

Action Collaborative on Preventing Sexual Harassment in Higher Education

Decision Points for Developing Policies to Prevent Passing the Harasser

This Table represents the combined content of Tables 1–3 in the Action Collaborative Issue Paper, “[Exploring Policies to Prevent Passing the Harasser in Higher Education](#)” (Serio, Blamey, Rugless, Sides, Sortman, Vatti, and Williams, 2023). For an in-depth discussion of these decision points, see the Issue Paper, which explores key considerations for developing and implementing policies to prevent passing the harasser, as well as examples of how some colleges and universities are addressing specific challenges.

Credit for this Table goes to the authors of the Issue Paper: Tricia Serio, Ashley Blamey, Laura Rugless, Vickie R. Sides, Melissa Sortman, Hima Vatti, and Quinn Williams.

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Learn more: <http://www.nationalacademies.org/sexualharassmentcollaborative>

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EXPLORING POLICIES TO PREVENT “PASSING THE HARASSER” IN HIGHER EDUCATION

Decision Point	Potential Resolution	Example	Description
Authority and Support			
<p>Authority and support. The creation of institutional policies can be difficult without federal or state compliance as a motivating factor; often, those responsible for hiring may not have the authority or institutional support to create new policies.</p>	<p>IHEs in Washington State have state-level legislation to comply with; however they are choosing to be more comprehensive.</p>	<p>University of Washington</p>	<p>“This Washington state law went into effect in June 2020 with an October 1, 2020, compliance date for applicant declaration; a July 1, 2021, compliance date for the reference check requirement; and a December 2023 date for the sharing of any climate assessment information. UW is currently working to establish procedures within Human Resources and the Office of Academic Personnel that includes, among other things, centralizing records that contain findings and ensuring that they can be shared in compliance with state law” (DOW).</p> <p>“The state law . . . is specifically in response to harassment of students by employees; however, UW is expanding our procedures and compliance to include harassment of students and employees” (DOW).</p>
	<p>IHEs in Wisconsin responded to headline-grabbing reputational events involving personnel hired with past misconduct to help drive policy at the state and board governance leadership level.</p>	<p>University of Wisconsin System</p>	<p>“The UW System Board of Regents passed resolution 11038, which required the adoption of new policies on documenting and disclosing sexual misconduct in the hiring process” (DOW).</p>
	<p>UC Davis collaborated with their own counsel and counsel within the UC Office of the President, UC Davis Academic Senate, senior staff, and academic leadership to ensure buy-in for their policy.</p>	<p>University of California, Davis</p>	<p>“[B]ecause of the policy’s legal ramifications, UC Davis representatives conferred with counsel both within the university and at the UC Office of the President . . . [as well as] the leadership of the UC Davis Academic Senate . . . academic leadership (10 deans) . . . [and] vice provosts of academic affairs/academic personnel at each of the 10 UC campuses.”</p>
<p>Connection to mission. Policies intended to prevent passing the harasser may need to be connected to existing mission statements or strategic plans.</p>	<p>Prevention of harassment is not only well-suited for inclusion in codes of conduct but also to DEI efforts.</p>	<p>University of Washington</p>	<p>Per UW Faculty Code amendment, “[all] candidates for initial faculty appointment will need to submit a statement of past and planned contributions to diversity, equity, and inclusion, and academic units and search committees shall consider this statement as part of a comprehensive evaluation of the candidate” (DOW).</p>
	<p>IHEs, through organizations like the Association of American Universities, can operate under guiding principles to prevent “pass(ing) the harasser.”</p>	<p>Association of American Universities</p>	<p>“These AAU Advisory Board on Sexual Harassment in Academia principles encourage institutions to educate the campus community on preventing sexual harassment, to ensure sexual harassers are not passed from one institution to the next, and to provide victims with the resources to report abuse without retaliation and to hold perpetrators accountable” (DOW).</p>

