TO: Members of the Council of the Princeton University Community

FROM: The CPUC Executive Committee

DATE: September 19, 2014

SUBJECT: Changes in Sex Discrimination and Sexual Misconduct Policy

At the CPUC meeting on September 29, the CPUC Executive Committee will recommend changes to the University’s sex and gender discrimination and sexual misconduct policy. The proposed policy, which will be incorporated into Rights, Rules, Responsibilities as section 1.9, is attached to this memorandum.

In order to align existing policy with the new policy, a variety of editorial changes are required to other sections of Rights, Rules, Responsibilities and the University’s Antidiscrimination/Anti-Harassment Policy. These changes, which are not substantive, remove outdated references and refer readers to the new policy. We recommend approval of these editorial changes as well. Documents indicating these editorial changes can be found on the CPUC Website.

Background

This July, the Office for Civil Rights of the U.S. Department of Education (OCR) told Princeton that its current procedures failed to meet the requirements of applicable federal laws, including Title IX and the Violence Against Women Act (VAWA). Title IX prohibits discrimination based on sex or gender in education programs and activities, and applies in sexual misconduct cases that include sexual harassment, sexual violence, stalking, and intimate partner violence. If Princeton had continued to adjudicate cases under its past policy, the University would have run a serious risk of liability in government enforcement proceedings and private law suits. Acting General Counsel Sankar Suryanarayan has prepared a memo summarizing the relevant law, which is attached for your reference.

We want to emphasize that the CPUC Executive Committee met many times over the past two months to consider, revise, and tailor the proposed policy. We adopted this policy only after wide-ranging and thorough discussion. The changes that we have proposed put the University on firm legal footing. We are confident the proposed policy will provide us with a good foundation for addressing issues of sexual misconduct in our University community, a foundation on which we hope to continue to build.
Please note that in order to provide opportunities for ongoing discussion and review of the University’s policies, procedures, and practices regarding Title IX and sexual misconduct, President Eisgruber has formed a new faculty-student Committee on Sexual Misconduct that initially will be co-chaired by Professor of English Deborah Nord and Vice Provost for Institutional Equity and Diversity Michele Minter. The committee will include students, faculty, and administrators. The committee will have the authority to propose further reforms. It may eventually recommend refinements in the measures we have proposed or other measures entirely. It is of course possible that the legal requirements we face will continue to evolve, but we believe that the University needs to adopt the current recommendations in order to comply with current law.

The Recommended Policy

As you review the proposed policy, we welcome your comments and questions. Michele Minter is available by email (mminter@princeton.edu) or in person to answer questions and address any concerns before the meeting. Please do not hesitate to contact her or one of us.

Title IX applies to all members of the campus community (students, faculty, and staff), and the policy we are recommending would apply to all matters of student and faculty/staff sex or gender discrimination and sexual misconduct, including sexual harassment, sexual violence, stalking, and intimate partner violence. The new policy would not apply to academic matters or any misconduct other than sex or gender discrimination or sexual misconduct; policies for administering those matters remain unchanged.

The new policy is based on several major themes that reflect both University values and alignment with OCR guidance. These themes are summarized below.

(1) **Creation of one comprehensive policy for all matters of sex and gender discrimination and sexual misconduct:** Currently, policies and procedural information related to sex and gender discrimination and sexual misconduct appear in several different locations, including Rights, Rules, Responsibilities sections 1.2.3, 2.5, and 2.7; the Rules and Procedures of the Faculty; the Antidiscrimination/Anti-Harassment Policy; the Title IX Grievance Procedures; and FAQs provided by the Office of the Dean of Undergraduate Students. The new policy consolidates all information into one superseding location in a new section of Rights, Rules, Responsibilities, 1.9.

(2) **Clarification of parties’ rights and roles and amplification of information:**
The new policy clarifies the rights and roles of complainants, respondents, and all participants in the process, as well as the responsibility of the University to investigate all matters formally brought to its attention. The policy includes detailed discussions of confidentiality, privacy, and other related matters, as well as information about how to access support resources or make a report of prohibited conduct.

(3) **Adjustments in policy to guarantee equivalent rights to complainants and respondents:** OCR and VAWA require that complainants and respondents generally have equivalent rights in all aspects of the policy and disciplinary procedures (unless OCR guidance grants a specific right to either complainant or respondent). The policy is designed to explain how rights and processes apply to both parties.

