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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*

October 31, 2015

**SUSAN CARLSON, VICE PROVOST
ACADEMIC PERSONNEL**

Re: Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment

Dear Susan,

As you requested, I distributed for expedited 30-day systemwide Senate review the set of [Proposed Revisions to Presidential Policy on Sexual Violence and Sexual Harassment](#) released by your office on October 1. All ten Academic Senate divisions and seven systemwide committees (CCGA, UCAAD, UCAF, UCORP, UCPB, UCPT, and UCFW) submitted comments. These comments and concerns also were discussed at length at the Academic Council meeting on October 28, 2015.

We appreciate the efforts to revise and clarify the earlier draft of the policy in response to the Senate's May 2015 letter. In general, Senate reviewers agree that the revised draft improves upon the earlier version by providing clearer definitions and guidance about prohibited conduct, clearer reporting structures for different kinds of cases of sexual misconduct, and clearer, more distinct processes for the adjudication of cases involving faculty and students.

Although these and other clarifications are helpful, faculty on the campuses still find many elements of the policy difficult to understand. They have specific concerns about provisions related to mandatory reporting responsibilities for faculty, graduate students, and others, in different circumstances; protections for graduate students; privacy and confidentiality provisions; disciplinary procedures; and the relationship of the policy to law enforcement and Senate Privilege and Tenure processes. The limited time between the Academic Council meeting and the response date precludes a thorough compilation of the many concerns raised. The full set of Senate comments is attached for your reference and is summarized below. The general consensus is that more work is needed to address these significant issues of confusion and concern, but we also understand that UC needs to have a permanent policy in place on January 1, 2016. We encourage the administration to consider these comments as it refines the current draft to meet that deadline, and also as it evaluates and further revises the policy going forward.

Mandatory Reporting

The revised policy includes some improvements. It attempts to distinguish the various roles of faculty as “Responsible Employees” obligated to report to the Title IX Officer conversations with a student who reveals that he or she has been subjected to sexual violence or sexual harassment, by differentiating between faculty members who supervise undergraduates and those who mentor/work as colleagues with graduate students and post docs. The policy also establishes different reporting rules for incidents that come from undergraduate students—for which every University employee is a mandatory reporter—and those from graduate students and faculty—for which only a limited set of designated officers are mandatory reporters. Employees designated as a “Confidential Resource” are exempt from the universal reporting policy.

However, many reviewers noted that the policy still does not provide clear and consistent guidance about (1) the respective responsibilities of different groups of UC community members in reporting on different kinds of sexual violence or harassment cases, or (2) the consequences of failing to report. This confusion is most acute regarding the role of graduate students and faculty.

- ***Graduate Students***

The policy fails to sufficiently address the responsibilities of graduate students as mandatory reporters in their formal instructional or informal mentor roles with respect to undergraduates. Does the obligation to report extend to graduate students who supervise undergraduates? For example, the first paragraph of Definitions Section C.6 implies that Responsible Employees are only required to report alleged incidents involving undergraduates. However, one gathers from other sections of the policy that a responsible employee who hears about incidents involving a graduate student must forward it to the Title IX Officer. (e.g., the second paragraph of C.6. talks about “any other person affiliated with the University...” and III.A states that “Any member of the University community may report conduct that may constitute sexual violence or sexual harassment...”.)

UCSF suggests that, especially given the absence of undergraduate students on that campus, it would be better for the policy to extend responsibility for reporting sexual misconduct involving any student, to any University employee who is not a Confidential Resource. On the other hand, other divisions and committees expressed concern about the consequences of such a broad definition of “responsible employee.” These concerns are particularly well expressed in the October 26 letter signed by 33 UCSC faculty.

In addition, the revisions do not provide consistent guidance about processes for reporting incidents of misconduct involving graduate students. There is also concern about a lack of sufficient protection for graduate students as complainants.

- ***Faculty***

There remains confusion about some elements of faculty members’ role as mandated reporters. The policy suggests that the failure of a Responsible Employee to fulfill his or her obligation to report an

incident could subject the individual to a wide range of discipline—from counseling, to adverse performance evaluations, and even to termination. That said, it is unclear what potential sanctions would follow should a faculty member choose not to report an incident. The policy should clarify the extent to which a faculty member’s failure to fulfill a reporting requirement is actionable, and under what process and authority.