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Implementation			
What to ask/What is covered? If requests cover only findings of misconduct and not allegations, open investigations, or investigations that could not be completed due to subject departure, then important information may be missed; however, there are concerns about withholding offers of employment simply for investigations that may or may not result in substantiated findings.	Ask for references for only substantiated findings, but ask applicants to self-attest that they are not currently being investigated.	University of California, Davis	UC Davis’ policy involves asking references for “any history of substantiated academic misconduct found following a formal investigation,” and asking candidates to “attest that they have not been disciplined in the last 5 years and are not currently the subject of an investigation.”
	Ask for information more broadly, but adverse information would not constitute an automatic rejection.	University of Wisconsin System	The UW System’s policy covers “violations, open investigations, and instances in which candidates left their previous position(s) while being actively investigated.”
		University of Tennessee, Knoxville	As part of UTK’s online employment application, all applicants for exempt staff, tenure-track faculty, and executive positions receive notice that if they are a finalist for a position they will be asked to provide information about current open investigations and adverse findings related to sexual misconduct. If the applicant is selected as the finalist for the position, the university will facilitate the Applicant Sexual Misconduct Attestation (ASMA). The scope of the ASMA is limited to pending cases and adverse findings. It is not an automatic disqualification. See The University of Tennessee, Knoxville Title IX 2022 Annual Report (utk.edu) .
Ask for a broad range of information.	The Ohio State University	Ohio State’s authorization form covers “ANY misconduct (i.e., findings of misconduct, ongoing investigations into alleged misconduct, discipline as a result of misconduct) . . . [but not] information about alleged misconduct for which an investigation was conducted and no findings of misconduct were identified.”	
Duration of history. The older the instances of misconduct are, the less relevant they may be to current risk assessments and the more challenging they may be to document; however, only seeking information from recent years may not provide the hiring institution with a comprehensive picture of the prospective employee’s history.	Include a specific and recent time frame, such as 5 years.	University of California, Davis	UC Davis’ policy involves asking candidates to “attest that they have not been disciplined in the last 5 years.”
	Specify a longer period for sources that are easier to obtain information from.	University of Wisconsin System	A case example for the UW System’s policy indicates that in addition to the most recent employer, information should be requested from “any UW or Wisconsin state agency employers from the past 7 years.”
	Reframe the request to focus on employment periods rather than calendar years.	University of Wisconsin System	A case example for the UW System’s policy indicates that information should be requested from “the candidate’s most recent employer.”
Administrative burden. The hiring process already involves many steps, and asking previous institutions for information on sexual harassment plus other types of information is an additional burden.	Consolidate information requests for all forms of misconduct.	University of California, Davis	UC Davis offers “a coordinated process for conducting reference checks that also encompasses any form (or combination) of harassment or discrimination that impacts the applicant’s capacity to perform research, teaching, or service duties.”
		Ethical Transparency Tool	The ETT would potentially cover “sexual, gender, and racial misconduct—as well as professional licensure, financial, and research misconduct to maximize its utility.”

