APPALACHIAN STATE UNIVERSITY
FACULTY SENATE MINUTES
NOVEMBER 9, 1998

The November 9 Faculty Senate meeting was called to order by Chair Neufeld, 3:16 PM in the University Conference Room.

I. ANNOUNCEMENTS
   A. VISITORS. Neufeld welcomed visitors and asked that they introduce themselves. (See voting sheet for visitors' names.)

   B. CONTRACTS FOR PART-TIME FACULTY. Neufeld moved and Koch seconded that the Faculty Senate chairperson would remind department chairpersons on a yearly basis about Section 3.6.5.1 of the Faculty Handbook regarding part-time faculty being hired on fixed term contracts. Bortz asked that action on this be postponed until further study is done. Bliss moved and Bortz seconded that the issue be sent to the Academic Policy Committee for further study. After some discussion, Neufeld withdrew his motion and referred the issue to the Academic Policy Committee. Bliss withdrew his motion.

   C. VETERANS DAY FLAG RAISING CEREMONY. Neufeld noted that there will be a Veterans Day Flag raising ceremony on Wednesday, November 11, 7:30 a.m., in front of the flag pole at the Administration Building. A continental breakfast will follow.

   D. FACULTY ASSEMBLY. Neufeld reported on the November 6 Faculty Assembly meeting, noting that the General Administration is in the process of studying faculty benefits and salaries. There is concern that health plan costs may go up 30% next year and 30% the year after that. An employee/spouse option is being studied. Neufeld noted that President Broad is going to push for a 6% pay raise for faculty for each of the next two years. Phased Retirement is being studied to be sure that it will not result in a net increase of part-time faculty. Post tenure review will also be assessed.

     Dr. Clinton Parker noted that in conversations the Chancellor had with Dr. Judy Pulley, our freshman class will reduce in size for next year, and then grow slowly over the next three years. Distance learning is being studied by the General Administration.

II. MINUTES

   Hearing no corrections, Bliss moved and Gaynor seconded to approve the minutes as written.

   VOTE 1 22 yes 0 no 0 abstain The motion passed.

III. GUEST SPEAKERS
   A. JONI PETSCHAUER. Joni Petschauer addressed the Centennial First Night being held on Saturday, January 30, 1999. An Opening Ceremony will be held at 6:45 in Farthing Auditorium, featuring James K. Flynn, Master of Ceremonies. There is no charge for tickets, but seating is limited so call now to get your tickets. From 8:00 p.m. until midnight is the Four Seasons Gala at the Broyhill Inn. The price is $50 per person. There will be a cocktail buffet and dancing featuring Todd Wright Quintet, ASU Jazz Ensemble, Dixie Dawn, Captain Cook. From 8:00 p.m. until 1:00 a.m., more dancing at the Winter Wonderland Gala, featuring
Chairmen of the Board at Legends. The cost is $10 per person and hors d’oeuvres will be served. All events require advance tickets so call 4046 and RSVP by December 1.

B. JANE HELM. Ms. Helm distributed a Traffic Fund balance sheet and statement of operating revenue and expenses for the period July 1, 1993-June 30, 1998. Helm went over the reports and noted that Appalachian has $1.7 million to go towards a parking deck. Helm reviewed the difficulty of finding a suitable place for a parking deck that state regulations will allow Appalachian to acquire. The area where the ATM machines are located is being studied now. Helm pointed out that revenues increased in fiscal year 1997, the year fines were increased. (Contact the Faculty Senate office if you would like a copy of these reports.) There was considerable discussion of conflicts developing from special event parking that takes parking spaces.

