1984). It is one of the many statutes on discrimination that is regulated by the Equal Employment Opportunity Commission, and it forbids discrimination based on sex within the educational system (Teaching with documents, 2011).

Under Title IX guidelines, there exist two kinds of sexual harassment. They are *Quid Pro Quo Harassment* and *Hostile Environment Sexual Harassment*. The U.S. Department of Education has defined them as follows:

> *Quid Prof Quo Harassment*—A school employee explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances, requests for sexual favors or other verbal, nonverbal or physical conduct of a sexual nature. Quid pro quo harassment is equally unlawful whether the student resists and suffers the threatened harm or submits and thus avoids the threatened harm.
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> *Hostile Environment Sexual Harassment*—Sexually harassing conduct (which can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature) by an employee, by another student, or by a third party that is sufficiently severe, persistent, or pervasive to limit a student's ability to participate

> in or benefit from an education program or activity, or to create a hostile or abusive educational environment (Sexual harassment in education, 2009).

Consequently, both Title VII and Title IX are the "umbrellas" under which the issue of sexual discrimination and harassment of students becomes relevant. Numerous cases have fallen under the "realm" of Title VII; however, there is a limited number that have been enforced by Title IX (Dziech & Weiner, 1984). One of the early cases was in 1977 with *Alexander v. Yale University.* This was a case where a student claimed that she received a lower grade in a course because she did not respond to the sexual advances of her male professor. She claimed that Yale University tolerated such behavior, and that it created an atmosphere that was not conducive to learning. As part of the suit, the plaintiff asked to have a grievance procedure implemented to provide relief for such complaints. The court dismissed the claims with the case being appealed and again dismissed in 1980 in the U.S. Court of Appeals. The Appeals Court contended that plaintiff had not given substantial proof of her case, and that Yale had indeed implemented the grievance policy she requested, thus making the complaint "moot". The entire significance of the court decision is that it clearly puts the issue of sexual harassment and, consequently, sex discrimination under Title IX (Dziech & Weiner, 1984). The actual reading from the court case says:

> It is perfectly reasonable to maintain that academic advancement conditioned upon submission to sexual demands constitutes sex discrimination in education (i.e. Title IX), just as questions of job retention or promotion tied to sexual demands from supervisors have become increasingly recognized as potential violations of Title VII's ban against sex discrimination in employment (Alexander v. Yale University, 1977).

Another aspect of the Title VII and Title IX regulations is that not only are they the vehicle for which sexual harassment claims are processed and tried, but they can also be a tool for affecting outside funding in the form of federal dollars if the college or university does not comply with proper policy and procedures. While there seems to be no real indication that sexual harassment complaints actually endanger federal assistance, these two regulations present a forum which enforcement agencies use as a very persuasive argument against such complaints being fostered. Complaints arising under Title IX can be filed with any Federal agency which grants school assistance, or another option is that a private suit can be filed (Dziech & Weiner, 1984).

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STATE LAWS

Federal law controls the guidelines of sexual harassment unless state law offers more protection. Many states have extensive laws regarding sexual harassment. As of 2015, sixteen states required sexual harassment training for either state employees, or employers with 15 to 50 or more employees. These states are: California, Connecticut, Florida, Illinois, Iowa, Maine, Michigan, Nevada, New Mexico, North Carolina, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, and Washington. Nine states recommended sexual harassment training. These states are Colorado, Hawaii, Maryland, Massachusetts, New Jersey, Ohio, Rhode Island, Vermont, and Wisconsin. Unfortunately, 25 states have no requirements for sexual harassment training (Rosen, 2015).