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	Use an efficient “check-the-box” form.	Ethical Transparency Tool	The ETT would provide “an efficient ‘check the box’ Disclosure Form Template, which minimizes labor for a disclosing entity to make disclosures and for a receiving entity to review disclosures.”
	Automate the process.	Ethical Transparency Tool	The ETT would automate both “individuals’ consents and entities’ disclosure requests.” It will also send automated reminders to complete the disclosure process.
	Provide search committees with a clear rubric to assess candidates.	University of California, Berkeley (see also Action Collaborative DOW)	“Review published faculty hiring procedures to ensure that the hiring process is informed by clear criteria regarding the potential contributions of the candidate to diversity, equity, inclusion, and belonging. Ensure, by monitoring active searches, that DEIB assessments are part of every hiring decision” (DOW).
<p>Staffing. Figuring out staff capacity to implement these policies can be a challenge. Many institutions do not have robust electronic hiring or human resource processes.</p> <p>Not everyone involved in hiring faculty is a member of the human resources team, nor is it guaranteed that those responsible for hiring will know what questions to ask or how to avoid exceeding the scope of the inquiry.</p>	Establish a dedicated committee for reviewing applications within a defined scope of practice.	University of Tennessee, Knoxville	As part of UTK’s pilot of an Applicant Sexual Misconduct Attestation (ASMA), a Sexual Misconduct Attestation Committee will review any applications for which the applicant or their former institution attests to investigations or findings of sexual misconduct.
	Offer institution-wide manager training to support responsible employees.	Harvard University	“The Universal Manager Training (UMT) program is a multiday program designed to give managers at Harvard everything they need to know and do in their role . . . UMT is for managers with supervisory responsibilities, including hiring, training, coaching, and performance management, and who have at least one direct report.”
	Offer recruitment training to support responsible employees.	University of Massachusetts Amherst	“STRIDE (Strategies and Tactics for Recruiting to Improve Diversity and Excellence) workshops are for faculty members with an important role in faculty recruitment efforts (e.g., search committee chairs and members and other key faculty). These two-hour workshops review research driven best practices to recruit for diversity and excellence across every stage in the search process.”
	Build peer faculty training (through advisors and a train-the-trainer model).	University of California, Riverside	“We found that the Faculty Equity Advisor Program could fill the gaps between Department Chairs who were conflict averse and who lacked managerial training in personnel conflicts, Graduate Advisors who also had fairly little training in such available resources and guidance, and College Deans’ administrative units with limited expertise and bandwidths could be supplemented” (DOW).
	Create campuswide resource guides and strategic efforts.	Harvard University (Sexual and Gender-Based Harassment Resource Guide and Harvard Culture Lab)	“Following the release of the report of the Presidential Task Force on Inclusion and Belonging at Harvard University, the Office for Diversity Inclusion & Belonging (ODIB) was established in October 2018. Informed by the recommendations of the Presidential Task Force on Inclusion and Belonging, ODIB guides Harvard’s culture toward sustainable inclusive excellence by convening stakeholders, serving as a catalyst for strategic efforts, analyzing University-level progress, optimizing investments, and facilitating University-wide coordination” (DOW).

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<p>When to ask? Asking for disclosures at the application stage means investing a lot of work in applicants that will never be seriously considered, but waiting until the final stages means potentially having to start over if a final candidate unexpectedly has a history of misconduct.</p> <p>The best time to make the request is closely related to how an IHE wants to make the request and vice versa.</p>	Incorporate the request for information into another stage of the search process.	University of Tennessee, Knoxville	If the applicant is selected as the finalist for the position, UTK will facilitate the Applicant Sexual Misconduct Attestation (ASMA). It is incorporated in the search process at the same stage as the background check.
	Require consent at the application stage, but wait to request disclosures until the final reference check stage.	University of California, Davis	UC Davis “requires all individuals applying for a tenured (or equivalent) faculty position to include with their application materials a signed release stating that if they are the top candidate, UC Davis may contact all their prior university employers and conduct a reference check.”
		University of Illinois	“The U of I System will include in the application process a notice to potential applicants that inquiries regarding past Findings of Sexual Misconduct or Sexual Harassment will be made of them and prior employers. Applicants also will be notified that final candidates are required to authorize current and former employers to disclose Findings of Sexual Misconduct or Sexual Harassment as part of the hiring process.”
		The Ohio State University	Ohio State requires all candidates for tenured faculty positions to complete an authorization form at the beginning of the application process that gives permission to contact current and past employers and to gather information on any misconduct; the hiring process cannot move forward without this authorization, but they will not reach out to employers unless the candidate is a finalist for the position. Ohio State also adds language to all offer letters that require applicants to agree that they have disclosed all information about “all employment-related misconduct findings and pending disciplinary proceedings.”
	Tailor the timing of the request based on the supervisory responsibilities of the role and/or the financial cost of the timing.	Whatcom Community College	Whatcom Community College uses a bifurcated approach. For positions with minimal or entirely without supervisory responsibilities, Whatcom requests information about prior misconduct during the third interview. For positions with significant supervisory responsibilities and high-level positions (such as vice presidents) that may require flying applicants out to an interview, Whatcom requests information about misconduct at the beginning of the recruitment process.
<p>How to ask? Because most current hiring processes do not include steps to request information like this, it can be unclear how to make the request. The best method for making the request is closely related to when an IHE wants to make the request and vice versa.</p>	Screen faculty job candidates through a self-reporting system in the application.	Vanderbilt University	A self-reporting system, as part of the application process, is a potential solution. At Vanderbilt, beginning with faculty hired for academic year 2019–2020, all faculty offers and appointment letters include language and terms about agreeing to self-reporting “if you have been or are currently the subject of an investigation or any administrative action based on an allegation of workplace misconduct.”
		University of Massachusetts Amherst	UMass Amherst incorporates “the question related to previous violations of policies covering discrimination, harassment, or bullying . . . [in] the faculty and staff employment application in PageUp, the university’s applicant portal and administration system.”