C. DAVID LARRY. Mr. Larry distributed written responses to questions raised by the Senate.

1) Last time you spoke to the senate you said you work for the university. As the senate is also part of the university, does that mean that you also work for the senate?
   a) An attorney representing a corporate or other institutional client represents the legal entity, rather than the individuals who comprise or work for the entity.
   b) Ultimately, the attorney reports to the Board of Directors (or Board of Trustees), although as a practical matter, the university’s attorney reports on a day-to-day basis to the Chancellor.
   c) In addition to generally applicable law, the principles that guide the attorney’s analysis and conduct are the policies announced or implemented by the Boards and/or the UNC General Administration (to the extent that such policies do not run afoul of the law).
   d) To the extent individuals or sub-entities within the institution are acting in consonance with the Board’s policies and the law, the university’s attorney may represent or defend such persons or sub-entities.
   e) However, where there is an actual or potential conflict between the conduct of individuals or sub-entities within the institution and Board policies and law, the university attorney’s responsibility remains with the institution (the Board), and the individuals or sub-entities should obtain separate counsel.

2) I am curious as to the extent to which a faculty member is personally or legally responsible for students when on an off-campus outing.
   a) A member of the faculty or staff (like anyone else) may be subject to personal liability if his or her willful or negligent conduct with respect to persons as to whom he/she had a duty of due care causes injury to such persons.
   b) If the faculty member’s injury-causing conduct occurred while the faculty member was acting in the scope of employment, such faculty have the benefit of limited indemnification by the University pursuant to North Carolina law, as well as excess liability insurance coverage with limits of $11,000,000 per occurrence and $22,000,000 annual aggregate.

3) As a club advisor, to what extent am I personally or legally responsible for students when engaged in club activities?
   a) The first is is whether serving as an advisor falls within the scope of a faculty member’s employment. I would argue that it does. Even if faculty members are not required to serve as advisors, it is my understanding that a student organization is required to have an advisor. If so, then serving as an advisor is potentially an expectation of faculty members.
   b) Assuming serving as an advisor falls within scope of employment, see the answer to question 3.
4. If ASU student teachers are sued for some action relating to their student-teaching responsibilities, are they on their own or protected by the university?
   a) My understanding is that student teachers are not University employees. Therefore, the University's indemnification policy for faculty and staff would not apply to them.
   b) Check with the school to which each student teacher is assigned to ensure that the school's insurance covers the student teachers.
      i) This issue should be addressed with the University's public school partners.

5. I am concerned about the definition of sexual harassment. When a person feels pressured to accept unwelcome, unwanted, or uninvited sexual behavior, that person is being sexually harassed, especially under the condition that the conduct creates an intimidating, hostile or offensive educational or work environment (quoted from the yellow brochure from the Equity Office.) I teach art. Many students associate nudity with sex, especially if it involves displaying a penis (vaginas are usually okay). Under this definition, could I be guilty of sexual harassment for showing a nude man? Also, I require students to use gender neutral language; could this also be construed as sexual harassment? If so, then I believe that there is something seriously wrong with ASU's notions of sexual harassment, and I am wondering how legal this definition can be.
   a) NOTE re: gender neutral language requirement. I doubt that such a requirement could be sexual harassment, but it might be considered a content-based restriction on a student's right of free expression under the First Amendment. However, as long as no sanction is imposed on a student for failing to comply, it is unlikely that a student would bring a cause of action.
   b) NOTE re: Sexual harassment language in the Equity Office brochure: virtually the same (or substantially similar) language appears in:
      i) the ASU General Bulletin 1997-1999 (at 34-35);
      ii) the University's Policy on Sexual Harassment (http://www.appstate.edu/www_docs/resource/admpl14a.htm)
   c) BROADER QUESTION: to what extent could a student claim that any professor's academic speech or conduct (or the classroom/studio setting itself) created an unlawful hostile environment?
      i) See APPENDIX: Excerpts from U.S. Department of Education Guidelines on Sexual Harassment
   d) Evaluate all of the circumstances, including academic appropriateness.
      i) Is the conduct sufficiently severe, persistent, or pervasive to:
         (1) limit a student's ability to participate in or benefit from an education program or activity, or
         (2) create a hostile or abusive educational environment?
      ii) The alleged conduct must be sufficiently severe to lead a reasonable person to perceive it to be hostile or abusive under the totality of the circumstances, and the person claiming harassment must actually perceive the conduct to be abusive or hostile.
   e) What can a faculty member do to avoid or minimize the likelihood of such claims?
      i) Make clear in catalog, syllabus, or other announcements that material of a sexual nature occasionally will be examined, reviewed, or discussed as an integral part of the course.
         (1) e.g., drawing from live models, discussion of sexuality in Ulysses and other novels, etc.
      ii) Make clear at the end of the preceding class or at the beginning of a class that specific
4) What is the maternity policy for faculty? paternity policy for faculty? How does this vary between full-time faculty (tenure-track) and part-time faculty (non-tenure track)? What is the federal law regarding maternity and paternity leave?

