



Office of the Chair
Telephone: (510) 987-0711
Fax: (510) 76-0309
Email: Lawrence.Pitts@ucop.edu

Assembly of the Academic Senate, Academic Council
University of California
111 Franklin Street, 12th Floor
Oakland, California 94607-5200

December 19, 2003

JOSEPH P. MULLINIX
SENIOR VICE PRESIDENT
BUSINESS AND FINANCE

C. JUDSON KING
PROVOST AND SENIOR VICE PRESIDENT
ACADEMIC AFFAIRS

Re: Academic Council's Final Response on Proposed New Policy on Conflicts of Interest Created by Consensual Relationships

Dear Joe and Jud:

The *Proposed New Policy on Conflicts of Interest Created by Consensual Relationships* was sent out on October 15 to Council committees and Divisional Senates for review. Based on their responses and its own deliberation as a body, the Academic Council supports the intent of the proposed policy, but feels that it is in need of careful reconsideration in regard to some of its provisions. Specific areas of concern are outlined below. It should also be noted that some of the reviewing bodies expressed significant reservations at the conceptual level, UCFW holding that "the emphasis of policy should be on the fair resolution of conflicts of interest," and not on sanctioning interpersonal relationships; and UCLA recommending that the proposed policy be "blocked" pending a reconsideration of the recent changes in APM 015.

Protocol and enforcement consequences – Several concerns were raised about the policy in practice. What is the reporting time frame? What is the culpability of third parties for failing to report? What is the range of possible sanctions for non-compliance? Also noted was the need to clarify: a) the process of and expectations connected with the transfer of evaluative responsibility (UCSD); b) how this policy would adjoin the sexual harassment policy in the case of third-party grievances (CCGA); and c) how already existing relationships will be addressed (UCLA). It was recommended that University and Title IX Coordinators be involved in developing implementation procedures. (UCSD)

Reference to and overlap with APM 015 -- An obvious concern is the intersection of this policy with the provisions of APM 015, and how (or if) that should be conveyed. The summary of APM 015 (last paragraph of the "Responsibilities toward Students" section) was seen as unnecessary and confusing. UCSD recommends that the summary be eliminated, and suggests amended language for that section. (See also UCFW.)

Policy Title –The term “conflict of interest,” which generally refers to financial conflicts, may not be appropriate and could be replaced with “abuse of power.” (UCSD) Also, the term “consensual” may not be direct enough. (UCB)

Disclosure— It was noted that this is a difficult area to legislate, and that the policy is more a “plea for self-governance than a policy with obvious ‘teeth.’” (UCB) Knowledgeable faculty (from the fields of rhetoric and law) might be consulted about crafting the policy’s language. It was also noted that disclosure has to be a function of dealing with conflicts of interest, and therefore calling behavior “strictly prohibited” may be misguided. (See also UCFW.)

Impact on women – UCFW suggests the proposed policy may have a negative effect on the status of women, similar to that of earlier anti-nepotism policies.

Intra-departmental spousal/partner relations

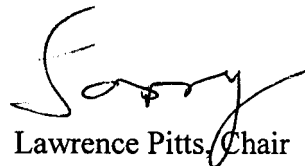
- Since the policy as written might prohibit a department chair from simply assigning duties to a spouse/partner in the same department, deletion of the word “decision-making” from the policy description is recommended. (UCLA) Additionally, the policy should avoid inhibiting research collaboration between spouses/partners. (UCLA)
- UCLA’s response included a suggestion to add restrictions to the policy that would prohibit individuals in a consensual relationship who work in the same academic unit from voting on anything involving a partner, or from serving on the same dissertation committee.
- UCEP noted that the policy *requires* the removal of conflicts caused by consensual relationships, however, there are no specific guidelines about how conflicts should be removed. This is especially a problem in a small department, for example, where a spouse serves as a department chair and thus is unable to make teaching assignments or participate in personnel actions for their spouse. Common-sense guidelines should be proposed and specific mechanisms instituted to deal with problems and complaints that arise.

Additional Questions regarding specific relationships

- Does the policy cover relations between post-doctoral scholars and faculty, and between faculty and house staff? Should it treat mature adult students the same as minors? (UCSD, UCFW)
- How far in the “chain of command” is the policy effective? (UCLA)
- Why would a relationship be prohibited if the senior manager were not in the “chain of command” above the student or staff person?

