



Bill Jacob
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*Chair of the Assembly of the Academic Senate
Faculty Representative to the Regents
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200*

February 27, 2014

**SUSAN CARLSON, VICE PROVOST
ACADEMIC PERSONNEL**

Re: Proposed revision of APM 035 and the President's Policy on Sexual Harassment and Sexual Violence

Dear Susan,

This memo follows up my February 14, 2014 letter to you, enclosed, and provides a full summary of the substantive comments submitted by Senate agencies on the proposed [revisions to the Presidential Policy on Sexual Harassment and Sexual Violence](#). For your convenience, I have also attached the entire set of comments received from Senate divisions and committees.

Eight divisions (UCB, UCD, UCI, UCLA, UCM, UCR, UCSB, and UCSD), and three systemwide committees (UCAF, CCGA, and UCFW) submitted comments. Many Senate reviewers expressed general support for the specific policy revisions, but a number of reviewers highlighted vague and confusing language, inconsistencies in style and tone, and other problematic areas. Before the Academic Council can fully support the revisions, four main areas of the policy need clarification. These relate to 1) definitions; 2) consistency across the policy; 3) training; and 4) applicability beyond the campus.

Clarity of Definitions and Consistency across the Policy

Significant parts of the policy are not written clearly. Several reviewers highlighted vague, confusing, and/or inconsistent language in the Definitions and in the Policy itself, which require additional clarification. Specifically, these include the distinctions between "incapacitation" and "drunkenness or intoxication" and between someone who was "voluntarily" intoxicated versus "impaired or incapacitated"; and the definitions of phrases like "reasonable person" and "appropriate actions." Reviewers also suggest assigning a specific timeframe to the word "prompt"; replacing the phrase "whatever action is necessary" with specific instructions; clarifying when the term "stalking" is used in sexual versus non-sexual contexts; and replacing the phrase "reasonable fear" with "reasonable apprehension" (UCD) (UCR). Some reviewers suggest the policy should employ the exact definitions used in the 2013 reauthorization of the Federal Violence Against Women Act (VAWA), or simply refer to VAWA 2013.

Three reviewers (UCAF, UCSB, and UCSD) recommend applying the “reasonable person” standard to the Policy’s definition of sexual harassment, to help protect against frivolous allegations in the interest of preserving academic freedom and freedom of expression. UCAF also recommends extending the “severe and pervasive” standard used in the paragraph of the Definitions section addressing student sexual harassment, to the general definition of sexual harassment, to enhance consistency and clarity.

Senate reviewers were also concerned that some important policy goals related to discrimination are either not clarified or may be subsumed within the larger umbrella of this revised policy. Reviewers pointed to the need to distinguish sexual forms of harassment and violence from non-sexual forms of harassment, both for clarity and to avoid minimizing the importance of the latter. (UCI, UCFW) UCFW recommends separating domestic violence, dating violence, and stalking from the heading “Sexual Violence.” Others question whether sexual assault and sexual violence should be covered in the same policy as non-sexual assault and gender hostility.

Reviewers noted that Policy Section III.D, which defines harassment related to Gender Identity, Gender Expression, or Sexual Orientation Discrimination, as “harassment that is not sexual in nature,” conflates sexual harassment with gender discrimination. (UCSB) Some reviewers suggested moving this discussion of non-sexual harassment to a more prominent place in the policy to clarify that the policy covers these forms of harassment, and/or integrating the elements of harassment described throughout the Policy and in the Policy title (UCD), or removing it altogether and covering it separately in a larger non-discrimination policy. (UCFW)

The policy should also clarify that a complainant may confidentially report an incident and is not required to participate in a formal investigation, but also recognize that a complainant’s choice not to seek a formal investigation does not end the institution’s responsibility to take action. (UCI)

Sexual Harassment Prevention Training

Several reviewers remarked on the need to clarify the role and content of sexual harassment prevention training in the context of this new policy. First, they suggest including the word “prevention” in the language covering sexual harassment training and corrective programs, in places where prevention is implied – for example, in Section V.B “Local Sexual Harassment and Sexual Violence Resources.” (UCSD) They also suggest that the policy provide more direction about the content of mandatory and recommended training by describing all existing forms of in-class or online sexual harassment awareness training required of administrative and teaching personnel. (UCD) Reviewers also remarked on the need to incorporate VAWA-mandated changes into current faculty and staff trainings, and to develop new training modules for students, including graduate students. (UCD, CCGA) They also noted that trainings should be updated to include issues of discrimination pertaining to gender orientation (UCSB) and might best be developed and coordinated from UCOP rather than replicated on each campus. (UCD)

Off-Campus Applications

Finally, several reviewers noted a lack of clarity with regard to the extent of the policy’s reach to off campus locations – for example, what locations are included in “auxiliary university locations” and whether they include non-UC properties where university activities occur (UCR, UCSB). The writers of this Policy should clarify how they intend the University to respond to off-campus incidents of domestic violence. One reviewer noted that it may be an overreach for the Policy to include domestic violence, which might be better left to local law enforcement, with the exception of

situations that occur in University-run housing for students, including students with families.
(UCAF)

As I noted in my February 14 memo, the Senate is aware that you were required to issue the revised Policy on February 19, to meet the requirements of the 2012 reauthorization of VAWA, but that your office would be recommending further revisions over the coming months. The Senate wants to participate substantively in the ongoing development of the policy during this time, and I ask that you fully engage the Academic Senate in the subsequent review process. We recommend that you enlist faculty experts from the University's law schools to verify what is required by VAWA.