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	Include the information request in the existing reference check process.	University of California, Davis	The UC Davis policy focuses on the reference check stage of the hiring process, introducing a “coordinated process for conducting reference checks that also encompasses any form (or combination) of harassment or discrimination that impacts the applicant’s capacity to perform research, teaching, or service duties.”
	Use an automated third-party tool.	Ethical Transparency Tool	The ETT would allow IHEs, societies, and other research organizations to “register to use ETT. A Registered Entity (RE) may require an Individual (Ind.) to complete a Consent Form on ETT (if not already submitted) as a condition to being considered for certain honor, privilege, employment, leadership, or governance roles. (A RE-society may ask Ind. To complete a Consent Form voluntarily anytime to help populate the ETT database and contribute to a norm of transparency.)” (Societies Consortium, 2022).
Who to ask? Often, reference checks are directed to faculty or staff who will not have access to confidential information; however, relying on self-disclosures primarily acts as a mechanism for IHEs to release employees if they have been found later to have misrepresented their history.	Rely on applicants to self-disclose through a self-reporting system.	Vanderbilt University	Vanderbilt relies on self-disclosure from candidates. “While universities do call former deans, department chairs, and/or colleagues to conduct reference checks, those individuals typically do not disclose the fact of such investigation or disciplinary action because of legal constraints or a lack of awareness of the investigation/discipline. Thus, reference-based system of screening faculty applicants may not uncover that a candidate had a history of discrimination or harassment even when supplemented by background checks.”
		University of Massachusetts Amherst	UMass Amherst incorporates “the question related to previous violations of policies covering discrimination, harassment, or bullying . . . [in] the faculty and staff employment application in PageUp, the university’s applicant portal and administration system.”
	Rely on references from previous employers.	University of California, Davis	The UC Davis policy focuses on the reference check stage of the hiring process, introducing a “coordinated process for conducting reference checks that also encompasses any form (or combination) of harassment or discrimination that impacts the applicant’s capacity to perform research, teaching, or service duties.”
		University of Illinois	“The U of I System will include in the application process a notice to potential applicants that inquiries regarding past Findings of Sexual Misconduct or Sexual Harassment will be made of them and prior employers. Applicants also will be notified that final candidates are required to authorize current and former employers to disclose Findings of Sexual Misconduct or Sexual Harassment as part of the hiring process.”
		The Ohio State University	Ohio State requires all candidates for tenured faculty positions to complete an authorization form at the beginning of the application process that gives permission to contact current and past employers and to gather information on any misconduct; the hiring process cannot move forward without this authorization, but they will not reach out to employers unless the candidate is a finalist for the position. Ohio State also adds language to all offer letters that require applicants to agree that they have disclosed all information about “all employment-related misconduct findings and pending disciplinary proceedings.”