Please refer to the enclosed individual responses for more detailed commentary. The Academic Council appreciates the opportunity to advise on the development of this policy, and trusts that our concerns and recommendations will be given serious consideration.

Sincerely,



Lawrence Pitts, Chair
Academic Council

Encl.:

Systemwide Senate Committee Responses: UCP&T, CCGA, UCFW, and UCEP
Divisional Responses: Berkeley, Davis, Irvine Los Angeles. and San Diego



UNIVERSITY COMMITTEE ON PRIVILEGE AND TENURE (UCP&T)
Carolyn Martin-Shaw, Chair

Assembly of the Academic Senate
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200
Phone: (510) 987-9466
Fax: (510) 763-0309

November 18, 2003

**LAWRENCE PITTS, CHAIR
ACADEMIC COUNCIL**

RE: Proposed New Policy on Conflicts of Interest Created by Consensual Relationships and Revised Policy on Sexual Harassment and Procedures for Responding to Reports of Sexual Harassment

Dear Chair Pitts:

Given the extremely short response time that the Office of President has given us to review both the proposed new "Policy on Conflicts of Interest Created by Consensual Relationships" and the revised "Policy on Sexual Harassment and Procedures for Responding to Reports of Sexual Harassment," the University Committee on Privilege and Tenure (UCP&T) has made considerable efforts to attempt to review these proposals without the benefit of being able to meet together as a committee. More time to review these proposals would have enhanced the ability for UCP&T and the other Academic Senate committees to conduct deliberative consultation. We trust that for future proposal reviews the administration will take the time constraints of shared governance into account. UCP&T's review of these two proposals follows.

Proposed New Policy on Conflicts of Interest Created by Consensual Relationships

This policy effectively extends the principles that were developed for student-faculty consensual relations to other university employees in supervisory-subordinate roles. While our committee supports the creation of such a policy, we have some concerns about specificity and clarity of language used in the proposed document.

UCP&T believes that the title of the proposed policy, "Policy on Conflicts of Interest Created by Consensual Relationships," is not acceptable. Our committee members had concerns about both the term "conflict of interest" and the term "consensual":

The term "conflict of interest" is usually used, both inside and outside the University, to refer to financial conflict. The University has been careful to avoid confusion about this term in the past by separating "conflict of interest" (financial) from "conflict of commitment" (time). Extending this term to the

context of personal relationships might be unnecessarily confusing and subject to misinterpretation.

2. The intent of the policy is to prohibit romantic and/or sexual relationships in which one individual has power or authority over the other. Whether or not these relationships are deemed “consensual” seems irrelevant to this policy.

In the “Policy” section, the phrase “as soon as practicable,” which establishes the timeline in which the individual in the supervisory position must take steps to remove himself or herself from professional decisions concerning the other individual involved in the relationship, is vague and hence may raise implementation difficulties (p. 1). One suggestion is to note that the person with supervisory responsibility must seek consultation with a third party for advice about when “as soon as practicable” might be, rather than leaving the entire decision up to the person involved in the relationship.

In the “Responsibilities Toward Students” section, some rephrasing should occur in the sections regarding unequal distribution of power and the circumstances in which exceptions would be approved (p. 2):

The third sentence of the first paragraph implies that it is unequal power that must be protected, not the students. This sentence should be revised to read: “Because of the unequal institutional power inherent between students and particular members of the University community, students must be protected...”

2. It is not clear in what cases exceptions can be approved. We assume that the power to approve exceptions covers all prohibitions stated, whether those specific to students or not, but this is not clear.
3. The final paragraph of this section references and provides a summary of the consensual relationships section of APM 015. While it is appropriate for a reference to APM 015 to remain, the summary is not needed and needlessly confuses whether this policy or APM 015 is the proper statement. We suggest merely stating: “Consensual relationships between faculty and students are also governed by APM 015, the Faculty Code of Conduct.”