Privacy and Confidentiality

Reviewers expressed several concerns about privacy and confidentiality provisions within the policy. First, the provision requiring Responsible Employees to report all conversations about incidents is too broad; it should be balanced with the need for victims to consult confidentially. Requiring faculty to report all conversations with students about sexual misconduct could damage their relationship with students who prefer to raise sensitive matters in confidence. Moreover, requiring the University to inform respondents of the source of allegations could create a disincentive for some victims – particularly young academics – to report incidents for fear of retaliation and jeopardizing career advancement. In addition, several reviewers note that the provision requiring disclosure to the complainant of any disciplinary actions imposed against the respondent conflicts with longstanding practice. It also violates standard confidentiality clauses in settlement agreements involving faculty. Moreover, it is unclear whether the reporting requirement applies to a second or third hand report and, in the absence of a definitive statement on that point, there are general concerns that hearsay could have undue influence in the process. Finally, many UC health professionals and other types of University employees hold professional licenses requiring confidentiality. UCSF and CCGA suggest that the policy more clearly describe the circumstances under which an employee with such licensure would not constitute a “Confidential Resource.”

Due Process

There are significant concerns about due process in the following three areas:

- ***Interaction with Law Enforcement***

Several reviewers note that it is unclear how UC administrative procedures outlined in the policy will interact with law enforcement procedures in cases of clear criminal acts. There was concern that incidents of sexual violence or assault should be reported immediately to law enforcement rather than be handled by UC. The policy should not suggest that UC will attempt to adjudicate criminal cases involving sexual violence and assault through a Title IX process.

- ***Relationship to the Privilege and Tenure Process***

Several reviewers remain confused about how the policy interacts with the established disciplinary process for Senate faculty involving Senate Privilege and Tenure committees—particularly the extent to which some elements of the Title IX process are intended to replace or supplement established P&T procedures in a disciplinary process. There is significant concern that the process outlined in the policy could weaken and/or unduly influence the Privilege and Tenure process. Faculty disciplinary hearings that go to P&T have to meet a “clear and convincing” standard, a

higher standard than “preponderance of evidence” required in the policy for the Title IX report. Because the student process outlined in the proposal uses the preponderance of evidence standard, UCFW and UCPT assert that any findings based on the lower standard should not be used as evidence of guilt or innocence if the case involves a faculty member and is brought by the Administration to P&T. It is imperative that faculty continue to have the right to an independent hearing for all disciplinary actions.

- ***Rights of Respondents***

Several reviewers expressed concern that the policy lacks sufficient due process protections and procedures for respondents. To help prevent baseless charges from tarnishing the reputation of innocent people, the policy should include clearer safeguards for ensuring due process rights for respondents and maintaining confidentiality.

Finally, there is a strong sense that the policy takes on too much, is overly broad, and will be very difficult to implement. It is challenging, and perhaps impossible, for a single policy to encompass clearly all of the populations of an organization as complex as the University of California. In the long run, it may be better to have separate policies covering sexual violence and sexual harassment, or covering students and employees.

Recent events show that sexual assault and harassment on campus is a significant problem and concern. All members of the University community share a responsibility to help change the culture, behavior, and norms around what constitutes sexual harassment and consent. We appreciate the extended effort to get this important policy right to ensure that UC has clear, robust policies and procedures in place both to recognize and eliminate sexual misconduct on campus and to ensure the safety and rights of all members of the University community.

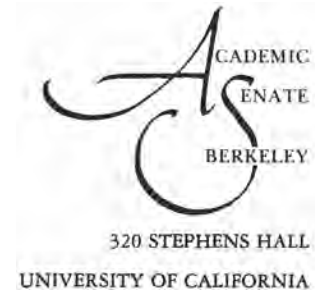
I also look forward to working with the Joint Committee of the Administration and Academic Senate to further explore policies that address incidents of sexual misconduct involving faculty and academic personnel, and, in particular, to evaluate the effective implementation of those policies.