Sincerely,

A handwritten signature in cursive script that reads "Bill Jacob".

Bill Jacob

Encl. (2)

Cc: Academic Council
Executive Director Winnacker
Policy Manager Lockwood
Senate Analysts
Senate Executive Directors



Bill Jacob
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February 14, 2014

**SUSAN CARLSON, VICE PROVOST
ACADEMIC PERSONNEL**

Re: Proposed revision of APM 035 and the President's Policy on Sexual Harassment and Sexual Violence

Dear Susan,

As you requested, I asked Academic Senate divisions and committees to review the proposed [revisions to the Presidential Policy on Sexual Harassment and Sexual Violence and the associated change to Academic Personnel Manual \(APM\) Section 035](#). Eight divisions (UCB, UCI, UCLA, UCM, UCR, UCSB, and UCSD), and three systemwide committees (UCAF, CCGA, and UCFW) submitted comments. I will relay their substantive comments to you in a subsequent letter.

At your request, I expressly asked Senate reviewers whether they object to the removal of the Presidential Policy from the Appendices of APM 035. A majority has indicated that they do not.

I also informed the Senate reviewers that you would issue the revised Policy on February 19, per the Office of General Counsel's opinion that the revisions reflect the requirements of the Federal Violence Against Women Act (VAWA) as reauthorized in 2012 and that UC is required to meet by March 7, 2014, but that your office would review and recommend further revisions in the policy over the coming months. I ask that you fully engage the Academic Senate in the subsequent review process.

Sincerely,

A handwritten signature in cursive script that reads "Bill Jacob".

Bill Jacob

Cc: Academic Council
Executive Director Winnacker
Policy Manager Lockwood
Senate Analysts
Senate Executive Directors



December 5, 2013

WILLIAM JACOB
Chair, Academic Council

Subject: Proposed revision of APM 035 (University of California Policy on Sexual Harassment and Sexual Violence)

Dear Bill,

On December 2, 2013, the Divisional Council of the Berkeley Division considered the proposed revisions to APM 035, informed by reports of our divisional committees on Budget and Interdepartmental Relations, and Faculty Welfare. We have no substantive objections to the proposed revision. We do, however, make the following grammatical recommendation: on p. 2, the verb "to impact" is still a contested usage and would best be changed to "affect" or "have an impact on."

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Deakin".

Elizabeth Deakin
Chair, Berkeley Division of the Academic Senate
Professor of City and Regional Planning

Cc: Eric Talley, Chair, Committee on Budget and Interdepartmental Relations
Calvin Moore, Chair, Committee on Faculty Welfare
Martha Winnacker, Executive Director, Academic Senate
Aimee Larsen, Manager, Committee on Budget and Interdepartmental Relations



OFFICE OF THE ACADEMIC SENATE
ONE SHIELDS AVENUE
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TELEPHONE: (530) 752-2231

January 24, 2014

WILLIAM JACOB, CHAIR

UC Academic Council
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

RE: Systemwide Review of Proposed Revision of APM 035, Append. A-1 and A-2

The proposal was forwarded to all Davis Division of the Academic Senate standing committees and Faculty Executive Committees from the Schools and Colleges. Responses were received from the Committee on Affirmative Action and Diversity, Faculty Welfare, and Graduate Council, as well as from the Faculty Executive Committee from the College of Letters and Science.

The College of Letters & Science is supportive of the proposal. The following summarizes responses received including the Committee on Affirmative Action and Diversity's significant concerns and recommendations:


- University policy on the role and responsibility of parties involved in sexual assault violence or harassment in the case of intoxication need to be more clearly stated. Section II.3.b: "Where alcohol or drugs are involved, incapacitation is distinct from drunkenness or intoxication, and is defined with respect to how the alcohol or other drugs consumed impacts a person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments." The statement that "incapacitation is distinct from drunkenness or intoxication" may not convey the right meaning and seems to contradict other sections of the document (i.e. part 3 (Sexual Assault) in the definition of Sexual Violence).
- The new Section III D on Discrimination based on Gender Identity, Gender Expression, Sexual Orientation does not currently read as well-integrated into the overall policy. These elements of harassment are neither integrated into the overall policy title nor the discussion beyond Section III D, which could potentially result in them being overlooked.
- The proposed revision does not significantly alter the substance of the campus policy. We are concerned that there is no mention of the extensive in class or online training currently required of administrative and teaching personnel at UC Davis regarding sexual harassment. In addition, there is concern that the online training is very broad in terms of educating about activities that **could** elevate to an uncomfortable situation.

Recommendations

Connect all forms of training provided to address these real problems and describe them in this policy. For example, the policy could state that on an ongoing basis administrative and teaching staff are required to complete sexual harassment awareness training and that this training raises awareness as to what activities are illegal, uncomfortable, and inadvisable.

Harassment of a non-sexual nature (now relegated to Section III D) be placed more prominently in this document to ensure that the UC-Wide community clearly understands that these forms of harassment are also covered by this policy.

Sincerely,


Bruno Nachtergaele, Chair
Davis Division of the Academic Senate
Professor: Mathematics



Office of the Academic Senate
307 Aldrich Hall
Irvine, CA 92697-1325
(949) 824-2215 FAX

January 28, 2014

William Jacob, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

RE: Systemwide Review of Proposed APM-035, Appendices A-1 and A-2, UC Policy on Sexual Harassment

At its meeting of January 22, 2014, the Irvine Divisional Academic Senate reviewed the proposed revisions to APM-035, Appendices A-1 and A-2, UC Policy on Sexual Harassment. The following Council commented on the proposal and suggested the following modifications.