Proposed Revised Policy on Sexual Harassment and Procedures for Responding to Reports of Sexual Harassment

Our committee commends various revisions to the policy, specifically important changes in the definition of sexual harassment, reports of sexual harassment, filing false reports, retaliation for filing a sexual harassment report, discrimination as sexual harassment, and academic freedom. However, we have some concerns and recommendations for modifications to this and other parts of the policy:

1. The phrasing “severe and pervasive” in the definition implies that the harassment must be both severe and pervasive (I.B., p. 1). We strongly recommend changing

the wording from “severe and pervasive” to “severe, persistent, or pervasive” to indicate that the conduct will be judged as harassment whether it is a single serious act, a long-continued set of actions, or a systematic pattern.

2. The phrase, “in a timely manner,” which defines the time limit for filing a complaint or grievance regarding the resolution of a report of sexual harassment, needs greater clarification (II.C., p. 8). Obviously the issue of filing such complaints or grievances in a timely manner is an important one, but the language here is vague, especially given that the date on which the time begins is specified in the proposed policy language, but the end date is not. Some specified time for an end date or a time limit needs to be indicated.
3. Earlier systemwide policy on sexual harassment included remedies for complainants whose allegations of sexual harassment were deemed well-founded through the University’s procedures. Some campuses also have local procedures that allow the Title IX officer or the officer in charge to suggest remedies. These remedies could include restoration in pay or reinstatement in position. The proposed policy includes no remedies short of those protective measures used while a case is being pursued (e.g., separation from post or change of housing, etc). This lack of remedies might discourage a complainant from filing a report of sexual harassment.
4. The new procedure, as well as the older version, explicitly states that the complainant shall not be told what disciplinary action has been taken against the accused when the finding is that the accused did commit acts of sexual harassment (II.E, pp. 8-9). We understand that this policy is based on the protection of the privacy of the accused's personnel records. We would argue, however, that the disciplinary process and the personnel record are not coterminous, are not identical processes or documents, and that the complainant should be made aware of the actual discipline before it is officially reported to the personnel record. There are several reasons for our concerns:
 - a. When a person has been judged to have been the target of sexual harassment, one important outcome of the resolution of the case should be to make the complainant whole and to bring closure to the situation. It must be very frustrating for a victim of sexual harassment to receive a final letter stating, “appropriate action has been taken,” without an explanation of what the action was.
 - b. In actual practice, Title IX officers on many campuses report to the complainant the range of disciplines that are appropriate, sometimes narrowing the range sufficiently to let the complainant have some idea of the specific disciplinary action.

Our committee, therefore, recommends finding a way to better fit the policy to the practice or to allow for specific information to be given to the complainant.

- 5 While University policy on privacy of information requires that personal and confidential information, other than that of the person requesting the report, be redacted, it is unclear as to exactly what information is redacted in the versions of the investigative report that the complainant and the accused are allowed to receive (II.B/4.i, p. 7). We recommend that this section be rewritten so that it is clear that the University is protecting the identity of individuals and not removing any other information that could be considered as evidence.

We hope that the administration will take our recommendations and concerns seriously and revise the proposals accordingly. We look forward to being given a sufficient opportunity to review both of the proposals again once amendments have been made.

Sincerely,

Carolyn Martin-Shaw, Chair
UCP&T

cc: Maria Bertero-Barcelo, Executive Director
UCP&T Members



UNIVERSITY COMMITTEE ON FACULTY WELFARE

Ross Starr, Chair
rstarr@weber.ucop.edu

December 10, 2003

**LAWRENCE PITTS, CHAIR
ACADEMIC COUNCIL**

Re: Proposed Policy on Conflicts of Interest Resulting from Consensual Relations

Dear Larry:

The UCFW has reviewed the proposed policy on conflicts of interest resulting from consensual relations. UCFW met with Sheila O'Rourke of the Provost's office to discuss the proposal. UCFW concurs with the aim of the policy that supervisors should not be improperly influenced by personal considerations in their dealings with subordinates. Nevertheless, UCFW has concerns about the proposed policy. As written it will create more problems than it solves.

1. The first concern is procedural. The time and resources available for review of the proposal are inadequate. The simple physical facilities for review are inadequate. The proposal has not been distributed in hard copy printed form. Some committee members found the proposal text difficult to download from the web. Ms. O'Rourke's written comments were sent out by e-mail the afternoon before the meeting --- many members had not seen them.
2. The second concern is conceptual. The policy seems naively unrealistic and punitive. Many stable relationships and (apparently happy) marriages result from the circumstances treated in the document. This includes the personal situations of the current presidents of several leading American universities and of numerous American university faculty and administrators.