Sincerely,



J. Daniel Hare, Chair
Academic Council

Cc: Policy Manager Lockwood
Academic Council
Executive Director Baxter



October 23, 2015

J. DANIEL HARE
Chair, Academic Council

Subject: proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment

Dear Dan,

The Berkeley Divisional Council discussed the proposed revisions at its October 19th meeting with input from our divisional committees on Faculty Welfare; Diversity, Equity, and Campus Climate (DECC); and Privilege and Tenure. Because of the compressed review period, none of those committees (some of which could only engage via email exchange) nor Divisional Council thought they had time to review the proposed Policy in as great a depth or with as great a care as it deserves. In particular, the Divisional Council did not reach complete consensus, which is reflected in this memorandum.

The Divisional Council generally agreed on the following points:

- In the last bullet point of Section II.C.6 (p. 7), faculty are not explicitly mentioned. If they are to be included, then this should be clearly stated. If they are not, then a phrase along the lines of "... Unit (ORU), but not faculty members otherwise" should be added. With reference to the same bullet point, should directors of centers be added? Alternatively, it could be prudent simply to replace the bullet with "Managers and Supervisors as defined in XX," where XX is some University document or relevant State law that defines managers and supervisors for these purposes.
- The privacy protections in Section III.C.3 should be stronger: to wit, the University should commit to keep reports confidential to the fullest extent permitted by law. The rationale for this is that the lack of procedural safeguards and the preponderance-of-evidence standard mean a non-trivial risk of erroneously finding an individual violated Policy. The potential severe adverse consequences for an individual from such error—and the consequent litigation risk to the University—would thus argue for strict confidentiality.
- It should be clarified in Section IV.F whether or not a failure to fulfill a reporting obligation is itself an action subject to investigation under Policy that could lead to a Report and the Remedies specified in the Appendix.
- Clarification is also required in Section IV.F concerning the phrase, "Non-compliance with this Policy, other than violations of Prohibited Conduct, may

result in employment or educational consequences up to and including informal counseling, education, adverse performance evaluations, corrective actions, and termination.” Who decides when non-compliance (e.g., failure to report) is actionable? Who decides what the appropriate consequences will be? For faculty, one might conjecture that non-compliance would be actionable if that is deemed a violation of the Faculty Code of Conduct, with pursuant consequences determined through the usual procedures; but if so, this should be clearly stated.

- Section V.A.5 should be clarified to state that the findings in a Report, although they can be used as evidence, are not necessarily binding or determinative in a further disciplinary or grievance proceedings. Such clarification is needed, in part, because the standard of proof for finding a violation under the Presidential Policy, a preponderance of the evidence, differs from the standard required in other proceedings. An additional rationale for clarification is that the procedures under the Presidential Policy are streamlined and lack normal procedural safeguards.
- In light of the Marcy case, it was thought wise to insert language to ensure the Policy is consistent with the provisions of Senate Bylaw 336, particularly in regards to the effect of an investigation under this Policy with respect to the statute of limitations for disciplinary actions.
- Section V.B.6: although this matter is specified as being left to the Locations, it was unclear what would constitute adequate and appropriate implementation of the mandatory annual training and who would determine whether a Location’s training met the requirements of this Policy. Additionally, what are the sanctions Locations can impose on those individuals who either fail to complete the mandated training or fail to complete it satisfactorily (whatever that might happen to mean)? The Policy should provide answers to these questions.

The following were discussed in Divisional Council, but no clear consensus or conclusion was reached.

- Concerns were raised about Complainant and Respondent’s right to representation when personally interviewed and at any related meeting as set forth in Section V.A.4.b. What if Complainant or Respondent wishes an attorney present but cannot afford one? What role can the representative play (can, e.g., s/he offer advice during an interview or related meeting, ask questions of the Investigator, etc.)? Section VII.1 might seem to offer some answer to this last question, but it then begs the question of what are the “certain restrictions” the institution can impose and the criteria by which it can decide to impose them.
- Some members of Divisional Council viewed the Policy as remedial in focus, serving to protect the Complainant and not focused on disciplining the Respondent. There was a debate as to whether it sufficiently protected the Complainant, with the DECC committee chair arguing strongly that it fell far short of providing adequate protections and support for Complainants. Yet others viewed it as an adversarial process and worried about the potential negative consequences that could arise given the limited protections afforded the Respondent, including no clear statement of her/his rights, with respect to the standard of proof, ambiguity as to what constituted permissible evidence, access to counsel, and her/his own intoxication or other factors affecting her/his mental abilities not being grounds for her/his defense.