Council on Faculty Welfare, Diversity, and Academic Freedom (CFW)

The Council on Faculty Welfare, Diversity, and Academic Freedom (CFW) reviewed the proposed revisions and suggested the following:

- To avoid confusion and misreading of APM-035, non-sexual forms of harassment and violence must be distinguished from sexual forms of harassment and violence.
- The proposed policy and procedures should make clear that a complainant has the opportunity to confidentially report an incident and that he/she is not required to participate in a formal investigation as a confidential victim, recognizing that a complainant's choice to not pursue a formal investigation does not end the institution's responsibility to take action.
- The policy should be clear on the roles and responsibilities of various administrative offices.

Committee on Privilege & Tenure

The Committee on Privilege & Tenure reviewed the proposed revisions to APM 035, and determined that the revisions will not change existing procedures in relation to P&T. The resolution, grievance, and disciplinary processes to which the new policy refers are in accordance with existing policies. Moreover, the policy is explicit that campuses should follow existing regulations. As such, P&T finds the new policy in accordance with existing APM sections dealing with grievances and disciplinary actions.

The Irvine Division appreciates the opportunity to comment.



Peter Krapp, Senate Chair

C: Martha Kendall Winnacker, Executive Director, Academic Senate

28 January 2014

William Jacob, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

Re: Proposed revision of APM 035, Appendix A-1 and A-2

Dear Bill,

Thank you for the opportunity to review the proposed revisions to APM 035. Input on these revisions was solicited from the Faculty Welfare Committee, the Committee on Diversity and Equal Opportunity, Charges, Privilege & Tenure, and the Grievance Advisory Committee. The revisions were also forwarded to the Graduate Council, the Undergraduate Council and the Faculty Executive Committees of all the schools for informational purposes with an invitation to respond.

The committees responding uniformly supported the revisions in their responses. At its January 23, 2014 meeting, the Executive Board discussed a range of issues raised by the document and had no substantial objections to the revisions as suggested.

Sincerely,



Jan Reiff
Chair, UCLA Academic Senate, 2013-2014

Chair, UCLA Academic Senate

cc: Martha Kendall Winnacker, Executive Director, Academic Senate
Linda Mohr, Interim CAO, UCLA Academic Senate

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OFFICE OF THE ACADEMIC SENATE
IGNACIO LÓPEZ-CALVO, CHAIR
senatechair@ucmerced.edu

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5200 NORTH LAKE ROAD
MERCED, CA 95343
(209) 228-7954; fax (209) 228-7955

January 27, 2014

William Jacobs, Chair Academic Council

RE: Merced Division Review APM 035 Appendices A-1 & A-2

Thank you for the opportunity to review the proposed policy changes that will affect the APM by removing Appendix A from APM 035. The Merced Division Council, Standing Senate Committees and the School Executive Committees reviewed the policy and provided the following feedback.

The Committee on Academic Planning (CAP) agreed that the proposed revisions essentially clarify the current language and do not contain any substantial policy changes. CAP found the clarifications to be reasonable and had no further comment.

The Graduate Council reviewed the documents related to the proposed revisions and members had no objections. However, they would like to note the need to incorporate changes mandated by the Violence Against Women Act (VAWA) into current training for faculty and staff, and to develop new training for students. This might be best achieved by developing a systemwide approach and tools, rather than developing them on a campus by campus basis.

No additional comments or concerns were received.

Sincerely,

A handwritten signature in black ink that reads "Ignacio López-Calvo".

Ignacio López-Calvo, Chair
Division Council

CC: Division Council
Senate Office

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ACADEMIC SENATE, MERCED DIVISION
COMMITTEE ON ACADEMIC PERSONNEL (CAP)
RAYMOND GIBBS, CHAIR
gibbs@ucsc.edu

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5200 NORTH LAKE ROAD
MERCED, CA 95344
(209) 228-4369; fax (209) 228-7955

November 15, 2013

To: Ignacio López-Calvo, Chair, Division Council

From: Raymond Gibbs, Chair, Committee on Academic Personnel (CAP) *Raymond Gibbs*

Re: Request for Review of Proposed Changes to APM 35

At Division Council's request on November 4, CAP reviewed the proposed revisions to APM 35. At its meeting on November 15, CAP agreed that the proposed revisions essentially clarify the current language and do not contain any substantial policy changes. CAP found the clarifications to be reasonable and has no further comments.

CAP appreciates the opportunity to opine on this systemwide review item.

cc: CAP Members
DivCo Members
Senate Office

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ACADEMIC SENATE, MERCED DIVISION
GRADUATE COUNCIL (GC)
VALERIE LEPPERT, CHAIR

UNIVERSITY OF CALIFORNIA, MERCED
5200 NORTH LAKE ROAD
MERCED, CA 95343
(209) 228-6312

January 6, 2014

To: Ignacio López-Calvo, Senate Chair

From: Valerie Leppert, Chair, Graduate Council (GC)

Re: GC response to the proposed revisions of APM 035, Appendices A-1 and A-2

In response to DivCo's request, the Graduate Council reviewed the documents related to the proposed revisions of APM 035- Affirmative Action and Nondiscrimination in Employment, Appendices A-1 and A-2. Members had no objections to the proposed revisions. However, Graduate Council would like to note the need to incorporate changes mandated by the Violence Against Women Act (VAWA) into current training for faculty and staff, and to develop new training for students. This might be best achieved by developing a systemwide approach and tools, rather than by developing them on a campus by campus basis.