The University should not undertake either to license or to sanction consensual relationships, let alone relationships between marital and domestic partners. The emphasis should be on fair resolution of conflicts of interest, not on burdening, and hence discouraging, the formation of relationships that may eventually produce conflicts of interest.

The conflict of interest issue should be the focal point of the policy, not the nature of personal relations. Hence the tone and approach of the document are inappropriate. The "Introduction" section has a needlessly punitive tone, particularly sentences 2 and 3, paragraph 1 and the whole second paragraph. These two passages should be deleted.

3. The document notes that it applies to faculty. In addition, faculty are covered in this area by APM-015 and the Faculty Code of Conduct. This creates the potential for inconsistency.

4. The proposed policy may have a deleterious effect on the status of women at the University of California. The approach of the document is formally similar to now-discredited anti-nepotism policies. Over the last 25 years, it has become settled that anti-nepotism policies did more harm than good, particularly with respect to the status of women. The better course is to afford autonomy in relationships, and to guard against unfairness by being alert to conflicts of interest rather than condemning or burdening the relationships that produce such conflicts.

5. The third section, "Responsibilities towards students", appears to contain overlap with APM 015. This part of the document should be a separate policy.

6. The scope of the third section, "Responsibilities towards students" needs serious evaluation. Should it treat mature adult students the same as minors? Should the University undertake to "strictly prohibit" a student lab assistant from having a personal relationship with a lab director without losing his or her job? Should UC require a graduate student teaching assistant to resign his/her position when he/she develops affection for a non-Senate instructor supervising him/her? Are these prohibitions similar, independent of whether the parties are married or domestic partners to one another? That's how the proposed policy reads, unrealistic as it may appear.

The document notes that "exceptions to the above prohibitions may be approved by the President or Chancellor in extraordinary circumstances." This undertaking seems unrealistic. What "extraordinary circumstances" allow some "strictly prohibited" relationships to be permitted if approved by the President or the Chancellor? This passage gives the appearance that consensual workplace personal relationships are acceptable for those powerful enough to win Chancellorial or Presidential permission.

7. The proposed policies need to specify enforcement procedures uniform over the University, to be reviewed by the Senate prior to adoption of the policy.

8. It is not clear whether the proposed policy is unique to the University of California among American universities. Other institutions' experience with these issues would be useful in evaluating the proposal.

Yours truly,
/s/

Ross M. Starr, Chair
UCFW



LISA ALVAREZ-COHEN
CHAIR, UNIVERSITY COMMITTEE ON EDUCATIONAL POLICY
Telephone: (510) 643-5969; Facsimile: (510) 642-7483
E-mail: alvarez@ce.berkeley.edu

Department of Civil Engineering
726 Davis Hall
University of California Berkeley
Berkeley, California 94720-1710

December 3, 2003

PROFESSOR LAWRENCE PITTS
CHAIR, ACADEMIC COUNCIL

Re: *Proposed Policies on Sexual Harassment and Conflicts of Interest Created by Consensual Relationships.*

Dear Larry:

UCEP discussed both the proposed Policy on Conflicts of Interest Created by Consensual Relationships (PCICCR) and the proposed Sexual Harassment Policy at its November meeting. To begin with, members were struck by the complete lack of coordination between these two policies. For example, this language appears in the PCICCR:

...conflicts of interest created by consensual relationships in employment or education may lead to charges of sexual harassment brought by third parties who believe the consensual relationship creates a discriminatory work or educational environment.

But there appears to be no language about harm to third parties in the Proposed Sexual Harassment Policy. Furthermore *sexual harassment* is not clearly defined apart from *discrimination*, for which we believe a separate policy exists. At a minimum, prior to finalizing any of these policies, the PCICCR, Sexual Harassment Policy and the Unequal Treatment (or Anti-Discrimination) Policy should all be considered in the context of the whole, so that interrelationships between the policies can be clarified.

Specifically with respect to the PCICCR, UCEP felt that the policy lacked any mechanism to clearly address the issues of past relationships between colleagues in the same department, including the behavior of former spouses. Further, favoritism associated with non-romantic relationships was not addressed at all.