a) Generally, paternity/maternity/adoption are all covered by the University’s FMLA leave policy.

b) See ASU’s policy implementing the FMLA. (http://www.appstate.edu/www_docs/resource/Perpol10a.htm)

i. Eligible (regardless of full or part-time status, tenure or non-tenure track) if employed for 12 months and worked at least 1040 hours (half time) during that 12 month period.

ii. Leave may be used for:
   (1) childbirth and postpartum care (leave must be taken within 12 months following the birth);
   (2) care for an adopted child;
   (3) care for a serious health condition of a spouse, child or parent;
   (4) serious health condition affecting the employee.

iii. Total leave available: 12 workweeks in a 12-month period.

iv. May apply accrued vacation or sick leave (during an employee’s disability) or take unpaid leave.

v. Job retained and insurance maintained during leave.

c) FMLA Policy sets the minimum. However, because faculty members do not accrue leave, it’s my understanding that the University attempts to take a flexible approach to providing leave for childbirth and postpartum care.

Dr. Parker noted that whenever a faculty member requests maternity leave, arrangements are made for that faculty member to take the time off.

The Senate took a break at 4:42 and reconvened at 4:52.

IV. STANDING COMMITTEE REPORTS

A. ACADEMIC POLICY COMMITTEE

Faculty Handbook Modification Regarding Faculty Office Hours. The Committee moved to modify section 5.4 of the Faculty Handbook regarding faculty office hours. The Handbook would now state, Each faculty member is required to keep a minimum of seven (7) office hours per week during the academic year. Regular hours should be distributed evenly throughout the week for routine conferences, and faculty should also be available to students at other times when classes are in session by prior appointment arranged for the mutual convenience of both parties. Office hours should be posted, listed on syllabi and available through departmental offices. During the term of a summer session in which a faculty member teaches, a minimum of four (4) office hours per week will be kept.

VOTE 2 21 yes 0 no 0 abstain The motion passed.

B. AGENDA COMMITTEE

1. Division I-A Consultant meeting report. Neufeld reported on the meeting the
Senate officers had with the consultants doing the study for the move up to Division I-A. Neufeld noted that the Committee is made up of former athletic directors, and one current one. The Committee appears competent, but is heavily weighted with people from athletics. They have worked with five other schools, some of whom they recommended go to I-A, others to begin a football program. One school voted against having a football team (George Mason). Northeast Louisiana State University moved up to division I-A a few years ago, and since then they have had losing seasons every year, and declining attendance.

Parker noted that the report is due November 30. The Committee will meet on December 5 to review the report and will probably make a formal report some time in January.

2. Motion to Amend the Faculty Handbook. The Faculty Senate voted on the following amendment to the Faculty Handbook, Article IV, Section 8 (top of page 4 of the current Handbook). It shall be....to appoint a Parliamentarian. It shall also be the responsibility of the Chairperson to serve as an ex officio nonvoting member of the Board of Trustees. 

   VOTE 3  21 yes  0 no  0 abstain  The motion passed.

Parker noted that this amendment would have to go before the faculty for a vote at the next General Faculty meeting in January.

CHAIR'S NOTE AFTERWARDS: Dr. Durham pointed out that there is no provision in the Board of Governors' Code to include senate chair's on Boards of Trustees. This resolution will probably be withdrawn at the December meeting. It will be discussed at the February Faculty Assembly meeting. In the meantime, the chair serves on the Board of Trustees, but it is not explicitly stated as so in the Faculty Handbook.