Cc: Graduate Council
Division Council
Academic Senate Office

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ACADEMIC SENATE, MERCED DIVISION
COMMITTEE ON ACADEMIC PLANNING AND RESOURCE ALLOCATION
ANNE KELLEY, CHAIR
amkelley@ucmerced.edu

UNIVERSITY OF CALIFORNIA, MERCED
5200 NORTH LAKE ROAD
MERCED, CA 95344
(209) 228-4369; fax (209) 228-7955

November 5, 2013

To: Ignacio López-Calvo, Chair, Division Council

From: Anne Kelley, Chair, Committee on Academic Planning and Resource Allocation *Anne Kelley*
(CAPRA)

Re: Systemwide Request to Review APM 035

CAPRA appreciates the opportunity to opine on the proposed changes to APM 035 but has no comments.

cc: CAPRA Members
DivCo Members
Senate Office

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ACADEMIC SENATE, MERCED DIVISION
COMMITTEE ON FACULTY WELFARE, DIVERSITY & ACADEMIC FREEDOM
RUDY ORTIZ, CHAIR
rortiz@ucmerced.edu

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January 10, 2014

To: Ignacio López-Calvo, Chair, Division Council

From: Rudy Ortiz, Chair, Committee on Faculty Welfare, Diversity, and Academic Freedom (FWDAF)

A handwritten signature in black ink, appearing to read "R. Ortiz", is placed below the "From:" line.

Re: Systemwide Request to Review APM 35

FWDAF appreciates the opportunity to review the proposed changes to APM 35 but has no comments.

cc: FWDAF members
DivCo members
Senate office

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ACADEMIC SENATE, MERCED DIVISION
COMMITTEE ON RESEARCH
RUTH MOSTERN, CHAIR
rmostern@ucmerced.edu

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(209) 228-4369; fax (209) 228-7955

December 4, 2013

To: Ignacio López-Calvo, Chair, Division Council

From: Ruth Mostern, Chair, Committee on Research (COR)

A handwritten signature in black ink, appearing to read "Ruth Mostern", is written over the "From:" line.

Re: Systemwide Request to Review APM 35

COR appreciates the opportunity to opine on the proposed changes to APM 35 but declines to comment.

cc: COR Members
DivCo Members
Senate Office



CHAIR, ACADEMIC SENATE
RIVERSIDE DIVISION
UNIVERSITY OFFICE BUILDING, RM 225

JOSE WUDKA
PROFESSOR OF PHYSICS AND ASTRONOMY
RIVERSIDE, CA 92521-0217
TEL: (951) 827-5538
E-MAIL: JOSE.WUDKA@UCR.EDU

January 23, 2014

William Jacob, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

**RE: Systemwide Review of Proposed Revised Academic Personnel Manual (APM)
Section 035, Appendices A-1 and A-2**

Dear Bill,

The committees of the Riverside Division that reviewed the proposed changes to APM-035 were generally supportive of the revision. There were, however, serious concerns about the use of vague and imprecise language that requires clarification.

For example: words like 'reasonable', 'appropriate' should be accompanied by definitions, 'prompt' by specific time frames, phrases like 'whatever action is necessary' should be replaced by specific instructions, 'voluntarily intoxicated' and 'impaired or incapacitated' should be differentiated, etc.; in addition terms such as 'stalking' should be clarified within the context being used. Two reviewers suggest directly using the definitions contained in VAWA2013 or referring to that act.

One committee felt that the use of 'reasonable fear' provides too high a bar and suggest replacing it by 'reasonable apprehension'. Another committee pointed out the need to define what 'auxiliary university locations' are.

Finally, par. II.G (pg 6) is about reporting sexual harassment, not addressing: the 3rd sentence should be corrected accordingly.

We appreciate the opportunity to comment.

Sincerely yours,
Jose Wudka
Professor of Physics & Astronomy and Chair of the Riverside Division

CC: Martha Kendall Winnacker, Executive Director of the Academic Senate
Cynthia Palmer, Director of UCR Academic Senate office



January 14, 2014

To: Jose Wudka, Chair
Riverside Division of the Academic Senate

From: Kambiz Vafai, Chair
Committee on Charges

Re: Systemwide Review of Proposed Revised Academic Personnel
Manual (APM) Section 035, Appendices A-1 and A-2

The Committee on Charges notes that in section II (entitled Definitions) there is no instructions/definitions for distinguishing between someone who was 'voluntarily intoxicated' versus 'impaired or incapacitated.' This is clearly a blurry line but it seems that definitions for each category should be more clearly articulated.

UCRIVERSIDE UNIVERSITY OF CALIFORNIA | **Academic Senate**
COMMITTEE ON DIVERSITY & EQUAL OPPORTUNITY

January 21, 2014

To: Jose Wudka, Chair
Riverside Division of the Academic Senate

From: Zhenbiao Yang, Chair 
Committee on Diversity & Equal Opportunity

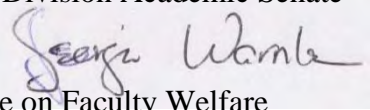
Re: Systemwide Review of Proposed Revisions to APM 035

The Committee on Diversity and Equal Opportunity considered the proposed revisions to APM 035 on Sexual Harassment and expressed concerns regarding the inclusion of vague definitions and the use of examples. The committee suggests further consideration be taken to include precise language taken from the WAWA 2013 Act or that all definitions be removed and the APM section point directly to The Violence Against Women Reauthorization Act (VAWA 2013).