It was noted that the policy *requires* the removal of conflicts caused by consensual relationships however, there are no specific guidelines about how conflicts should be removed. This is especially a problem in small departments for example, where a spouse serves as department chair and thus is unable to make teaching assignments or participate in personnel actions for their spouse. It was proposed that instead of creating a prescriptive policy to deal with consensual relationships, that common-sense guidelines should be proposed and specific mechanisms

instituted and widely advertised to deal with problems and complaints that arise. There was significant support for guidelines based upon good judgment coupled with a strong supported complaint mechanism.

Sincerely,

Lisa Alvarez-Cohen
Chair, UCEP

LAC/ml

cc: UCEP members
Academic Senate Director Bertero-Barceló

CCGA
Chair Kent Erickson

November 17, 2003

LAWRENCE PITTS
CHAIR, ACADEMIC COUNCIL

Re: Proposed New Policy on Conflicts of Interest Created by Consensual Relationships

Dear Larry,

At its November 4, 2003 meeting CCGA discussed the Proposed New Policy on Conflicts of Interest Created by Consensual Relationships. The committee had the following comments and suggestions:

- The introductory section of the policy currently states that consensual relationship may lead to charges of sexual harassment brought by third parties. This limits a third party's interest to the definition of sexual harassment and does not consider that the third party may be aggrieved by reasons other than sexual harassment.
- The policy should be more explicit about a third party's responsibility in reporting violations of the University's policy and procedures. It should also clearly explain whether the third party is subject to disciplinary action if a violation is not reported.
- It is unclear what mechanism would constitute an acceptable transfer of evaluative responsibility.
- It should be clarified whether a relationship between a faculty member and postdoctoral student would fall under this policy.
- On page two, the phrase "reasonably expect" was found to be vague and undefined in terms of when a faculty member has academic responsibility over a student.

Sincerely,

Kent Erickson,
Chair, CCGA

cc: CCGA



ACADEMIC SENATE EXECUTIVE OFFICE
LOS ANGELES DIVISION
3125 MURPHY HALL
LOS ANGELES, CA 90095-1408

PHONE: (310) 825-3853
FAX: (310) 206-5273

November 13, 2003

To: Larry Pitts Academic Senate Council Chair

Re: UCLA's Response to "Policy on Conflicts of Interest Created by Consensual Relationships"

The Academic Senate, Los Angeles Division received seven responses from academic senate members about the proposed "*Policy on Conflicts of Interest Created by Consensual Relationships*". Below are the highlights from those responses.

Concerns from those responses:

1. The policy needs to be clear about addressing the existing consensual relationships between superiors and subordinates, rather than being grandfathered.
2. Does the policy apply to superior-subordinate relationships regardless of the distance in the chain of command? Can the U.C. President work for the University?
3. What does it mean that a relationship is prohibited between a senior manager and any student, when the relationship arises in the context of that manager's responsibilities? Why would a relationship be prohibited if the manager is not in the chain of command above the student?
4. The "strictly prohibited" language in the Responsibilities Toward Student's section is misguided and may cause more problems than it will potentially avoid. Dealing with conflict of interest is disclosure.
5. Department Chairs are required to assign classes and appoint committees. If the department member is the chair's spouse or consensual other, how is s/he supposed to "give up" assigning that person to teach classes or serve on committees? It is recommended that the word "decision-making" be deleted from the sentence "An individual shall not accept

supervisory, decision-making, oversight, evaluative or advisory responsibilities over someone with whom he or she has a consensual relationship unless effective steps are taken to eliminate any potential conflict of interest..." and other sections in the policy because it is too broad in potential application.

6. Many faculty have spouses who want to be involved in research but do not have faculty positions of their own. Does the university really want to end these kinds of spouse collaboration just to avoid the remote possibility that someone will take offense and sue?

One academic senate member requested that the following be conveyed:

The university should have a clear-cut policy forbidding people who have consensual relationships who have their academic appointments within the same faculty unit from:

- a. voting on matters in which their partner is involved (such as being on the same ad hoc committee making a recommendation to the department)
- b. serving jointly on the same dissertation committee

The old nepotism rules were discriminatory against women. We need to address the real issues of nepotism that remain in a non-discriminatory way.

