

Presentation to APLU Vice Presidents for Research Meeting—June 18, 2019

***Preventing Sexual Harassment in Academic Science, Engineering & Medicine: The Facts***

- ✓ **The Academies Report.** In June 2018, the National Academies of Sciences, Engineering and Medicine released a Consensus Study Report, [\*Sexual Harassment of Women: Climate, Culture and Consequences in Academic Sciences, Engineering and Medicine\*](#) (*Academies Report*). It reveals that sexual and intersecting bases of harassment (e.g., race, sexual orientation, gender identity and expression) pose significant barriers to inclusion of all talent in academic science, engineering, and medicine, undermining excellence in the fields. Medicine has the greatest incidence, followed by engineering, and then science. (*Academies Report* p. 60)
- ✓ **Prevention Depends on Community and Conduct Standards, Not Mere Legal Compliance.** Similar to hospital quality initiatives, successful prevention of harm requires building a community that is actively intolerant of sexual and other harassment and committed to collectively advancing standards of excellence—both in high quality work output and in professional and ethical conduct. Compliance with law is necessary, but not nearly enough. Rates of sexual harassment in the workplace have not significantly decreased despite 30 years of laws prohibiting sexual harassment. (*Academies Report* pp. 39-41) Policy should be driven by the mission and role of academic science, engineering and medicine in society.
- ✓ **Sexual Harassment** is a form of discrimination and includes:
  - **Sexual coercion or quid pro quo sexual harassment:** threats or rewards respecting educational or employment benefits, support, or status are conditioned on sexual favors
  - **Hostile environment sexual harassment:** exposure in work- or education- related settings or activities to gratuitous (i.e., non-work related/unnecessary for the work) (a) sexual images, gestures, or remarks, (b) sexual insults, (c) non-sexual **gender harassment** or (d) unwanted sexual attention—of such pervasiveness or severity as to interfere with a “reasonable person’s” ability to learn or work (which is influenced by research and developing societal norms of conduct)
    - **Gender Harassment:** is a form of sexual harassment that includes sexism, or other *non-sexual* behaviors (including sexually crude and sexually hostile remarks and conduct, e.g., women are lousy engineers, scientists, surgeons) that demean, denigrate, devalue, and disrespect individuals on the basis of sex (including sex, gender identity and expression, and sexual orientation)
  - **Sexual assault and battery,** including but not limited to rape
- ✓ **Gender harassment is most prevalent** and causes harm equivalent to that caused by sexual coercion and unwanted sexual attention. It doesn’t receive as much public or legal attention as—but often marks the beginning of a progression to—other forms of sexual harassment. While not taken seriously in the past, research has found that gender harassment has negative professional and psychological outcomes, supporting its inclusion in hostile environment sexual harassment. (*Academies Report* pp. 25-27, 42, 72, 90)
- ✓ **Certain climates correlate with high incidence of sexual harassment.** Male dominated settings that lack civility and respect, and tend to concentrate power in individuals, correlate with increased risk of sexual harassment. (*Academies Report* pp. 52-56, chapter 6)
- ✓ **Perception of tolerance of sexual harassment** is the strongest indicator of the occurrence of sexual harassment. (*Academies Report* pp. 121-22) Publicly demonstrating intolerance of sexual harassment—that complaints are taken seriously, targets are supported, and sanctions are imposed on harassers (e.g., in annual reports on types and numbers of incidents and consequences imposed or actions taken), while maintaining privacy of individuals—is critical, and can prevent people from sexually harassing others. (*Academies Report* p. 50)