UC RIVERSIDE UNIVERSITY OF CALIFORNIA | **Academic
Senate**
Committee on Faculty Welfare

January 21, 2014

To: Jose Wudka
Chair, Riverside Division Academic Senate

From: Georgia Warnke 
Chair, Committee on Faculty Welfare

Re: Systemwide Review of Proposed Revisions APM 035

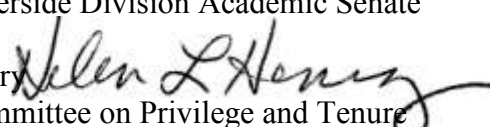
At its meeting on January 16, 2014, UCR's Senate Committee on Faculty Welfare discussed the proposed revisions to the University of California Policy on Sexual Harassment. Its concerns mirror those of the UC Faculty Welfare Committee. The UCR committee suggests links to federal regulations.



Committee on Privilege and Tenure

January 13, 2014

To: Jose Wudka
Chair, Riverside Division Academic Senate

From: Helen Henry 
Chair, Committee on Privilege and Tenure

Re: Systemwide Review of Proposed Revised Academic Personnel Manual
(APM) Section 035, Appendices A-1 and A-2

The committee on Privilege and Tenure met on January 8 to discuss the Proposed Revised University of California Policy on Sexual Harassment and Academic Personnel Manual (APM) Section 035, (APM- 035).

The Committee believes that as this draft Policy undergoes revision attention must be paid to the following specific points:

1. If “Stalking” is to be included as part of the definition of sexual violence (page 3) then the definition of it on page 4 needs context and clarity. Stalking in and of itself is a crime and goes beyond the bounds of sexual harassment. In our academic setting, one may well imagine incidents of stalking that are based on resentments other than those of a sexual nature, e.g., of a faculty member by a student unhappy with a grade; of a student by another student who is envious or jealous. Thus if stalking is to be included as a part of sexual violence, we believe the use and definition of the term needs to be defined within a sexual context.

Although many definitions of the word stalking use “reasonable fear” as the measure of whether stalking is occurring, we believe the term “reasonable apprehension” is more appropriate to our academic environment. “Fear” is a strong word; the willingness to use it may vary from one individual to another. In our multicultural heterogeneous community, the more general “apprehension” is a better descriptor for when stalking may be present.

2. In Paragraph III.G, page 6 are examples of wording that is so overly broad as to not be very useful. Supervisors, managers, etc. should “take reasonable and appropriate actions” to prevent sexual harassment rather than “whatever action is necessary.” “Reporting it promptly” should be modified by giving a time frame. This paragraph is about reporting, not “addressing” sexual harassment so that term should be deleted.

Many examples of this type of inexactness occur in this document, probably a result of pulling so much of the text from different sources.

3. Paragraph H, last sentence. This sentence may have legal meaning but it seems pre-judgmental in a paragraph devoted to procedures (not outcomes) or complaint and grievance procedures.

In general the document suffers from being a patchwork of several other sources. The Committee understands the necessity of bringing policy into compliance with VAWA. But now a careful thoughtful re-drafting is necessary to ensure that what is said will bring about the desired behaviors with a minimum of confusion in its implementation.



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January 20, 2014

TO: Jose Wudka, Chair
Riverside Division

FR: Akula Venkatram, Chair
Executive Committee, Bourns College of Engineering

RE: Proposed revisions to the UC system-wide sexual harassment policies outlined in APM-035, Appendices A-1 & A-2

The BCOE Executive Committee has reviewed the proposed revisions to the UC system-wide sexual harassment policies outlined in APM-035, Appendices A-1 & A-2. The revisions address requirements mandated by the recent federal Violence Against Women Reauthorization Act (VAWA 2013) regarding domestic and sexual violence. Broad changes applicable to UC are:

- 1) Reporting of campus crime statistics beyond the Cleary Act covers incidents of domestic violence, dating violence, and stalking as well as crimes motivated by national origin or gender identity;
- 2) Training for new students and new employees (above and beyond ongoing programs) to promote awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking;
- 3) Annual training for personnel investigating and reviewing offenses; and
- 4) Adoption of policy to address and prevent campus sex violence.

While the proposed revisions to APM-035 are extensive, most seem to be adapted from current language to conform to VAWA 2013. The BCOE Executive Committee endorses the proposed changes.

UNIVERSITY OF CALIFORNIA, RIVERSIDE



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EXECUTIVE COMMITTEE:
COLLEGE OF HUMANITIES, ARTS, AND SOCIAL SCIENCES

RIVERSIDE, CALIFORNIA 92521-0132

January 8, 2014

TO: José Wudka, Chair
Academic Senate

FROM: Erica Edwards, Chair
CHASS Executive Committee

RE: Response to the System-wide Review of Proposed Revised Academic Personnel Manual
(APM) Section 035, Appendices A-1 and A-2

The CHASS Executive Committee discussed the proposed revised academic personnel manual (APM) Section 035, appendices A-1 and A-2 at the regular meeting on January 8, 2014. The committee was in agreement with the revisions.

Erica Edwards, Chair

UCR CHASS Executive Committee

TO: Jose Wudka, Chair,
Riverside Division

FROM: Gillian Wilson, Chair, Executive Committee
College of Natural and Agricultural Sciences

DATE: Jan 8th 2014

RE: Systemwide Review of Proposed Revisions to APM 035

Dear Jose,

The CNAS Executive Committee discussed the proposed revisions to APM 035 at its meeting on January 7th 2014. The CNAS Executive Committee strongly endorses the revisions.