COURT CASES

Court cases establish the basic precedent for rulings which may occur in a case. There have been several over the past few years which are landmark cases in the area of relationships which constitute sexual harassment. The premier case involving Title VII which brought up the issue of a voluntary vs. involuntary sexual relationships was *Meritor Savings Bank, FSB v. Vinson, et al.* (1986). This case occurred during the early 1970s when Mechelle Vinson was hired by a vice president named Sidney Taylor for employment at Meritor Savings Bank. She later became intimately involved with him. Over the course of her employment, she advanced from teller to assistant branch manager. Her advancement was deemed to be merit based; however, when she was terminated for taking excessive leave in 1978, she filed suit against the bank under Title VII claiming sex discrimination. Her claim was that although she had at least 40-50 "voluntary" sexual encounters with Taylor, they were unwelcomed and created a hostile work environment. The district court concluded that it was a voluntary relationship and unrelated to her work; however the appellate court reversed this judgment and remanded the case for further determination as to whether a hostile work environment existed. The Supreme Court affirmed the judgment of the appeals court. The implications of this case as it may apply to faculty/student relationships are that just because a sexual relationship appears to be voluntary, the "unwelcome" aspect can create a hostile work environment. Additionally the appeals court held the employer liable for the conduct of their supervisors because they were acting as agents of their employers (Meritor Savings Bank, FSB v. Vinson, et al., 1986).

In regard to faculty/student relationships under Title IX, one of the premier cases is *Korf v. Ball State University* (1984). Dr. Korf initially had been placed on probation and later terminated from his position in the Department of Fine and Applied Arts at Ball State University in February, 1981, after he was accused of making unwelcomed sexual advances toward several of his students, who incidentally were male. At a hearing of the University Senate Judicial Committee, a student related that Dr. Korf did, indeed, give money and gifts, also promising good grades in exchange for sex. The district court granted summary judgment to Ball State, and Dr. Korf appealed on the grounds that because of equal protection and substantive due process, the summary judgment was not the appropriate ruling. The question was whether Dr. Korf should have been given adequate notice prior to termination. The appeals court ruled in favor of the university (Olivas, 2006).

One of the major arguments that Korf used in his appeals was based on The American Association of University Professors (AAUP) Statement of Professional Ethics which had recently been adopted by Ball State. The AAUP statement has five major points, none of which specifically addresses sexual conduct for faculty/student relationships. The Ball State committee used section II as a basis for the initial probation and later termination of Dr. Korf assessing that:

> Professors demonstrate respect for students as individuals, and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to assure that their evaluations of students reflect each student's true merit….They avoid any exploitation, harassment or discriminatory treatment of students (Olivas, 2006, p. 506).

However, the court contended that

> As is the case with other laws, codes and regulations governing conduct, it is unreasonable to assume that the drafters of the Statement on Professional Ethics could and must specifically delineate each and every type of conduct (including deviant conduct) constituting a violation. Nor have we been cited any case reciting that the language of the Constitution requires such precision (Olivas, 2006, pp. 510-511).

Therefore, the overall conclusion was that statements such as the one by the AAUP do not necessarily have to "spell out" every type of conduct but that some may be left for interpretation (Olivas, 2006).

Dr. Korf then argued that his relationship with one student was consensual and that these types of "private and consensual" faculty and student relationships occurred frequently and were still continuing at Ball State (Olivas, 2006). According to Jafar, (2005) teachers are viewed as having a type of "special status" and because of this status, even a consensual relationship that becomes sexual is viewed as being amoral and unethical. The AAUP Statement additionally makes it clear that university professors have certain ethical obligations to their students and society as a whole. Therefore, the University committee held that: "Dr. Korf's conduct is not to be viewed in the same context as would conduct of any ordinary 'person on the street'" (Olivia, 2006). With the above facts in consideration, the appeals court contended that they believed that the "University's interpretation of the AAUP Statement was entirely reasonable and rationally related to the duty of the University to provide a proper academic environment" (Olivas, 2006). Therefore, the appeals court upheld the termination of Dr. Korf (Olivas, 2006).

