

FAS-SEAS SENATE

AN ELECTED BODY OF THE
FACULTY OF ARTS AND SCIENCE AND SEAS
YALE UNIVERSITY

Report from the FAS-SEAS Senate Governance Committee on “Passing the Harasser”

Approved by the FAS-SEAS Senate on May 9, 2024

Yale faculty members sometimes commit academic or sexual misconduct. These offenses hurt all the more, and lead to stronger negative publicity, when it is learned subsequently that the same faculty member committed a similar offense at their prior institution. Any hiring university wants as much information as possible about potential new faculty, yet the same university, fearing lawsuits, will generally not provide negative information about their current faculty to future employers. This fear of litigation leads to what is politely called “passing the harasser,” in which a faculty member may bounce from university to university without their track record following them.

The University of California at Davis recently implemented a creative solution to this dilemma. Any late-stage applicant for a senior faculty position is required to sign a release allowing their prior employers to provide information concerning any findings of academic or sexual misconduct or cases that were open upon the departure of the faculty member. Failure to sign this release removes the applicant from further consideration. Further, learning of a finding of misconduct does not automatically preclude hiring that faculty member, but leads to further investigation and institutional discussion prior to making a hiring decision. The UC Davis policy addresses findings of academic or sexual misconduct by senior faculty candidates in the previous ten years¹. (The UC Davis release form is attached to this report.) A similar policy at Boston University looks only at findings of sexual misconduct over the prior seven years, but includes faculty candidates at all levels². The California legislature is considering applying the UC Davis model to all universities in the

¹ <https://www.nationalacademies.org/news/2022/04/innovative-practice-university-of-california-davis-stop-passing-the-harasser-policy>.

² <https://www.bu.edu/policies/appendix-b-authorization-to-release-information/>.

state³. The University of Wisconsin system focuses on the other side of the equation, and provides information on findings of misconduct to potential future employers⁴.

The Senate heard in January from two officials from UC Davis, Philip Kass, Vice Provost for Academic Affairs and Distinguished Professor of Analytic Epidemiology, and Sandi Glithero, Associate Director of Academic Employee Relations. They are strong proponents of the policy and have been consulted by numerous universities considering its implementation. They told us that they have yet to uncover misconduct as a result of the policy. Presumably, applicants with a finding of misconduct self-select and do not apply to the university, which immediately provides a layer of protection to the reputation of the university. They also told us that expanding the policy to all faculty applicants, and not limiting it to senior faculty applicants, would multiply the effort manyfold and make it unwieldy. Their current work can be handled by one person devoting only part of their effort to this task.

The Senate's Executive Council raised this policy with the FAS and SEAS deans and the Provost. The administration, which has heard of similar initiatives at peer universities, indicated that strong support from the faculty would help drive this effort at Yale.

The Governance Committee recommends that Yale adopt a policy similar to that developed by UC Davis. We recommend that the policy:

1. Encompass findings of both sexual and academic (research and teaching) misconduct.

Since sexual misconduct undermines access to academic study and research, and academic misconduct undermines the core mission of scholarly research and teaching, both types of misconduct should be included in this policy, helping Yale achieve its core mission of pursuing academic excellence.

2. Require applicants at all faculty levels to disclose whether they have been found responsible for academic or sexual misconduct.

Asking applicants to all faculty positions to attest to the fact that they have not been found responsible for misconduct and to disclose findings of misconduct would, without much effort on Yale's part, help to dissuade applicants with significant findings from applying and help to protect Yale should such a faculty member commit a new offence. Lying on this disclosure could be grounds for disciplinary action, possibly leading to termination following a significant new violation. A similar question is asked of all student applicants to the Graduate School, with space for an explanation, if needed. For instance, some graduate school applicants report instances of academic integrity violations (from plagiarism on up),

³ https://www.chronicle.com/article/one-way-to-stop-passing-the-harasser-require-colleges-to-ask-about-it?utm_source=lterable&utm_medium=email&utm_campaign=campaign_9519245_nl_Academe-Today_date_20240409&cid=at.

⁴ <https://www.nationalacademies.org/news/2022/04/innovative-practice-university-of-wisconsin-system-stop-passing-the-harasser-policy>.

but can explain the situation and show how they have grown. In neither situation would a disclosure bar an applicant from being hired, but would be a signal for further investigation.

3. For hires with tenure or its equivalent, require applicants to sign a release allowing their prior employers to provide information concerning any findings of academic or sexual misconduct or investigations that were ongoing at the time the applicant left the prior position.

We recommend limiting the release requirement to senior hires, as at UC Davis, to keep the administrative burden manageable and to focus on those most relevant to Passing the Harasser situations.

4. Not include criminal background checks.

The administration raised with the EC the possibility of implementing criminal background checks for faculty hires. The Governance Committee has not looked in depth into background checks but strongly recommends against their implementation at this time as they could create significant concern that the publicity might dissuade potential applicants with trivial convictions and have a chilling effect on the civil disobedience activities of some of our colleagues and potential colleagues. We expect that implementing background checks now would be particularly poorly received given the current climate of campus unrest, civil disobedience, and arrests. Should the administration consider background checks in the future, the Governance Committee will investigate their implementation at other universities and whether various policies include all convictions or are limited to the most serious crimes, such as felony convictions.

2023-24 FAS-SEAS Governance Committee

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- Mark Solomon
- Jing Yan (Chair)
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