Yours sincerely,



Gillian Wilson
Chair, Executive Committee
College of Natural and Agricultural Sciences

Division of Biomedical
Sciences

School of Medicine

Riverside, CA 92521

Tel (951) 827-5942

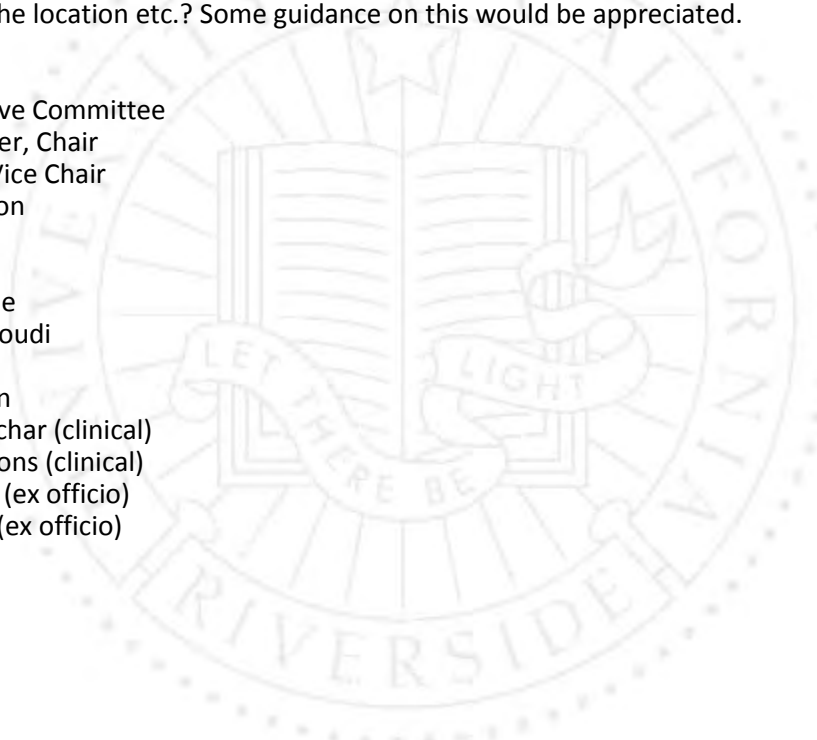
To: Jose Wudka, Chair of the Senate
From: Ameae Walker, Chair SOM executive committee
Re: APM 035

1/16/2014

The SOM executive committee discussed the proposed revised academic personnel manual section 035, appendices A-1 and A-2 at both its December and January meetings. The committee has no concerns about the proposed changes.

However, an issue that pertains to both the current and former versions is the lack of definition of the threshold at which location responsibilities are incurred. The policy states that it applies to all auxiliary university locations. When does an off campus site become an auxiliary location? E.g. Does the university have to own the location, some part of the location, conduct a certain level of business at the location etc.? Some guidance on this would be appreciated.

SOM Executive Committee
Ameae Walker, Chair
Paul Lyons, Vice Chair
Monica Carson
Iryna Ethell
David Lo
Christian Lytle
Ilhem Messaoudi
Neal Schiller
Emma Wilson
Mahendr Kochar (clinical)
Emma Simmons (clinical)
Richard Olds (ex officio)
Phyllis Guze (ex officio)





ACADEMIC SENATE
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Kum-Kum Bhavnani, Chair
Deborah Karoff, Executive Director

January 24, 2014

Bill Jacob, Chair
Academic Senate

RE: Revised UC Policy on Sexual Harassment-APM 035, Appendices A-1 and A-2

Dear Bill,

Several groups at the UCSB Division were provided the proposed revisions to UC Policy on Sexual Harassment and the following groups provided commentary: Council on Faculty Issues and Awards, Committee on Diversity and Equity, and the Graduate Council. Graduate Council endorsed the proposed revisions. Two other groups offered substantive comments.

The Council on Faculty Issues & Awards (CFIA) understands that the changes are meant to bring the University into compliance with federal law (the Violence Against Women Reauthorization Act of 2013). They have several concerns and I quote directly from their memo:

CFIA finds some incoherence in the way the new categories are defined and applied, and believes that the document as it stands lacks clarity and raises confusions. Several of the revisions appear to be patched onto the document rather than organically integrated. One of the most outstanding problems is the conflation of sexual harassment with gender discrimination under the same APM.

CFIA agrees with the suggestion of the University Committee on Academic Freedom (UCAF), which recommends that the “reasonable person” standard should be included in the policy, with the intent of reducing the likelihood of frivolous allegations. For example, the definition of “sexual harassment” under Section II (Definitions) should state that the behavior is such that a “reasonable person” would find it intimidating, hostile, or offensive. The UCAF proposed change reads: “Sexual Harassment is unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person’s employment or education, unreasonably interferes with a person’s work or educational performance, or creates a working or learning environment that a reasonable person would find intimidating, hostile or offensive.”

CFIA would like clarification on where this policy would apply (page 4 of the document, under section III A). This section does not seem to include university sponsored/funded off-campus locations (e.g., research cruises, field trips, etc) unless these are covered under the term “auxiliary”. If so, then auxiliary needs some definition and clarification. If not, then off-campus locations should be specifically mentioned.

Because of the patched nature of the document, the Council wonders to what extent these revisions are reflected in the current employee training on sexual harassment and recommends that this training be updated to include issues of discrimination pertaining to gender orientation (transgender or gender-nonconforming).