A significant case where the findings were in favor of the faculty member was in *Brown v. California State Personnel Board* (1985). In this case, Brown was an associate professor who had made suggestive comments and "passes" to two female students in 1975. The students did not tell anyone until the faculty member went up for tenure, and they then admitted the incident. The California State University at Sacramento officials did nothing at that time. Then in 1979, another incident occurred with a female student when he asked her out on a "date" and said he would like to "make love to [her]" (Olivas, 2006). This incident brought a Title IX complaint which resulted in the dismissal of Brown for "unprofessional conduct and failure to perform the duties of his office" (Olivas, 2006). The trial court ruled in favor of the university; however, the appeals court reversed the judgment and ordered the reinstatement of Brown to his former position. This ruling was partially because of the time lapse in the first incident when the California State University at Sacramento failed to take action. They also held that a pattern had developed of sexual harassment on the part of Brown, yet without being allowed to consider the first incidents, no pattern could be established. Additionally because the university admitted that it did not have any "rule, regulation, law or policy against faculty and students dating each other, or even living together or marrying one another" (Olivia, 2006), there was no basis for the claim that the "advance impinged upon Brown's professional duties" (Olivas, 2006). This case appears to be significant to the author in the fact that it implies that universities should have policies in place to prohibit behavior between faculty/students, and that if there is a violation immediate, (not delayed) action should be implemented.

POLICIES

As noted in the cases above, if policies are not in effect for the university, the case can obviously be awarded in favor of those who have acted inappropriately. Likewise, if the policy is vague, the case may be lost. This situation occurred in 1996 when an appeals court indicated that the policy of San Bernadino Valley College was a "vague policy [which] discourage[d] the exercise of first amendment freedoms" (Euben, 2003). Additionally, the 1997 Title IX guideline on policies were reaffirmed in 2001 by the U.S. Department of Education. They stated that the institutions need to "formulate, interpret and apply [their] rules so as to protect academic freedom and free speech rights" (Euben, 2003).

According to Cartwright (2016), there are several approaches that could be taken in regards to policies that a university can instigate. The first would be a "bright-line test" where there is total objectivity in regards to the policy with no room for interpretation. In this case the relationship would be banned between faculty and student regardless of whether a supervisory situation exists. A second approach would be limited prohibition or limited prohibition plus discouragement. The third approach is merely discouraging any relationship, and the last approach is to simply have no policy on the subject.

Clearly having policies in place as in the Korf case puts the university in a better legal position than in the Ball case where there were no policies. However, even with policies in place, the universities are still challenged. In *Saxe v. State College Area School District* (2001), the school district was deemed to have an anti-harassment policy that violated the First Amendment by having certain restrictions in the school policy. While the district court contended that the policy was constitutional and dismissed the case, the appeals court reversed the decision. The appellate court said that the policy of the school district prohibited speech that would not have fallen under the definition of harassment, either in state or federal law. They went on to say that the restrictions were not necessary, and that it would not interfere with the work conducted at the school or the student's rights (Saxe v. State College Area School District, 2001).

Faculty and organizations that represent faculty should be involved in the process of policy formation on the subject of sexual harassment and faculty/student relationships in general. There are policies from the American Association of University Professors (AAUP) that prohibit sexual harassment by faculty. There is also a Statement on Professional Ethics stating that professors are told to "avoid any exploitation, harassment or discriminatory treatment of students" (Euben, 2003). Examples of policies that have been implemented over the years are as follows:

In 1984 the University of Minnesota initially approved a policy on sexual harassment that followed that of Title VII. It first defined sexual harassment as "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature" (Dziech & Weiner, 1984). The policy continued to explain that it is the responsibility of the administration to uphold Title VII and that every effort will be made to protect the rights of those who claim to have been sexually harassed. They further stated that in order to make the determination of what "constitutes sexual harassment, those entrusted with carrying out this policy will look at the record as a whole and at the totality of the circumstances such as the nature of the sexual advances and the context in which the alleged incidents occurred" (Dziech & Weiner, 1984). They concluded by stating that remedies will be on a case by case basis. The president of the University of Minnesota addressed this policy in a letter in 1989 stating that "sexual harassment is a real problem at the University. Each year we deal with a number of cases that affect people's lives and careers and destroy some part of our fragile academic environment" (Dziech & Weiner, 1984). As for

consensual relationships between faculty and students, the University of Minnesota stated that while not explicitly forbidden, they are not encouraged. They issued a warning that it may be very difficult for a faculty member to "prove immunity on grounds of mutual consent" (Diech & Weiner, 1984).