- ✓ **Formal reporting and resort to legal process are rare** likely due to fear of or actual cost to career and relationships. (*Academies Report* pp. 81-82, 106-07) Over-reliance on formal reporting is not a high-impact strategy for prevention.
- ✓ **Some facts and figures:**
  - Rates of sexual harassment in the workplace include (*Academies Report* p. 56):
    - 69% of women in the military
    - 58% of female faculty and staff in academic workplaces
    - 46% of women in private sector jobs
    - 43% of women in government
  - Anyone may experience sexual harassment, but women are harassed more often than men; and men are the perpetrators of the vast majority of harassment of women. (*Academies Report* pp. 41-43, 59, 65)
    - >50% of female faculty and staff in academia encounter or experience harassment
  - Some studies indicate rates of sexual harassment of female students ranges from 20-50%, with sexual harassment of female medical students at the highest rates, followed by engineering. (*Academies Report* p. 59, p. 60 figures 3-3, 3-4, pp. 61, 65)
    - 45%-49.6% of female medical students
    - 25% of female engineering students
    - 38% of women grad students (all fields)
    - 23.4% of male grad students (all fields)
    - ~14-46% of female undergraduate students (all fields)
  - Women who have multiple societal identities targeted for bias, e.g., women of color and “sexual- and gender- minority women,” experience gender and sexual harassment at even greater rates than other women, often as a manifestation of both gender and other kinds of discrimination. (*Academies Report* pp. 44-46, 62)
- ✓ **Sexual assault and battery** are crimes and may also trigger civil negligence claims where there is a duty of reasonable care for safety of employees, volunteers, patients, families and other “business invitees” and it is breached. **Hostile environment sexual harassment and sexual coercion** violate federal nondiscrimination laws that apply to employment applications, terms and conditions (Title VII) and to *all* educational programs and supporting functions of non-federal entities that receive federal funding for *any* broadly defined educational program (Title IX). They also violate some states’ laws. **Gender harassment** is hostile environment harassment and violates laws when sufficiently pervasive (frequent) or severe (even once). Research on harm caused and societal norms can influence determination of a legal violation. **Whether or not always recognized as violating law, gender harassment causes real harm to individuals and STEM fields, which lose talent as a result.** (*Academies Report* pp. 25-27, 42, 72, 90)
  - **Consequences for violations:** exacerbating barriers to inclusion and excellence; individual, entity, field reputational damage; financial damages; and court- or agency- imposed actions and operations changes

**Attachment:** Laws Prohibiting Sexual Harassment, As a Form of Prohibited Sexual Discrimination Include—

- **Title VII**, a federal law, prohibits sexual discrimination and harassment in employment terms and conditions. It applies to all private and public employers (with a limited exception for private employers of less than 15). It protects employees and applicants, in the scope of their employment wherever they are, against sexual harassment by supervisors, fellow employees, and even clients, customers, contractors, and business associates.
- **Title IX**, a federal law protecting educational benefits, prohibits sexual discrimination and harassment in all “education programs and activities”—broadly defined (e.g., traditional and vocational education, as well as workshops, training programs, seminars and likely instructional conferences)—of public non-federal and private entities that conduct any education program and receive federal funding or resources for any educational program or activity or function that supports it.
  - Once triggered, Title IX applies in all of an entity’s education programs, however funded, in all areas within the entity that deliver or indirectly support such programs (including, e.g., serving students, and employment of faculty and staff). For IHEs and any public non-federal or private entity with a primary purpose of education that receives federal support for any purpose, Title IX applies enterprise-wide.
  - Under Title IX, an entity must take action to prevent, respond to, investigate, and avoid recurrence of sexual harassment in its education programs and supporting functions, on and off campus, whether conducted by it or by volunteers, contractors or other third parties; to have grievance procedures; and to give prominent notice and post notice to all students, employees, participants, applicants, and those who refer applicants, of Title IX’s prohibitions, the entity’s commitment to comply and procedures, and the name and contact information for the required lead (and any other) Title IX coordinator(s) for referral of questions. Title IX coordinator(s) must have broad ability to support compliance.
  - The consequences of violations may be different, however, for sexual harassment in education programs that are and are not federally funded. While rare due to requirements to seek voluntary compliance, violation of Title IX in a specific program receiving federal funding, puts that program’s federal funding at risk of loss.
- **Exceptions.** There are some statutory and regulatory exceptions under Titles VII and IX for some differential treatment based on sex that does not perpetuate stereotypes, but not for sexual harassment.
- **Equal Protection and Due Process** clauses of the 14th and 5th Amendments to the U.S. Constitution apply to public entities.
- **Criminal law, state anti-discrimination/harassment and tort/negligence law** may also apply.
  - Tort/negligence law establishes duties of reasonable care that entities and individuals have in their business and personal relationships, roles and activities (e.g., as property owners and operators, as employers, as membership entities) to avoid harm to others.
  - The general inquiry is (1) was there a duty of care to the victim; (2) was that duty breached by the perpetrator (or someone for whose actions and omissions an accused entity or individual is responsible); (3) did the breach cause harm; (4) was the harm within a chain of objectively, reasonably foreseeable or connected/proximate events? Societal norms and expectations—of what harm is reasonably foreseeable and what actions or precautions are desirable for a reasonable person to take—influence what due care is in the circumstances and are part of the inquiry (and subject to change).
  - In many jurisdictions, for liability to attach as a result of emotional harm, the offensive actions must be outrageous, the emotional harm must be severe, and there must be some associated physical aspect.
  - Also relevant are the effect of warnings, marketing and other communications, due diligence in hiring and in up-front review of recommended or required programs conducted by third parties, foreseeability based on similarity of prior incidents, robust training programs to avoid the harm, and the like.