Finally, according to the November 1 memo from Duckett, Sakaki, and Carlson, the new policy is meant to address "Reporting [of] campus crime statistics beyond the crime categories the Clery Act already mandates, to include incidents of domestic violence, dating violence, and stalking, as well as crimes motivated by national origin and gender identity...." The Council notes that mention of "national origin" is absent from the policy, despite the inclusion of this category in their memo.

The Committee on Diversity and Equity (CDE) members agree that the revised policy brings to mind a single process that handles multiple forms of harassment. However, there is some lack of confidence that this policy will prompt reporting parties, students in particular, to share information with all of the right agencies. We recommend further clarification for students, staff and faculty on the appropriate paths for reporting.

Thank you for the opportunity to comment.

Sincerely,



Kum-Kum Bhavnani, Chair
UCSB Division



OFFICE OF THE ACADEMIC SENATE

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January 22, 2014

Professor William Jacob
Chair, Academic Council
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

Subject: Proposed Revisions to University of California Policy on Sexual Harassment and APM 035, Affirmative Action and Nondiscrimination in Employment, Appendices A-1 and A-2

Dear Professor Jacob,

The proposed revisions to APM 035 were sent to the appropriate Divisional committees for review and comment and were discussed at the January 6, 2014 Senate Council meeting. The San Diego Division has the following suggested revisions to the proposed policy.

- The first paragraph under the definition of sexual harassment in Section II: Definitions reads:

Sexual Harassment is unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment. Sexual harassment includes sexual violence. In the interest of preventing sexual harassment and sexual violence, the University will respond to reports of any such conduct.

The definition makes no reference to “objectively offensive” conduct or to the idea that in order to be considered sexual harassment a person’s conduct would need to be such that a “reasonable person” would find it offensive. Reviewers expressed concern that the absence of such language, which is used later in the document, invites purely subjective criteria in the definition of sexual harassment, with potentially chilling effects on the freedom of expression and academic freedom. Council suggests the revision of the section quoted above to include an objective definition of sexual harassment.

- Reviewers recommended that the word “prevention” be inserted when addressing training and corrective programs. For example, Section V.B is currently titled “Local Sexual Harassment

and Sexual Violence Resources”. This section includes resources for the *prevention* of sexual harassment and sexual violence. While prevention is implied, the word “prevention” should be inserted into the relevant passages in the policy.

Thank you for the opportunity to provide comments.

Sincerely,

A handwritten signature in blue ink that reads "Kit Pogliano". The signature is written in a cursive style with a large, stylized "K" and "P".

Kit Pogliano, Chair
Academic Senate, San Diego Division

cc: Divisional Vice Chair Boss
Executive Director Winnacker



UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM (UCAF)
Cameron Gundersen, Chair
CGundersen@mednet.ucla.edu

Assembly of the Academic Senate
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January 31, 2014

**BILL JACOB, CHAIR
ACADEMIC SENATE**

RE PROPOSED REVISIONS TO APM 035

Dear Bill,

This letter reflects the outcome of deliberations among members of UCAF concerning the proposed revisions to the University's policy on sexual harassment and sexual violence dated 10/28/2013. Collectively, there were three issues on which the committee deliberated. The most serious concerns focused on the wording in the definition of sexual harassment. Specifically, in the first paragraph that begins on page 2, part of the definition was regarded as being too general. The sentence that was felt to be problematic is reproduced here and our suggestion for re-wording follows with red text:

Concern#1:

Current: Sexual Harassment is unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment.

UCAF proposed change: Sexual Harassment is unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment or education, unreasonably interferes with a person's work or educational performance, **or creates a working or learning environment that a reasonable person would find intimidating, hostile or offensive.**

UCAF feels that the introduction of the "reasonable person" standard will diminish the likelihood of frivolous allegations being brought.

Concern#2: The third paragraph in the definition of sexual harassment focuses on inter-student misconduct and includes the "severe and pervasive" criterion. However, the general definition of sexual harassment

does not. This lack of consistency remains an obstacle, and UCAF recommends inclusion of the “severe and pervasive” criterion in the general definition of sexual harassment.

Concern#3: Members of UCAF felt that embroiling the university (versus the police) in “domestic violence” matters (page 3) is potentially problematic. However, in light of the married student housing facilities that the university manages, it appears that this feature of the policy may be necessary. Nevertheless, we encourage the individuals framing this policy to tread cautiously in this area to determine whether this matter might be best left with law enforcement authorities.

Sincerely,

A handwritten signature in black ink that reads "Cameron Gundersen". The signature is written in a cursive style with a large initial 'C'.

Cameron Gundersen, Chair
UCAF



COORDINATING COMMITTEE ON GRADUATE AFFAIRS (CCGA)

Donald Mastronarde, Chair

djmastronarde@berkeley.edu

ACADEMIC SENATE

University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

January 20, 2014

**ACADEMIC COUNCIL CHAIR WILLIAM JACOB
MEMBERS, ACADEMIC COUNCIL**

Re: Senate Review of Revised APM-035

Members of CCGA carefully reviewed the proposed revisions to the University of California Policy on Sexual Harassment, which is reprinted in the Academic Personnel Manual Section 035 (APM-035), Appendixes A-1 and A-2, and the group discussed the revisions at two recent meetings. The proposed draft language implements policy requirements mandated by the Violence against Women Reauthorization Act (VAWA 2013) to include within UC policy several provisions addressing domestic and sexual violence.

