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Teachers decry Harvard's shift on sex assaults

By **Travis Andersen**

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Twenty-eight current and retired Harvard Law School professors are asking the university to abandon its new sexual misconduct policy and craft different guidelines for investigating allegations, asserting that the new rules violate the due process rights of the accused.

“This is an issue of political correctness run amok,” said Alan M. Dershowitz, an emeritus Harvard Law professor who was among the faculty members signing an article, sent to the Globe’s Opinion page, that is critical of the new procedures.

The article was published on The Boston Globe website Tuesday night.

In a statement Tuesday night, Harvard said the new policy was enacted after a two-year review of its practices and its guidelines “create an expert, neutral, fair, and objective

mechanism for investigating sexual misconduct cases involving students.”

The misconduct policy, which Harvard announced in July and which took effect this fall, includes a provision to adopt a “preponderance of evidence” standard when determining whether sexual assault or harassment occurred.



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The new policy is inconsistent with many of the most basic principles taught at the university, 28 members of the Harvard Law School Faculty write.

In addition, the new policy established a university-wide Office for Sexual and Gender-Based Dispute Resolution at Harvard composed of trained investigators who are responsible for handling sexual and gender-based misconduct complaints against students ranging from harassment to rape.

The new policy came after the US Department of Education disclosed in May that Harvard was among the dozens of colleges and universities the agency was investigating for alleged federal Title IX violations stemming from the schools' handling of sexual assault and harassment complaints.

In the Opinion article, the professors complained that the new investigative office is a Title IX compliance entity, rather than one “that could be considered structurally impartial,” and that the policy lacks adequate safeguards for the rights of the accused.

“Harvard has adopted procedures for deciding cases of alleged sexual misconduct which lack the most basic elements of fairness and due process, are overwhelmingly stacked against the accused, and are in no way required by Title IX law or regulation,” the letter stated.

The professors said the new policy fails to ensure adequate representation for the accused and includes rules governing sexual conduct between two impaired students that are “starkly one-sided as between complainants and respondents, and entirely inadequate to address the complex issues involved in these unfortunate situations involving extreme use and abuse of alcohol and drugs by our students.”

In addition to Dershowitz, faculty members who signed the letter included Elizabeth Bartholet, Nancy Gertner, and Charles Ogletree.

Harvard said in its statement on Tuesday that a committee of faculty, staff, and students will offer advice to the university going forward on the new policy and its implementation.

“The policy and procedures address a problem that affects core institutional values and objectives — access to educational opportunities, fairness, objectivity, and non-discrimination,” the statement said.

MaryRose Mazzola, a member of Harvard Students Demand Respect, one of the campus groups that has pushed for stronger protections for victims, fired back against the law professors in an e-mail.

“We’re deeply concerned by the content of the op-ed and will be reviewing the letter more closely in the coming days,” Mazzola wrote, adding that her group is also pressing for the university to adopt a policy of affirmative consent, which generally means that sex is considered consensual only if both parties actively agree to it.

Harvard said in July that it would adopt a standard of “unwelcome conduct of a sexual nature,” which means “essentially, conduct is unwelcome if a person did not request or invite it and regarded the conduct as undesirable or offensive.”

A spokeswoman for the federal Education Department declined to comment on the professors’ letter and said the Title IX investigations into Harvard College and Harvard Law School are ongoing.

Globe correspondent Matthew Rocheleau and Evan Allen of the Globe Staff contributed to this report.



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