Approximately 10 years later, in 1993, the University of Virginia instituted a policy prohibiting faculty/student sexual relationships; however, the policy of prohibiting any type of romantic relationship between them was not passed. This area is a gray one in regards to sexual harassment policies. While most universities will contend that consensual, romantic relationships are inappropriate while the student is an undergraduate, they are not often explicitly forbidden. Many variables come into play in looking at this type of relationship, "individual maturity levels, professor's marital status, and questions of direct supervision play a role" (Lombardi, 1993). All parties involved contend this type of relationship is a complex issue. Some individuals view consensual relationships as exploitative while others cite cases of happy, long term relationships or marriages as a result, although these are rare. An appropriate suggestion would be that if there is a mutual relationship that has developed between a faculty member and student, it would be wise to allow the status of one of the individuals to change before it is pursued, (i.e. the student graduates). This was indeed the situation of Margaret Keady Goldberg who married her English professor two years after graduating from Marymount College. However, in their situation, they waited until two years after graduation before even dating (Lombardi, 1993).

Another 10 years went by and in 2003, the University of California passed a policy that bans both "romantic or sexual" relationships between faculty and their students. One of the professors at the university actually questions what the term "romantic" means in the context of the ban. Is it a strictly personal relationship, or would the ban be on even going for coffee? This question has yet to be fully answered; however, it appears that the ban pertains to situations in which faculty have "academic responsibility" over the student. While the policy was overwhelmingly approved, there were about 60 faculty members who expressed objection to the policy of The University of California because they stated it is very difficult to know which students one will have "academic responsibility over" (Rimer, 2003). The University has had a sexual harassment policy in place for many years, but this new ban is one of a growing trend among schools which include "Stanford, Yale, Duke, the University of Virginia, Ohio Wesleyan, and the University of Iowa" (Rimer, 2003). The College of William and Mary has the strictest policy that does not allow any type of consensual relationship between faculty and any undergraduate student. However, the faculty at the University of California at Berkeley believes that it would be better to assume that faculty and students will have liaisons from time to time, and when that occurs, faculty should remove themselves from the position of supervision over the students (Rimer, 2003).

REGULATION

Regulation of these types of relationship could prove to be difficult. A question to consider is whether or not student rights are violated by forbidding or monitoring these relationships? Consideration to student rights was given by Cartwright (2016) when she suggested that policies regarding amorous relationships between faculty/staff (employees) and students could violate federal or state constitutional rights to freedom of speech, association, and privacy. These questions are of particular concern for public institutions, rather than private institutions which typically have a strict culture and interests which must be maintained and often coincide with the mission of the private institution.

However, the U.S. Department of Education is watching very closely the employee-student amorous relationship situation. They believe these types of relationships have the potential to lead to sexual misconduct. And while there are definitely laws protecting students who are underage from having relationships of this nature, Title IX does not forbid them for higher education students (Cartwright, 2016). However, the U.S. Department of Education has expressed a strong warning stating that even though a student meets the legal age of consent, it is strongly presumed that a sexual relationship between the school employee and student is nonconsensual (Office for Civil Rights, 2014).

Cartwright (2016), states that institutions "should stay abreast of federal and state law and guidance on related issues". Collective bargaining may be needed in this type of regulation. And, it should be noted that requiring access to social media accounts can be a violation of state privacy laws. Additionally, when institutions draft policies, which could extend from an outright ban of the relationships to discouragement of them, the institution should be careful to avoid discrimination, particularly in gender or marital-status. Consequently, because of regulation difficulties, some institutions choose a policy of discouragement or no policy at all, in which case situations are addressed on a case-by-case basis, allowing for more flexibility (Cartwright, 2016).