CCGA noted that important information had been added to the University of California Policy on Sexual Harassment, in compliance with VAWA2013, such as a much-needed and detailed definition of “consent” (page 2), and of “sexual violence” (page 3). Also, the revisions to the Policy make sure that references to “sexual violence” are added to any reference to “sexual harassment,” again in compliance with VAWA.

While CCGA feels that this revision meets legal requirements and may be approved now in order to meet legal expectations, members also felt that there is still work to be done in the future to improve this policy. The following list reflects issues related to substance, implementation, and style that should at some point be addressed.

- 1) **Substance:** CCGA noted, and applauded, the increased firmness of language overall in the Policy, but pointed out that certain important aspects, specifically the need to implement more severe measures against retaliation, were still missing from the Policy or not emphasized enough.
- 2) **Implementation:** CCGA wants to point out the importance of creating training programs/courses for Graduate Students (many of whom teach and advise undergraduate students), and the need to raise awareness among our graduate student population about sexual harassment and sexual violence on our campuses.
- 3) **Style:** CCGA judged that the revisions to the Policy have a certain “cut-and-paste” quality, which occasionally results in a lack of clarity and a confusing mélange of vague statements and firmer language. Members observed that similar policies issued by some other universities are much easier to read. We offer here one example. On page 3, in the Definitions section, under the rubric “Sexual Harassment”, the last sentence reads succinctly, “In the interest of preventing sexual harassment and sexual violence, the University will respond to reports of any such conduct.” On page 4, in the actual Policy, however, the same issue is approached in more detailed and resolute terms: “The University will respond promptly and effectively to reports of sexual harassment and sexual violence and will take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates this Policy.” The tone of these two statements differs, and it is not clear why the weaker sentence on page 3 is even included in the Definitions section.

Sincerely,

A handwritten signature in black ink that reads "Donald J. Mastrorarde". The signature is written in a cursive style with a large, prominent initial "D".

Donald Mastrorarde, Ph.D.
Chair, CCGA

Copy: Martha Winnacker, Academic Senate Executive Director
Prof. Maite Zubiarre, CCGA Lead Reviewer
Clare Sheridan, Principal Policy Analyst, Academic Council
Todd Giedt, Academic Senate Associate Director



UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
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January 23, 2014

**WILLIAM JACOB, CHAIR
ACADEMIC COUNCIL**

RE: Proposed Revisions to UC Policy on Sexual Harassment and APM 035 (Affirmative Action and Nondiscrimination in Employment) Appendices A-1 and A-2

Dear Bill,

The University Committee on Faculty Welfare (UCFW) has discussed the proposed revisions to the University of California Policy on Sexual Harassment, which is reprinted in APM 035 (Affirmative Action and Nondiscrimination in Employment) Appendices A-1 and A-2. The committee appreciates the University's need to conform to new federal regulations, but we have several concerns about these revisions. Below we enumerate these concerns.

First, the committee is not persuaded that the APM section on "Affirmative Action and Nondiscrimination in Employment" is the appropriate location for a policy on sexual harassment and violence. The only connection between them is the gender of the persons usually mistreated by the prohibited conduct. Nondiscrimination is distinctly different from sexual harassment and violence. It may be a good opportunity to separate these issues within the APM to avoid the conflation of the various types of prohibited practices and behaviors.

Second, the committee finds that the proposed revisions to the UC sexual harassment policy, regardless of where reprinted, incorrectly combine sexual assault and sexual violence, on the one hand, with non-sexual assault and gender hostility, on the other. The impact of this imprecision is that the language could be interpreted to mean that only violence that is sexual in nature is prohibited.

In the new draft, "Sexual Violence" is defined to include domestic violence, dating violence, and stalking, as well as sexual assault. However, many, if not most, reasonable people would understand sexual violence and sexual assault to be synonymous, and thus regard sexual violence as referring only to sexual assault (e.g., rape). Thus this formatting hides and minimizes within the broad category of "sexual violence" any non-sexual form of violence or stalking. It would be more appropriate to separate domestic violence, dating violence, and stalking from sexual violence and sexual assault.

Item D explicitly notes that not all prohibited harassment is sexual in nature, yet this recognition is still subsumed throughout as "Sexual Harassment". There is no further reference in the document to nonsexual hostility, including how to recognize and respond to what is today the most common form of gender harassment in the workplace.

As noted, this inexact language has the potential of rendering as unproblematic those forms of harassment and hostility that are not sexual in nature. It is neither necessary nor desirable to prosecute all between-gender violence as though it were sexual violence, but neither should such non-sexual violence escape prosecution because of an absence of statutes other than those available to prosecute sexual violence.

Further, by defining women's experiences of harassment and violence as always sexual in nature, this language unintentionally reduces women to sexual beings.

Third, and similarly, presenting the false reporting directives in conjunction with only sexual harassment propagates the myth that women are prone to file false reports about sexual assaults. Not only does research on false reporting of crime show no evidence of this phenomenon, sexual assault is among the most *underreported* crimes. The committee recommends that this proposed section of be deleted and that a general policy about sanctions for filing knowingly false reports of prohibited behavior (whether it is plagiarism, cheating, gender harassment... or sexual assault) be developed and included in a more appropriate location.

Lastly, the committee feels that the revisions could be made more readable if relevant federal regulations were linked, rather than reprinted.

Please let us know if you have any questions or concerns.

Sincerely,



J. Daniel Hare, UCFW Chair

Copy: UCFW
Mary Gilly, Vice Chair, Academic Council
Martha Winnacker, Executive Director, Academic Senate