A few other academic senate members suggest the following:

The new regulations contain much that is reasonable, codifying procedure for avoiding conflict of interest that have long been practiced informally. In combination with the new APM-015, these proposed regulations have disturbing implications. The Senate has a duty to take firm action to protect its members, and to reverse the erosion of constitutional rights that has already taken place. The Senate is being urged to block the proposed changes in regulations concerning consensual relationships, pending a full reconsideration of the recent changes in APM-015. In the meantime, the administration should be asked to place a stay on enforcement of this section of APM-015.

The detailed responses from each faculty member are available upon your request.

Sincerely,



Clifford Brunk, Chair
Academic Senate, Los Angeles Division

BERKELEY DIVISION

November 12, 2003

CHAIR LAWRENCE H. PITTS

Academic Council, Assembly of the Academic Senate

Subject: Draft Policy on Conflict of Interest Created by Consensual Relationships

The Divisional Council and several divisional committees considered the draft Policy on Conflict of Interest Created by Consensual Relationships. Senate members commented that the draft policy was appropriate in concept, but expressed concern about the policy in practice. Senate members noted the references to Academic Personnel Policy (APM) 015. The Berkeley Division opposed the most recent revision of APM 015, Part II.A.6., as the use of the term "romantic" is vague and subjective. It seems this policy is intended in part to define this section of the *Academic Personnel Manual*.

The divisional Committee on Educational Policy offered the following comment.

It was noted that this is more a plea for self-governance than a policy with obvious "teeth." A very difficult area to legislate a consensual relationship is unlikely to generate a complaint by one of the consentees (except after the fact) or (because unknown) by an injured third party who was not graded on a level playing field with a classmate who was involved with the instructor or GSI. Nevertheless the interests of both the less-powered in such a relationship and the uninvolved third parties require that consensual relationships within an academic power relationship be understood to be inappropriate and subject to sanctions.

One member of the committee suggested that there were some individuals knowledgeable on this subject on campus and that they might logically be consulted about the language of this policy, specifically Kathryn Abrams (Law) and Judith Butler (Rhetoric).

A member of the Divisional Council offered a final comment. The use of "consensual" in the policy title is too broad considering the limited focus of the policy on romantic, physical and/or sexual relationships. It would be better to find a straightforward title that more clearly defines the scope of the policy.

We appreciate the opportunity to comment on the proposed policy.

Sincerely,
Ronald Gronsky
Chair

cc: Margaretta Lovell

IRVINE DIVISION

November 12, 2003

Lawrence Pitts, Chair
Academic Senate
c/o Executive Director María Bertero-Barceló
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

RE: UC Policy on Conflicts of Interest Created by Consensual Relationships

The UC Irvine Councils on Faculty Welfare and Student Experience found the proposed UC Policy on Conflicts of Interest Created by Consensual Relationships fundamentally appropriate. Their discussions brought forth the following points for further consideration.

Some reviewers were concerned that the policy did not pay attention to the implementation at local campuses. It would be useful to define what office or offices would be designated to oversee local compliance.

There was some sentiment to clarify the last sentence of the first paragraph, "Responsibilities Toward Students," so that it reads as follows: "Accordingly, consensual relationships of the following nature are strictly prohibited during the time that the supervisory, instructional, evaluative or advisory relationship is in effect:"



Abel Klein, Chair

DAVIS DIVISION

12 November 2003
Lawrence Pitts, Chair
Academic Council

Re: Proposed New Policies. 1. Policies on Conflict of Interest Created by Consensual Relationships. 2. Policy on Sexual Harassment.

Dear Larry,

In response to your request for review by responsible committees of the Davis Division of the Academic Senate of the two proposed policies named above, I offer a few succinct comments.

The Committee on Privilege and Tenure:

Overall, the Committee had no real problems with the two proposals. One committee member, however, expressed serious reservations because the tenor of the sexual harassment policy was biased in assuming that anyone accused is probably guilty. The member also did not see the logic of singling out a deteriorating faculty-student romantic relationship as any more likely to lead to sexual harassment as any other deteriorating relationship.

Another member was concerned with the language in the last paragraph of the second page that warns faculty about entering into a romantic relationship with any student for whom he/she "...should reasonably expect to have in the future..." some kind of academic responsibility. The member thought that the policy required a bit too much clairvoyance. (Of course, this was a similar concern in Academic Council and the Assembly of the Senate last year by some members of the faculty during the revision of APM 015 –Faculty Student Relations).