OTHER ISSUES

A legitimate question in regard to analyzing faculty/student relationships would be "How do these relationships occur?" A possible answer to this question could be that it is the imbalance of power that exists between faculty and their students. This can occur because the initial relationship between the two is much like a parent/child relationship. A very close bond may develop between faculty and students because they are working so closely together, such as when students are involved with the faculty member's research efforts. Additionally, if an individual faculty member has a common interest with a student, this too could progress to either a voluntary or involuntary relationship. Likewise, teachers are in an authoritative position whereby students admire and respect them, thus increasing the power bond. "Such closeness can blur the professional boundaries and lead people—both school employee and student alike—to step over the line" (Sexual harassment in education, 2009). However, in *Schneider v. Plymouth State College*, (1999), the court deemed that a fiduciary relationship exists between college and student. The meaning of a fiduciary relationship was defined in *Lash v. Cheshire County Savings Bank*, (1984) as:

> A fiduciary relation[ship] does not depend upon some technical relation[ship] created by, or defined in law. It may exist under a variety of circumstances and does exist in cases where there has been a special confidence reposed in one who, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence.

With this fiduciary relationship in mind, the court awarded $100,000 in compensatory damages to Tracy Schneider for the injuries endured from the sexual harassment which resulted at Plymouth State College while she was taught by Professor Leroy Young from 1987-1991. This sexual harassment included pressuring her to come on trips with him, kissing and fondling her, sending her flowers, and disrobing in front of her. When she attempted to avoid his advances, he would become angry and even gave her a C- on work she did for him as an intern. This case

clearly indicates the power control that a teacher can have over their students (Schneider v. Plymouth State College, 1999).

What if the relationship does become consensual? Is it illegal or unethical? In answering these questions, the word "unwelcome" is a major component in the definition, and this aspect is what makes faculty and student relationships fall under the term "sexual harassment". A consensual relationship between the parties would not be unlawful; however, they may well violate company or university policies, depending on the policy, as previously noted (Sexual harassment, 2005). Previous research by Kolbert, Morgan, & Brendel (2002) indicated that educators within the counseling field do not have the same issues concerning relationships with former students as they do with current students. One reason for this was that the American Counseling Association Code of Ethics (2005) had no prohibition on faculty having sexual relationships with former students. The reasoning in this situation was that the professor role is not being maintained at the same time as the romantic relationship, thus no conflict of interest is occurring (Kress & Dixon, 2007). Bowman, Hatley, and Bowman (1995) did research that indicated that 85% of his respondents, who consisted of faculty and students, actually believed that a romantic relationship was allowed provided they waited until the student graduated. Likewise, a study by Gattrell, Herman, Olarte, Localio, & Feldstei (1988), indicated acceptability of mutual relationships between faculty and students as long as there was no professional, working, relationship, and the student was graduated (Kress & Dixon, 2007). According to Kress and Dixon (2007) "Although most universities have policies about sexual harassment, the issue of consensual sexual relations between faculty members and students is rarely addressed, and the issue of professors having sexual relationships with former students is seemingly not addressed at all" (Congress, 2001; Fogg & Walsh, 2002).

Other questions may arise concerning faculty-student relationships, such as is the age difference material or even the professor's sexual orientation? In *Naragon v. Wharton PhD.* (1984), a graduate assistant, who was a 29 year old doctoral student, was removed from her teaching duties because of having a sexual relationship with a 17 year old freshman student at Louisiana State University in the early 1980s. Although this appears to be an acceptable age difference between individuals, with both being "students", Naragon, was subsequently removed from her teaching duties and filed suit against the university administrators. Her claim was that the real reason she was removed from her teaching duties was because she was homosexual and that the dismissal violated her right to privacy. In addition, she claimed that her right to association under the First Amendment was violated. Both the district court and appeals court held that the change in her work assignment was not a result of her homosexual tendencies but because of the violation of professional ethics. The U.S. Supreme Court upheld the ruling of the lower courts. (Naragon v. Wharton, PhD, 1984).

What if the relationship was preexisting? In other words, assume that the individuals were dating prior to one becoming a student at the institution. A good policy to follow is that of Northwestern University (2014) which says that preexisting relationships prior to the student being admitted will be considered on a case by case basis. If possible, a plan will be developed with consultation of the department chair, dean, and the provost. If one of the parties is in a position of power, there is always the potential for favoritism and exploitation, thus creating a conflict of interest. Arrangements should be made to remove the person with less authority from the direct supervision of that individual (Northwestern University, 2014).