3. Boards of Visitors. Neufeld noted that the development of Boards of Visitors will be considered at the December Faculty Senate meeting. Neufeld will work with the deans to gather information on their area's advisory boards.

4. Meeting with Eva Klein. Neufeld reported that those who were supposed to meet with Eva Klein did not--they met with the Secretary of the General Administration instead. Gates and Moore reported that Eva Klein Associates had prepared questions for which they sought answers from the student and faculty in attendance. The questions had to do with Appalachian's mission; strengths and weaknesses of program and capital planning; learning needs and processes envisioned for the future. Some of the questions prepared by faculty senators for presentation at the meeting could not be asked in the structure allowed. The on-campus visits by Eva Klein Associates are intended to lead to a profile of the campus, its present status and needs, and its plans for the future. Engineering analysis of facilities will be joined to the profile and together the results become part of a 10-year capital plan for the university system. Individual campuses will be ranked within that capital plan.

5. Meeting with Judy Pulley. Moore reported that Pulley was clear that the demographics project about 48,000 additional students will seek higher education in North Carolina from now through 2008, and that graduate student enrollment will probably remain flat while undergraduate enrollments rise. This presents the GA with a political problem: it must work with the legislature to take on extra students or risk weakening its valuable reputation as the central institution of higher education in the state. An additional political problem is that if UNC does not take on these extra students, they will probably go to private schools, which
would not be in the best interests of the University system. The number of students reported that Appalachian may be required to enroll (originally set at 5,100) is negotiable; but the fact that Appalachian will have to take a share of the extra enrollment is not negotiable. The result is that Appalachian must find alternative ways to meet its determined share of the added enrollment, and Pulley suggested ways such as satellite campuses, cooperation with other institutions, and enlarged summer enrollment.

C. BUDGET COMMITTEE
Koch reported that the Committee was charged with looking at the $600,000 shortfall Athletics has and receives from Academic Affairs monies. The Provost has asked the Committee to put this on hold—that a substantial amount of this will be redirected to salaries.

Koch also reported that a list of questions about the budget were sent to Jane Helm, but the Committee has received no response yet. Parker clarified that the Committee should ask the Faculty Senate Chairperson for the specific information requested and for Neufeld to forward that request to the Provost so that the Provost can retrieve the information.

Neufeld noted that the senators should have received charts on 1) number of full time faculty by rank; and 2) faculty salaries. These charts are available from the Faculty Senate office.

D. CAMPUS PLANNING COMMITTEE
No report.

E. CHANCELLOR ADVISORY COMMITTEE
The next Chancellor Advisory Committee meeting is November 16 at 2:00 p.m. Forward questions for this meeting to the Senate office.

F. COMMITTEE ON COMMITTEES
Domermuth reported that he spoke with Joe Watts who spoke with the Admissions committee regarding their membership and duties. The Admissions Committee is still discussing this issue.

Domermuth also reported that the Committee looked into the concern regarding science representation on the Core Curriculum Council. After speaking with Loren Raymond, who agreed to represent the sciences in an unofficial nonvoting capacity, the Committee decided that, since it is hard enough to find faculty volunteers to serve on University committees, they would not recommend that a representative from all areas of Arts and Sciences be required.

G. WELFARE AND MORALE COMMITTEE
Bliss reported that at the next Faculty Senate meeting, the Committee will have a resolution on civility on campus.

H. WELFARE OF STUDENTS COMMITTEE
Abbott reported that the Committee has met with the Student Government Association. SGA is most concerned with the Academic Integrity Code, the withdraw/repeat procedures, and textbook rentals.

The Committee also reported that they looked into the student use of academic buildings after hours. Some suggestions for monitoring this use were hiring graduate students as monitors and to allow students to use the buildings Monday-Thursday and only until 10:00 p.m.

V. OLD BUSINESS
A. RESOLUTION OPPOSING THE GA'S PROPOSED INCREASE IN STUDENTS AT APPALACHIAN. Neufeld read the resolution passed by the Town of Boone and sent to the Chancellor, with a copy to the Faculty Senate Chair regarding their concern with
an extensive increase in students at Appalachian.