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<p>Which employees does this apply to? Reviewing all employees of an IHE may be too large of a step to take.</p>	<p>Start with a smaller, more defined group than “all employees.”</p>	<p>Ethical Transparency Tool</p>	<p>The ETT may cover “volunteers and employees, post docs and residents,” but not students. While its design may enable a broadening of scope in the future, it assumes that the institutions that use the tool will want to phase in its application.</p>
		<p>University of California, Davis</p>	<p>UC Davis’ policy applies to “faculty with tenure/security of employment (i.e., a career-long guarantee of employment).”</p>
		<p>The Ohio State University</p>	<p>Ohio State’s policy applies to “any faculty member being hired with tenure (Associate Professors and Professors).”</p>
		<p>University of Wisconsin System</p>	<p>The UW System’s policy applies to “full-time employees (faculty, academic staff, postdoctoral fellows, etc.), but not to temporary employees, student hourly employees, and graduate assistants.”</p>
	<p>Have the policy cover a large group of employees.</p>	<p>Purdue University</p>	<p>Purdue requires that “all job postings will indicate that disclosure regarding Findings of Misconduct will be required for external applicants and will be considered in the selection of the successful candidate . . . [except]</p> <ul style="list-style-type: none"> • Individuals employed by outside staffing agencies • Individuals appointed to positions not on university payroll”
Resulting Effects of the Policies			
<p>Delays in offers. If institutions have to wait for the results of the disclosure request, an applicant may accept an offer from a competitor.</p>	<p>Provide tentative offers.</p>	<p>University of California, Davis</p>	<p>UC Davis “issues tentative offer letters to final candidates asking them to attest that they have not been disciplined in the last 5 years and are not currently the subject of an investigation.”</p>
		<p>Purdue University</p>	<p>Purdue requires that “all offers of employment to new hires to the University will be made contingent upon the results of a Misconduct Screening.”</p>

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<p>Hiring decisions. IHEs do not want to feel restricted in their ability to make hiring decisions.</p>	<p>Policies that require information-gathering efforts do not have to stipulate any particular decision be made based on the information gathered, though it can be helpful to provide some guidelines for how to assess the significance of the information gathered and what factors demonstrate that an individual’s behavior will no longer be a risk to the campus community.</p>	<p>University of Illinois System</p>	<p>“In the event a Finding has been made against a candidate, the candidate shall be permitted an opportunity to provide an explanation for consideration prior to a final decision. The information will be evaluated, and a decision will be made regarding whether it is deemed in the best interest of the U of I System to withdraw a candidate from consideration or withdraw an offer of employment at any stage of the application process. Relevant factors to be considered include but are not limited to:</p> <ul style="list-style-type: none"> • The nature and severity of the conduct at issue; • When and under what circumstances the conduct occurred; • Whether the conduct involved an abuse of power or authority, such as involvement of subordinate employees or students; • The nature of the position for which the candidate is being considered; • The candidate’s subsequent conduct and work history; • Evidence of rehabilitation. <p>A candidate’s failure to respond to an inquiry about Findings of Sexual Harassment or Sexual Misconduct, any dishonesty in response to inquiries about Sexual Harassment or Sexual Misconduct, or failure to consent to the release of Findings of Sexual Misconduct or Sexual Harassment, will be grounds for removal of a candidate from further consideration.”</p>
		<p>Purdue University</p>	<p>“Upon verifying a Finding of Misconduct or upon conclusion of Human Resources’ investigation of a reported Finding, the Candidate will be permitted an opportunity to provide a written explanation for consideration prior to a final decision. Human Resources, in consultation with the Senior Leader and legal counsel, will evaluate the Finding, review the Candidate’s explanation, and determine whether it is in the best interest of the University to allow the Candidate to continue to be considered or to withdraw any offer of employment made and remove the Candidate from further consideration for the position. Relevant factors to be considered include, but are not limited to: The nature and severity of the conduct at issue; when and under what circumstances the conduct occurred; whether the conduct involved an abuse of power or authority, such as involvement of subordinate employees or students; the nature of the position for which the Candidate is being considered; the Candidate’s subsequent conduct and work history; and evidence of rehabilitation.”</p>
		<p>University of Wisconsin System</p>	<p>The UW System’s policy states that “disclosure of adverse information by a candidate or previous employer does not constitute an automatic disqualifier. To ensure that all UW campuses avoid automatic disqualification of candidates upon disclosure of sexual misconduct information, the UW policy requires that all disclosures be weighed as part of the evidence-based hiring process. This hiring process takes into account the relevance of the violation(s) to the open position, the amount of time elapsed since the violation(s), the severity of the violation(s), whether the position would involve direct contact with vulnerable populations, and any other relevant factors. The specific process for handling any findings of responsibility for sexual misconduct discovered during the hiring process is established at the campus level.”</p>