How damaging are these relationships? This question has been mostly unanswered in regards to consensual faculty-student relationships that begin after the student graduates. In the

short term, the consequences of unwanted relationships with faculty do have a more significant bearing psychologically on the students than if it were consensual. Long term effects may vary, yet in a study by Glaser & Thorpe (1986), of the counseling students surveyed, 72% indicated they did not feel coerced at the time of their sexual encounter with their professor. However looking back on the relationship now, 51% believed coercion to be involved. As previously noted in the case of *Schneider v. Plymouth State College* (1999), compensatory damages of $100,000 were awarded for the damage caused by the unwelcomed sexual advances of her professor. Additionally, one outcome that can result from a faculty/student sexual relationship is that a "modeling" effect can happen, which could result in the student carrying on the behavior when they become employed (Pope, Levenson, & Schover, 1979).

A final question to consider regarding faculty/student relationships is should the instructor be readmitted if he has admitted to the charge and received psychological counseling? This situation occurred in the case of *Cockburn v. Santa Monica Community College District Personnel Commission,* (1984); Donald Cockburn had been an instructor for Santa Monica Community College for 17 years and was charged with sexual harassment for kissing a student lab assistant who was 18. Cockburn did not deny the charges, and he was dismissed by the college. Cockburn claimed he had not been given prior notice before dismissal and sued. The case was upheld by the district court claiming that his dismissal was proper. However, in the judgment of the superior court, a condition of reemployment was that he should receive psychological counseling, and that a report would have to be rendered that he had been rehabilitated. This reinstatement never materialized, however, because the judgment of the superior court was reversed stating that "continued employment exposed the college to substantial moral and financial risks" (Cockburn, v. Santa Monica Community College District Personnel Commission, 1984).

RECOURSE FOR SECUAL HARASSMENT CLAIMS

Violations of Title VII or Title IX can incur either civil or criminal penalties. Additionally, either civil and/or criminal suits on the basis of sexual harassment can be filed under individual state laws (Dziech & Weiner, 1984). Civil lawsuits may be either tort lawsuits or breach of contract suits which award financial compensation for loss of physical, mental or emotional damages. Criminal lawsuits may be filed based on rape or other criminal laws that are in existence. These laws would vary by state but include claims of sexual assault or assault and battery. Remedies under criminal lawsuits would be fines and/or imprisonment for the offender Dziech & Weiner, 1984).

Lawsuits of a Civil Rights nature fall under state jurisdiction. There are many variances from state to state; however, the basic prohibition would be "sex-based discrimination" or those "enforced by Human Rights Commissions" (Dziech & Weiner, 1984). Remedies under Civil Rights Law would be cease and desists orders and/or jury trials with damage awards (Dziech & Weiner, 1984).

There has been a significant increase in litigation regarding all types of discrimination cases. From 1991 to 1996 federal suits related to discrimination in employment almost tripled. Additionally there was a 25% increase in class-action suits regarding employment discrimination that was tried by federal and state agencies during this time frame. Students are responsible for filing most of the sexual harassment cases. What has happened to bring about this increase? The answer is increased awareness and perception! Reports of discrimination have increased because more types of behavior are being perceived as discriminatory, and "students and their parents filed

more suits and complaints than any other major group represented in the harassment and discrimination articles selected to run in *The Chronicle* in 1997" (Cantu-Weber, 1999). In 1992, *The Chronicle* published five articles on sexual harassment, while in 1997, 14 articles were published with 11 of those complaints being lodged by students (Cantu-Weber, 1999).