After some discussion regarding the proposed resolution by the Senate opposing the GA's proposed increase in students at Appalachian, it was decided that Neufeld will modify the resolution before the next Senate meeting to reflect the desire of the faculty to keep enrollment to a reasonable level, rather than a fixed level of 12,500 as the Chancellor has stated.

B. CHILD CARE SURVEY REPORT. Weitz distributed a copy of the data received from the Survey Concerning Child Care and Parental Leave. Weitz noted that in some instances, it can be an awkward situation to request maternity leave from a department chair.

VI. NEW BUSINESS
A. FACULTY CONCERNS.
1. Faculty Handbook changes. Neufeld reported that he met with Dayton Cole regarding the status of the Faculty Handbook changes. Cole noted that the General Administration has returned the changes and commented that we (Appalachian) have too much information in sections 3 and 4 of the Faculty Handbook. They suggest that some material can be taken out and put into other sections so that it does not need to go to the GA for approval. Neufeld suggested that the Senate devote the January meeting to looking at these changes.

2. Cancellation of classes. Koch reported that the History department was not the only department that canceled classes. Koch noted that he had a list of those departments that canceled classes which he will make available to those requesting it.

3. Paperwork for course changes. Edwards noted that the amount of work, including paperwork, to get changes made for a departmental course was excessive. Neufeld referred the issue to the Academic Policy Committee and suggested that Al Rapp be contacted.

B. BENEFITS FOR RETIRED FACULTY. A copy of a resolution passed by East Carolina University's Faculty Senate concerning Privileges for Retired Faculty was distributed to Senators. Neufeld reported that the Faculty Assembly is also working on this, and that President Broad has talked to the chancellors about this. The idea is to have a common set of benefits across the University system for retired faculty, such as free parking, email and internet access, invitations to events, use of the gym, etc.

Bliss moved to adjourn and Dobson seconded.

VOTE 4  17 yes  0 no  0 abstain  The motion passed.

The meeting adjourned at 6:20.

Respectfully submitted,

Mike Moore

/msh

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APPALACHIAN STATE UNIVERSITY
FACULTY PRESENT AND VOTING SHEET
November 9, 1998
VOTING SYMBOLS: Y=YES  N-NO  A=ABSTAIN  ABSENCE
NAME OF SENATOR:  1  2  3  4
ABBOTT, RICHARD   Y  Y  Y  Y
ARNHOLT, ALAN     Y  Y  Y  Y
ARNOLD, EDWIN     Y  Y  Y  Y
BIDDLE, NICK      Y  Y  Y  Y
BLISS, LEN        Y  Y  Y  Y
BORTZ, JEFF       Y  Y  Y
BOYD, JOHN        Y  Y  Y  Y
BUTTS, JEFF       Y
CAMPBELL, KATHLEEN  EXC
CATON, DAN        Y  Y  Y  Y
DOBSON, BILL      Y  Y  Y  Y
DOMERMUTH, DAVE   Y  Y  Y  Y
EDWARDS, DEBRA   Y  Y  Y  Y
GATES, PAUL       Y  Y  Y
GAYNOR, PATRICIA Y  Y  Y  Y
KAENZIG, REBECCA  EXC
KOCH, ANDREW      Y  Y  Y  Y
MCGARRY, RICK    Y  Y  Y  Y
MCKINNEY, HAROLD Y  Y  Y  Y
MOORE, MIKE       Y  Y  Y  Y
NEUFELD, HOWARD  Y  Y  Y  Y
SPEER, CHARLIE   EXC
TRUETT, CAROL    Y  Y  Y
WEITZ, GAYLE     Y  Y  Y  Y
WINEK, JON       EXC
WINKLER, LINDA   Y  Y  Y
WYATT, TONI      EXC

VOTE  1: Approve the October minutes as written
VOTE  2: Motion to amend section 5.4 of the Faculty Handbook regarding faculty office hours
VOTE  3: Motion to amend Article IV, Section 8 of the Faculty Handbook
VOTE  4: Adjournment

VISITORS: Jennifer Corrigan, HPC student; Jane Helm, Business Affairs; Hugh Hindman, AAUP; David Larry; University Attorney’s office; Josh McIntosh, HPC student; Chris Moody, HPC student; Clinton Parker, Academic Affairs; Joni Petschar, Centennial First Night; Trisha Turner, HPC student

APPENDIX:
Excerpts from U.S. Department of Education Guidelines on Sexual Harassment

**Hostile Environment Harassment** -- Sexually harassing conduct by an employee (that can include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature) 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.