From, Professor Arnold Sillman, Chair, Committee on Privilege and Tenure

The Committee on Academic Freedom and Responsibility: The committee offered the following recommendations for revision of the draft.

Section G, Free Speech and Academic Freedom, should be amended to include the term "research." The fifth sentence under G should read: "Consistent with these principles, no provision of this policy shall be interpreted to prohibit conduct that is legitimately related to course content and teaching or research methods of an individual faculty member."

Research methodology quite frequently necessarily excludes members of a particular gender from participating in the study (i.e., females that are or might become pregnant are often excluded from receiving certain drugs). This might be construed by some as a prohibited form of gender-based discrimination.

Equally important to the proper level of protection against accusations of sexual harassment is the delineation of what is conduct “legitimately related to course content and teaching or research methods” and what is not. We may all feel that we “know” when the bounds of legitimacy have been breached but in reality this is not true.

There is no complete all-inclusive definition of these subjective concepts that can be made without possible encroachment on constitutional rights, which, as a public university, the administration has an obligation to protect.

Under these circumstances the university may well go too far when it includes under the term “harassment” conduct that is not in the policy clearly definable. For example, under Section B, paragraph 6 actions or comments based on gender, sex stereotyping or sexual orientation if it is “sufficiently serious to deny or limit a person’s ability to participate in or benefit from University educational programs, employment or services” will be considered as harassment. However, how is a faculty member to know *a-priori* what the sensitivity of any particular individual might be to a body of information or opinions such that it would be “sufficiently serious to deny or limit their ability to participate in or benefit from university educational programs, employment, or services” because they felt harassed by the information?

There is also a statement in Section G that reads: “Freedom of speech and academic freedom, however, are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws.”

In point of law constitutional guarantees, such as freedom of speech, do in fact supersede federal and state anti-discrimination laws where there may be a conflict. Therefore, the real issue is whether parts of the university policy on sexual harassment may be a violation of freedom of speech. This will be particularly relevant if the university policy is co-extensive with federal and state anti-discrimination laws. If, on the other hand, university policy is broader than state or federal law the policy statements fail to clarify to what extent they are broader and how the university can justify such a policy.

For example, it is not clear from the current draft whether the stated prohibited conduct only qualifies as sexual harassment under the policy if it is committed on university property. If the policy applies to activities that occur off-campus as well, then the policy should put the faculty and staff on notice that this is the intent.

Finally, the issue of whether peer review involves power or authority over someone else needs to be stated one way or the other. If a faculty member is having a sexual relationship with another faculty member in the same department, should they be prohibited from participating in departmental votes on merit advances or promotional recommendations for their lover?

From, Professor Jerold Theis, Chair, Committee on Academic Freedom and Responsibility

Sincerely,

SAN DIEGO DIVISION

November 6, 2003

PROFESSOR LAWRENCE PITTS, Chair
Academic Senate
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

SUBJECT: Proposed Policy --Conflicts of Interest Created by Consensual Relationships

Dear Larry:

In response to your email request of October 15, the proposed new policy on Conflicts of Interest Created by Consensual Relationships was transmitted to the Committee on Faculty Welfare and Committee on Privilege and Tenure. It was also discussed in some detail at the November 3 meeting of the Senate Council.

After the recent revisions of APM 015, it seemed reasonable that a policy of this nature should follow. While we endorse the policy as a straightforward statement of principles, we felt it somewhat hastily crafted, and we were of the opinion that it should set out more clearly defined protocols and enforcement consequences not subject to the vagaries of local interpretation and implementation. Below we offer the specific comments and concerns that were raised in our consideration.

With regard to the section "Responsibilities Toward Students" we note the following:

- The final paragraph references and then goes on to summarize the elements of APM 015 that address consensual relationships between faculty and students. We are of the opinion that: (1) the summary should be dropped; it is not needed, and restating the policy simply confuses whether this document or APM 015 is the proper statement; (2) the reference to APM 015 should be retained, but be moved just after the sentence ending "goals and ideals of the University" in the first paragraph; the start of the next sentence then becomes "Additionally", rather than "Accordingly"; and (3) the statement regarding exceptions should be moved to the end of the first paragraph (see page 3 for editorial recommendations).