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<p>Perceived or actual liability. Institutions may be in a difficult position, trying to determine whether they have more perceived or actual liability if (1) they hire someone with a history of misconduct without a process for requesting disclosures of misconduct, or (2) they hire someone with a history of misconduct after requesting disclosures of misconduct but not doing a thorough job.</p> <p>IHEs may be concerned about employees litigating the sharing of misconduct information with potential employers.</p>	<p>Instead of performing an exhaustive investigation of prior misconduct, limit requests to only substantiated findings, and also ask applicants to self-attest that they do not have a history of findings or an ongoing investigation; therefore, if a history is discovered, they have grounds for dismissal.</p>	<p>University of California, Davis</p>	<p>UC Davis’ policy involves asking references for “any history of substantiated academic misconduct found following a formal investigation,” and asking candidates to “attest that they have not been disciplined in the last 5 years and are not currently the subject of an investigation.”</p>
	<p>Ask applicants to waive liability.</p>	<p>Ethical Transparency Tool</p>	<p>ETT’s consent form includes a waiver of liability for those who make disclosures and those who receive them. This aspect of ETT’s design reduces the legal risk of sharing information.</p>
	<p>Risk of litigation can occur from not having a process in place as well as having one. IHEs can establish a process for obtaining information about misconduct as well as guidelines for how the information is assessed, including allowing a candidate to explain any adverse information.</p>	<p>University of Illinois System</p>	<p>“In the event a Finding has been made against a candidate, the candidate shall be permitted an opportunity to provide an explanation for consideration prior to a final decision. The information will be evaluated, and a decision will be made regarding whether it is deemed in the best interest of the U of I System to withdraw a candidate from consideration or withdraw an offer of employment at any stage of the application process. Relevant factors to be considered include but are not limited to:</p> <ul style="list-style-type: none"> • The nature and severity of the conduct at issue; • When and under what circumstances the conduct occurred; • Whether the conduct involved an abuse of power or authority, such as involvement of subordinate employees or students; • The nature of the position for which the candidate is being considered; • The candidate’s subsequent conduct and work history; • Evidence of rehabilitation. <p>A candidate’s failure to respond to an inquiry about Findings of Sexual Harassment or Sexual Misconduct, any dishonesty in response to inquiries about Sexual Harassment or Sexual Misconduct, or failure to consent to the release of Findings of Sexual Misconduct or Sexual Harassment, will be grounds for removal of a candidate from further consideration.”</p>
<p>Inequitable decision-making. Job applicants belonging to marginalized groups (such as people of color and members of the LGBTQIA+ community) may face harsher penalties for adverse information compared with peers who do not belong to those groups.</p>	<p>IHEs can carefully monitor the implementation of anti-passing-the-harasser policies and engage in continuous quality improvement efforts to ensure equitable decision-making.</p>	<p>University of Wisconsin System</p>	<p>The UW System is “working to determine a mechanism or plan for evaluating the effect the policy has on [identifying individuals with sexual misconduct histories] or how it will monitor for any unintended consequences of the policy. To this end, the UW System is considering what data to collect to evaluate the effectiveness of the policy and is reviewing other evaluation approaches for similar policies (e.g., the Washington State policy to prevent passing the harasser and reduce sexual harassment).”</p>