In determining whether an employee's sexual harassment of a student created a hostile environment, i.e., whether it was sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from the education program, or to create a hostile or abusive educational environment, OCR considers the factors discussed in the Peer Harassment Guidance. An additional factor to consider if a student is harassed by a school employee is the identity and relationship of the individuals involved. For example, due to the power that a professor or teacher has over a student, sexually based conduct by that person toward a student may be more likely to create a hostile environment than similar conduct by another student.

61 Fed. Reg. at 52173-74 (emphasis supplied; footnotes omitted).

**U.S. Department of Education, Office for Civil Rights, Sexual Harassment Guidance: Peer Harassment, reprinted at 61 Fed. Reg. 52176, et seq. (October 4, 1996)**, lists the factors to be considered in determining whether a school should be held liable:

A school will be liable for . . . conduct . . . that creates a sexually hostile environment where (I) a hostile environment exists, (ii) the school knows ("has notice") of the harassment, and (iii) the school fails to take immediate and appropriate steps to remedy it. Under such circumstances, a school's failure to respond to the existence of a hostile environment within its own programs or activities permits an atmosphere of sexual discrimination to permeate the educational program and results in discrimination prohibited by Title IX.

For the same reason, a school will be liable for sexual harassing conduct of third parties, who are not themselves students at the school (e.g., members of a visiting athletic club), where the conduct creates a sexually hostile environment in the school's programs or activities, if the school has notice of the harassment but fails to take appropriate steps to remedy it. In determining whether the school took appropriate measures to remedy the sexual harassment in these cases, OCR will consider the level of control that the school has over the alleged harasser.

**Welcomeness**

In order to be actionable as harassment, sexual conduct must be unwelcome. Conduct is unwelcome when the student being harassed did not "solicit or incite it" and "regarded the conduct as undesirable or offensive." Mere acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome. For example, a student may decide not to resist sexual advances of another student or may not file a complaint out of fear. In addition, a student may not object to a pattern of sexually demeaning comments directed at him.
or her by a group of students out of a concern that objections might cause the harassers to make more comments. The fact that a student may have accepted the conduct does not mean that he or she welcomed it. Also, the fact that a student willingly participated in conduct on one occasion does not prevent him or her from indicating that the same conduct has become unwelcome on a subsequent occasion. On the other hand, where a student actively participates in sexual banter and discussions and gives no indication that he or she doesn't like it, then the evidence generally will not support a conclusion that the conduct was unwelcome.

. . . OCR will consider the age of the student, the nature of the conduct involved, and other relevant factors in determining whether a student had the capacity of welcoming sexual conduct.

If there is a dispute about whether the harassment occurred or whether it was welcome -- in a case where it is appropriate to consider whether the conduct could be welcome -- determinations should be made based on the totality of the circumstances. While this is not an exhaustive list, the following types of information may be helpful in resolving the dispute:

-- **Statements by any witnesses** to the alleged incident.

-- **Evidence about the relative credibility of the allegedly harassed student and the alleged harasser.** For example, the level of detail and consistency of each person's account should be compared in an attempt to determine who is telling the truth. Another way to assess credibility is to see if corroborative evidence is lacking where it should logically exist. However, the absence of witnesses may indicate only the unwillingness of others to step forward, perhaps due to fear of the harasser or a desire not to get involved.

-- **Evidence that the alleged harasser had been found to have harassed others** may support the credibility of the student claiming harassment; conversely, the student's claim will be weakened if he or she had been found to have made false allegations against other individuals.