The Graduate Council noted specifically that (1) it should be made clear whether this policy covers relationships between faculty and postdocs (and between faculty and housestaff), or whether postdocs (and housestaff) are included in the provisions of APM 015, and (2) great care must be given to spelling out forms of resolution, acknowledging that it may be very difficult to transfer supervisory capacity to another individual.

There was also sentiment expressed that student volunteers should not be included in the policy (in Statement C) as there is not a substantive supervisor/supervisee relationship.

Concerns about a lack of basic implementation protocols that all locations might be expected to follow were raised, particularly with regard to the sections "Failure to Comply with the Policy" and "Coordination with Policy on Sexual Harassment".

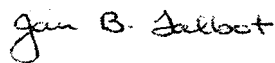
If someone forms a consensual relationship as defined in the policy, when are they supposed to report it? Is there a time frame of weeks, months, quarters that will be common to all locations?

What is the range of sanctions that will be applied for non-compliance?

- Are third parties that become aware of a consensual relationship as defined in the policy culpable if they fail to report it?
- University and local Title IX Compliance Coordinators/Sexual Harassment experts must be involved in developing locations' implementation procedures. Past experience and anecdotal evidence on consensual relationships indicates that many problems may arise if and when such relationships end. As the draft policy suggests, there is a slippery slope toward charges of sexual harassment.

Finally, there was opposition to the title of this proposed policy. The intent of the policy is clear; however, the term "conflict of interest" is already in use (inside and outside the university) with a fairly precise meaning, one which is restricted to financial matters. Extending this term to cover something quite different will be confusing and subject to misinterpretation; the University has been careful to avoid confusion in the past by separating "Conflict of Interest" (financial) from "Conflict of Commitment" (time). The document is intended to prevent abuse of one's position, through favoritism or coercion, either of which would be an "abuse of power"; and it was suggested that this phrase be substituted for "conflict of interest" throughout the document--though the title might be just left as "Conflict" since it seems odd to have an "Abuse of Power" Policy.

Sincerely,



Jan B. Talbot, Chair
Academic Senate, San Diego Division

cc: D. Tuzin
ChronFile

g:\senate\sc\03-04\general\Conflicts of Interest-Consensual Relationships-Response.docx

Editorial recommendations:

Introduction, second paragraph, third sentence: Omit “that violate University policy”.
[Even romantic relationships that begin as consensual may evolve into situations that lead to charges of sexual harassment. ~~that violate University Policy.~~]

Responsibilities Toward Students, first paragraph, third sentence: “The unequal institutional power inherent between students and particular members of the University must be protected from influences...” implies that the unequal power must be protected; this sentence should read “Because of the unequal institutional power [...] students must be protected....”

Responsibilities Toward Students

The University has a special responsibility towards students as members of the University community. The academic success of students is central to the University’s educational mission. ~~The~~ Because of the unequal institutional power inherent between students and particular members of the University community, students must be protected from influences or activities that can interfere with learning consistent with the goals and ideals of the University. Consensual relationships between faculty and students are governed by APM - 015, the Faculty Code of Conduct. ~~Accordingly~~ Additionally, consensual relationships of the following nature are strictly prohibited. Exceptions to these prohibitions may be approved by the President or Chancellor in extraordinary circumstances.

- A. Between a senior manager and any student, when the relationship arises in the context of that manager’s responsibilities;
- B. Between a coach, professional counselor, teaching assistant, lecturer, or other individual not covered by APM - 015, the Faculty Code of Conduct, who is in a position of instructional, evaluative, or advisory authority over students, and any student for whom the coach, professional counselor, teaching assistant, lecturer, or other individual has direct instructional, evaluative, or advisory authority;
- C. Between a direct supervisor and a student employee, including a student volunteer.

~~Exceptions to the above prohibitions may be approved by the President or Chancellor in extraordinary circumstances.~~

~~Consensual relationships between faculty and students also are governed by APM - 015, the Faculty Code of Conduct, which states that it is unacceptable faculty conduct, subject to disciplinary action, for a faculty member to enter into a romantic or sexual relationship with any student for whom a faculty member has, or should reasonably expect to have in the future, academic responsibility (instructional, evaluative, or supervisory) or to~~

~~exercise academic responsibility (instructional, evaluative, or supervisory) for any student with whom a faculty member has a romantic or sexual relationship~~