Another reason for the increase in awareness has been attributed to social issues and media coverage. In fact, *The Chronicle of Higher Education* reports that of the 160 articles published in 1997 which involved controversy resulting in lawsuits and rulings, 76 or (48%) involved some type of discrimination or harassment issue (Cantu-Weber, 1999)

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CONCLUSIONS

This paper has addressed the legal aspects of faculty student relationships from both a nonconsensual and consensual perspective. In summary, nonconsensual faculty student relationships fall under the status of sexual harassment and are covered primarily by Title IX of the Civil Rights Act of 1964; however, Title VII addresses employment-related issues which may involve student workers. Several landmark cases have been mentioned which address both Title VII and Title IX (Teaching with documents, 2011). These cases are *Meritor Savings Bank, FSB v. Vinson, et al.,* (1986), *Korf v. Ball State University*, (1984), and *Brown v. California State Personnel Board*, (1985). Additional cases have been cited which clarify points in the legal aspects of this subject. Likewise, various university policies were cited spanning a 30 year time frame, indicating the increased awareness and evolving remedies in the area of faculty/student relationships. Other clarifying issues were addressed on the subject such as how faculty/student relationships occur, damages that may result from them, how the consensual nature applies, age differences between the parties, and if the professor should be reinstated after psychological counseling. Finally, this paper gives legal recourse that may be instituted as a remedy for the damages that result primarily from unwelcomed faculty/student relationships. It must be noted that while the law is a minimum standard for guidelines pertaining to these types of relationships, ethics is a higher calling which needs to be regarded when a faculty member considers a relationship of this nature with a student. Faculty should use good decision-making in weighing the consequences of any sexual relationship with a student. According to Kress & Dixon (2007),

> ..an educator might specifically ensure the following: (a) the student's independence and autonomy to make his or her own choices are respected, (b) no harm is done to the student, (c) actions are made with the best interests of the student in mind, (d) the educator is fair to the student in all actions and decision, (e) and the educator is truthful and genuine with the student (Kress & Dixon, 2007, p. 117).

There are two types of ethics: principle ethics, which are the compulsory guidelines one must follow, and virtue ethics, which are the non-mandatory guidelines that form character traits. It is the virtue ethics that indicate a person's integrity. Educators should always remember that they are a role model for their students, exhibiting professionalism which they hope their students will carry with them into the workplace. It is with this idea in mind that educators should "do what is right because they believe it is right—not simply because it is an ethical statement in their professional code of ethics" (Kress & Dixon, 2007).

REFERENCES

Alexander v. Yale University, 459 F. Supp. I (D. Conn. 1977), aff'd, 631 Fed 2d. 178, (D. Conn.1980), accessed from Dziech, B. W. & Weiner, L. (1984). *The lecherous professor* (2nd ed.). Urbana and Chicago: University of Illinois Press (p. 20).

Arie, B. (2011). How are laws made? *eHow.* Retrieved February 24, 2011, from http://www.ehow.com/how-does_5245955_laws-made_.html.

Bowman, V.E., Hatley, L.D., & Bowman, R.L. (1995). Faculty student relationships: The dual role controversy. *Counselor Education and Supervision, 34,* 329-339.

Brown v. California State Personnel Board, 213 Cal. Rptr. 53 (Cal. App. 3 Dist. 1985), accessed from Olivas, M. A. (2006). The law and higher education (3rd ed.). Durham, North Carolina: Carolina Academic Press.

Cantu-Weber, J. (1999). Harassment and discrimination: News stories show litigation on the rise. *Change.* May/June, 38-45.

Carthwright, A. D. (2016). State of affairs: Employee-student amorous relationship policy & procedure considerations. *National Association of College and University Attorneys, 14*(3).

Cockburn v. Santa Monica Community College District Personnel Commission, 161 Cal. App. 3d 734; 207 Cal. Rptr. 589; 1984 Cal. App. (LEXIS 2704 accessed February 6, 2011, from Megadeal Academic Universe, Nexis).

Congress, E.P. (2001). Dual relationships in social work education: Report on a national survey. *Journal of Social Work Education. 37,* 255-267.

Dziech, B. W. & Weiner, L. (1984). *The lecherous professor* (2nd ed.). Urbana and Chicago: University of Illinois Press.

Ei, S. & Bowen, A. (2002). College students' perceptions of student—instructor relationships. *Ethics and Behavior, 12*(2), 177-190.

Euben, D. R. (2003). Legal watch: sexual harassment policies on campus. *Academe Online*, Nov/Dec, Vol 89.

Fogg, P. & Walsh, S. (2002). The question of sex between professors and students. *Chronicle of Higher Education 48,* 8-10.