-- **Evidence of the allegedly harassed student's reaction or behavior immediately after the alleged harassment.** For example, were there witnesses who saw the student immediately after the alleged incident who say that the student appeared to be upset?

-- **Evidence about whether the student claiming harassment filed a complaint or took other action to protest the conduct soon after the alleged incident occurred.** However, failure to immediately complain may merely reflect a fear of retaliation or a fear that the complainant may not be believed rather than that the alleged harassment did not occur.

-- **Other contemporaneous evidence.** For example, did the student claiming harassment write about the conduct, and his or her reaction to it, soon after it occurred (e.g., in a diary or letter)? Did the student tell others (friends, parents) about the conduct (and his or her reaction to it) soon after it occurred?
Severe, Persistent, or Pervasive

Peer sexual harassment is created when conduct of a sexual nature is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from the education program, or to create a hostile or abusive educational environment. In deciding whether conduct is sufficiently severe, persistent or pervasive, the conduct should be considered from both a subjective and objective perspective. In making this determination, all relevant circumstances should be considered:

The degree to which the conduct affected one or more students' education. **For a hostile environment to exist, the conduct must have limited the ability of a student to participate in or benefit from his or her education, or altered the conditions of the student's educational environment.**

-- **Many hostile environment cases involve tangible or obvious injuries.** For example, a student's grades may go down or the student may be forced to withdraw from school. A student may also suffer physical injuries and mental or emotional distress.

-- However, a **hostile environment may exist even where there is no tangible injury to the student.** For example, a student may have been able to keep up his or her grades and continue to attend school even though it was more difficult for him or her to do so. A student may be able to remain on a sports team, despite feeling humiliated or angered by harassment that creates a hostile environment. Harassing conduct in these examples alters the student's educational environment on the basis of sex.

-- **A hostile environment can occur even where the harassment is not targeted specifically at the individual complainant.** For example, where a student or group of students regularly directs sexual comments towards a particular student, a hostile environment may be created not only for the targeted student, but for others who witness the conduct.

The type, frequency and duration of the conduct. **In most cases, a hostile environment will exist where there is a pattern or practice of harassment, or where the harassment is sustained and nontrivial.** For instance, where a young woman is taunted by one or more young men about her breasts and/or genital area, OCR may find that a hostile environment has been created, particularly where the conduct has gone on for some time, takes place throughout the school, or where the taunts are made by a number of students. **The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true when the harassment is physical.** For instance, where the conduct is more severe, e.g., attempts to grab a female student's breasts, genital area, or buttocks, it need not be as persistent or pervasive in order to create a hostile environment. Indeed, **a single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment.** On the other hand, conduct that is not severe, persistent or pervasive will not create a hostile environment: e.g., a comment by one student to another student that she has a nice figure. Indeed, depending on the circumstances this may not even be conduct of a sexual nature. Similarly, because students date one another, a request for a date or a gift of flowers, even if unwelcome, would not create a
hostile environment. However, where it is clear that the conduct is unwelcome, repeated requests for dates or attempts to make contact could create a hostile environment.

**The number of individuals involved.** For example, sexual harassment may be committed by an individual or a group. In some cases, verbal comments or other conduct from one person might not be sufficient to create a hostile environment, but could be if done by a group. Similarly, while harassment can be directed towards an individual or a group, the effect of the conduct towards a group may vary, depending on the type of conduct and the context. For certain types of conduct, there may be "safety in numbers." For example, following an individual student and making sexual taunts to him or her may be very intimidating to that student but, in certain circumstances, less so to a group of students. On the other hand, persistent unwelcome sexual conduct still may create a hostile environment when directed towards a group.

**The age and sex of the alleged harasser and the subject(s) of the harassment.** For example, in the case of younger students, sexually harassing conduct may be more intimidating when coming from an older student.