(4) **New definitions:** The CPUC previously approved definitions for types of sexual misconduct. The new policy proposes additional definitions for sex or gender discrimination and retaliation.

### New Disciplinary Procedures

The recommended policy incorporates procedural changes that are under the jurisdiction of the faculty. On September 15, the faculty approved the disciplinary procedures that are embedded in the new policy. These disciplinary procedures are therefore not subject to further change at this time. We are asking the CPUC to approve the full policy, incorporating the new disciplinary procedures, for inclusion in *Rights, Rules, Responsibilities*.

The changes to the disciplinary procedures are summarized below for your reference.

**(1) Change of evidence standard for student cases:** In the past, for all student disciplinary proceedings, Princeton used a “clear and persuasive” standard of evidence. This means that adjudicators had to have been persuaded to a fairly high degree of certainty, although not to the level of “beyond a reasonable doubt” that may apply in the criminal justice system. OCR requires that all student disciplinary matters relating to sexual misconduct use the evidence standard of “preponderance,” which means “more likely than not.” This lower standard of proof is the evidence standard generally used in civil court. Princeton was the last institution among its peers to make this mandated change to its sexual misconduct disciplinary procedures. Disciplinary procedures for cases where the respondent is a faculty or staff member already used the “preponderance” standard, so there was
no impact from this change on faculty or staff.

(2) Adjudication in student sexual misconduct proceedings: OCR has taken the position that students may not play an adjudicatory role in sexual misconduct disciplinary proceedings. Under Princeton’s past procedures, a subcommittee of the Faculty-Student Committee on Discipline (COD) adjudicated sexual misconduct cases. In our view this subcommittee operated with fairness and discretion, and the students and faculty members selected by their peers to participate on the subcommittee over the years served the University admirably and deserve our gratitude. But under OCR’s interpretation of Title IX, students must be removed from participation in the disciplinary process.

Under the new student disciplinary procedures, a panel of three trained investigators will conduct an investigation and then make findings of fact and responsibility. Complainants and respondents will receive copies of the investigation case file, including witness statements (consistent with past practice), and will be provided with ample opportunity to present their case to the panelists. If there is a finding of responsibility, the dean of undergraduate students and an associate dean of the Graduate School will jointly determine the penalty. This new procedure ensures that fact-finders in sexual misconduct cases will have appropriate professional training. It also allows for more timely resolution of disciplinary cases involving sexual misconduct, including during academic breaks and over the summer.

In all student disciplinary matters that do not involve sexual misconduct, the Committee on Discipline will continue to operate according to its current procedures.

Faculty/staff sexual misconduct procedures are not affected by this change.

(3) Role of advisers in disciplinary proceedings: VAWA regulations require that universities allow complainants and respondents to be accompanied by an adviser of their choice in all meetings relating to the sexual misconduct disciplinary process. Under past student disciplinary procedures, students could be accompanied by an adviser selected from the University community, usually a member of the staff or a faculty member. Under the new procedures, complainants and respondents may be accompanied by non-University individuals, including lawyers, in cases involving sexual misconduct. Advisers are not permitted to speak on behalf of the student during interviews and/or meetings; students must still speak for themselves. The role of the adviser is limited to assisting and supporting the
student in presenting his/her own case.

Faculty/staff procedures are not affected by this change.

(4) Parity of right to appeal: OCR and VAWA require “equivalent rights” for the complainant and respondent in all sexual misconduct disciplinary procedures. The new sexual misconduct disciplinary procedures establish parity for the complainant and the respondent in the right to appeal.

Next Steps

Our proposed policy appears in attachment 1. If approved by the CPUC, it will be incorporated into Rights, Rules, Responsibilities as section 1.9. As a reference, a notated version of the policy appears in attachment 2. The notated version identifies sections of the policy that have been approved in the past by the CPUC or the faculty, as well as language that responds to specific OCR requirements.

There are also conforming editorial changes required in other sections of Rights, Rules, Responsibilities and the Antidiscrimination/Anti-Harassment Policy in order to bring them into alignment with the new policy. These proposed editorial changes, which also require CPUC approval, can be found on the CPUC Website (http://www.princeton.edu/vpsec/cpuc/meetings/) for your review.

Also attached as a reference is a memo from the University’s Acting General Counsel summarizing the relevant law (attachment 3).

We welcome your questions, and we will appreciate your support.