Gattrell, N., Herman, J., Olarte, S., Localio, R., & Feldstein, M. (1988). Psychiatric residents' sexual contact with educators and patients: Results of a national survey. *American Journal of Psychiatry 145,* 690-694.

Glaser, R. D. & Thorpe, J.S. (1986). Unethical Intimacy: A survey of sexual contact and advances between psychology educators and female graduate students. *American Psychologist, 41,* 43-51.

Jafar, A. (2005). Little red riding hood in college. *Sexuality and Culture, 9*(2), 87-92.

Kolbert, J.B. Morgan, B. & Brendel, J.M (2002). Faculty and student perceptions of dual relationships within counselor education: A qualitative analysis. *Counselor Education & Supervision, 41,* 193-206.

Korf v. Ball State University, 726 F. 2d 1222 (1984), accessed from Olivas, M. A. (2006). *The law and higher education* (3rd ed.). Durham, North Carolina: Carolina Academic Press.

Kress, V.E. & Dixon, A. (2007). Consensual faculty-student sexual relationships in counselor education: Recommendations for counselor educators' decision making. *Counselor Education & Supervision, 47,* 110-122.

Lash v. Cheshire County Savings Bank, 124 N.H. 435, 438 474 A. 2d 980, 1984 N.H. LEXIS 244; 38 U.C.C. Rep. Serv. (Callaghan) 274.

Lombardi, K.S. (1993, May 9). Student-faculty dating: It's not in the rule book. *New York Times.* Retrieved November 4, 2017 from http://www.nytimes.com/1993/05/09/nyregion/student-faculty-dating-it-s-not-in-the-rule-book.html

Meritor Savings Bank, FSB v. Vinson, et al. No. 84-1979, 477 U.S. 57; 106 S. Ct. 2399; 91 L. Ed. 2d 49; 1986 U.S. LEXIS 108.

Naragon v. Wharton, Ph.D. 737 F. 2d 1403; 1984 U.S. App. (LEXIS 19803).

Northwestern Unversity, (2014). Consensual, romantic or sexual relationships between faculty, staff and students. Retrieved November 4, 2017 from http://policies.northwestern.edu/docs/Consensual_Relations_011314.pdf

Office for Civil Rights, U.S. Dept. of Education, *Questions and Answers on Title IX and Sexual Violence.* (Apr. 29, 2014)

Olivas, M. A. (2006). The law and higher education (3rd ed.). Durham, North Carolina: Carolina Academic Press.

Pope, K.S., Levenson H., & Schover, L. (1979). Sexual intimacy in psychology training: Results and implications of a national survey. *American Psychologist*, 34, 682-689.

Rimer, S. (2003, October 1). Love on campus: Trying to set the rule for emotions. Retrieved November 4, 2017 from http://www.nytimes.com/2003/10/01/nyregion/love-on-campus- trying-to-set-rules-for-the-emotions.html?rref=collection%2Fbyline%2Fsara-rimer&action=click&contentCollection=undefined&region=stream&module=stream_unit&version=latest&contentPlacement=103&pgtype=collection

Rosen, D. (2015, June 24). Sexual harassment training requirements by state. Retrieved November 4, 2017 from https://www.opensesame.com/blog/sexual-harassment-training-by-state.

Saxe v. State College Area School District, 240 F.3d 200; 2001 U.S. App. LEXIS 2179.

Schneider v. Plymouth State College 144 N.H. 458; 744A2d 101; 1999 N.H. LEXIS 137.

Sexual harassment. (2005). *The Free Dictionary by Farlex.* Retrieved February 25, 2011 from http://legal-dictionary.thefreedictionary.com/Sexual+Harassment.

Sexual harassment in education. (2009). *Sexual Harassment Support*. Retrieved February 11, 2011 from http://www.sexualharassmentsupport.org/SHEd.html.

Teaching with documents: The civil rights act of 1964 and the equal employment opportunity Commission. (2011). *National Archives*. Retrieved March 3, 2011 from http://www.archives.gov/education/lessons/civil-rights-act/.