**The size of the school, location of the incidents, and context in which they occurred.** Depending on the circumstances of a particular case, fewer incidents may have a greater effect at a small college than at a large university campus. Harassing conduct occurring on a school bus may be more intimidating than similar conduct on a school playground because the restricted area makes it impossible for the students to avoid their harassers. Harassing conduct in a personal or secluded area such as a dormitory room or residence hall can also have a greater effect (e.g., be seen as more threatening) than would similar conduct in a more public area. On the other hand, harassing conduct in a public place may be more humiliating. Each incident must be judged individually.

**Other incidents at the school.** A series of instances at the school, not involving the same students, could--taken together--create a hostile environment, even if each by itself would not be sufficient.

**Incidents of gender-based, but non-sexual harassment.** Acts of verbal or physical aggression, intimidation, or hostility based on sex, but not involving sexual activity or language, is a form of discrimination and is unlawful if it is "sufficiently patterned or pervasive" and directed at individuals because of their sex. Such incidents, combined with incidents of sexual harassment, could create a hostile environment, even if each by itself would not be sufficient.

61 Fed. Reg. at 52176-77 (emphasis supplied; footnotes omitted).

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David Larry
Assistant University Attorney
Appalachian State University
RESPONSES TO SURVEY CONCERNING CHILD CARE AND PARENTAL LEAVE
(As compiled from 53 completed responses)

#1 Do you currently have any children in any ASU child care facility?
YES 11.3% (6)  NO 88.7% (47)
If YES, how many children?  1 - 83.3% (5)  2 - 16.7% (1)
If YES, what facility?
  - Snow Day/Holiday Program at Hardin Park (1)
  - Poplar Grove (2)
  - Lucy Brock (1)
  - Early Learning Center (1)
  - Child Development Center (2)
If NO, did you try to get into an ASU facility but could not?
YES 40.4 % (19)  NO 38.3% (18)  NO ANSWER 21.3% (10)

#2 In the past, have you used any of the following child care facilities? (Check all that apply)
  - ASU Early Childhood Center - 11.2% (10)
  - ASU Poplar Grove Child Care Center - 11.2% (10)
  - ASU Lucy Brock Child Care Center - 9% (8)
  - Private Child Care Center - 25.9% (23)
  - Parent/family day care - 14.6% (13)
  - In-home care by Non-family member - 21.3% (19)
Other (see surveys for explanations) - 6.7% (6)

#3 Do you have children?
YES 81.1% (43)  NO 18.9% (10)
If YES, were any of them born while you were working for ASU?
YES 59.1% (26)  NO 34.1% (15)  NO ANSWER 6.8% (2)
If YES, did you take maternity or paternal leave?
YES 2.3% (1)  NO 56.8% (25)  NO ANSWER 40.9% (17)
If NO, would you have taken it if you knew it were available?
YES 52.3% (23)  NO 25% (11)  NOW ANSWER 22.7% (9)

#4 Do you anticipate needing child care in the next five years?
YES 75.6% (40)  NO 24.5% (13)
If YES, what type of child care? (Check all that apply)
  - Infant Care - Part-time 27.5% (11)
    Full time 32.5% (13)
  - Toddler Care  Part time 20% (8)
    Full time 45% (18)
  - Pre-School Care  Part time 20% (8)
Full time 50% (20)  
After School Care 47.5% (19)  
Summer Care Part time 37.5% (15)  
Full time 32.5% (13)  
Snow Day Care 57.5% (23)  
Sick Child Care 52.5%  

#5 Do you anticipate exercising your maternity/paternal leave option in the next five years?  
YES 26.4% (14)  NO 71.7% (38)  NO ANSWER 1.9% (1)  

#6 Do you know what your maternity/paternal leave option is?  
YES 15.1% (8)  NO 81.1% (43)  NO ANSWER 3.8% (2)  

#7 Please rank the following child care options in order of preference (1-11)  
See spreadsheet for distribution  

#8 Would you like further information regarding child care options?  
YES 37.7% (20)  NO 43.4% (23)  NO ANSWER 18.9% (10)  
If YES, give name, campus address, phone, and e-mail address  

#9 Would you be willing to provide your name for further inquiry?  
YES 52.8% (28)  NO 22.6% (12)  NO ANSWER 24.5% (13)  
If YES, please fill out the section above