- A concern was raised about the Policy's apparent silence concerning the consequences for knowingly making a false complaint.

The following were raised by one or more committees reporting to Divisional Council, but were either not discussed or not discussed at length by Divisional Council. I include them because they nonetheless seem points worthy of consideration.

- Section V.A.5 implies Complainant and Respondent have rights of appeal. It is, however, unclear to whom an appeal is made and what would constitute grounds for an appeal.
- Appendix IV part (v): a question was raised as to whether a Title IX Coordinator can require a faculty member to "undergo training, including sexual harassment training, anger management training, and periodic refresher classes" without a formal disciplinary proceeding as set forth in the APM and Senate Bylaws.
- Although a faculty member could be guilty of sexual harassment through her/his classroom conduct, there are also issues of academic freedom pertaining to teaching that involves sexual material (e.g., a discussion of sexual assault in a law course). Consequently, there could be room to clarify the protections for teaching such topics in Section III.D.
- A question was raised concerning *quid pro quo* harassment (Section II.B.2.a.i) in which it is alleged that a person's submission to such conduct is *implicitly* the basis for employment decisions, academic evaluation, etc. A view was expressed that if the Policy were to be consistent with the law governing civil actions, then it must be shown that the Respondent *intended* acceptance of the sexual contact, proposition, etc. to be a condition for an employment decision, academic evaluation, etc.; moreover, in this regard, the Complainant's *inference* of such a condition is not considered sufficient proof. By what means, then, is intent to be ascertained in determining whether behavior was *quid pro quo* harassment absent any explicit statement of intent by the Respondent?
- The following typographical errors:
 - o Section II.B.1.b.i: the word "harm" or "injury" is missing from the end of the last sentence.
 - o Section II.B.1.c: the phrase "... by other University including ..." is missing something between "University" and "including."

Regards,



Benjamin E. Hermalin
Chair, Berkeley Division of the Academic Senate
Thomas & Alison Schneider Distinguished Professor of Finance & Professor of Economics

cc: Donna Jones, Chair, Committee on Diversity, Equity, and Campus Climate
Mark Gergen, Chair, Committee on Faculty Welfare
Vern Paxson, Chair, Committee on Privilege and Tenure

Andrea Green Rush, Executive Director staffing Committee on Privilege and Tenure

Diane Sprouse, Senate Analyst, Committee on Diversity, Equity, and Campus Climate

Anita Ross, Senate Analyst, Committee on Faculty Welfare

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October 26, 2015

DAN HARE, CHAIR

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

RE: Presidential Policy on Sexual Violence and Sexual Harassment – Second Review

The final draft Presidential Policy on Sexual Violence and Sexual Harassment was distributed for review by specific committees of the Davis Division of the Academic Senate. The short turn around prohibited broad consultation. Responses were requested and received from the Graduate and Undergraduate Councils and Committee on Faculty Welfare (Faculty Welfare). All committees reviewing the document noted typographical errors. The Division presumes the policy will be carefully edited before distribution; therefore, we have decided not to send the errors noted.

Faculty Welfare expressed appreciation for the opportunity to comment. Faculty Welfare also commended the Policy Work Group efforts to incorporating many of the previously identified concerns. Graduate Council noted that the re-wording clarified the differences between sexual harassment and sexual violence.

We are concerned about the increased administrative workload, infrastructure and expense required to implement the new policy. Faculty Welfare specifically expressed concern regarding the lack of estimated expense associated with the CARE office, service coordinators, case management team, and other activities. Graduate Council noted that Title IX Officers workload will increase. It is unclear if campuses will be expected to shift funding from other priorities and unfunded mandates to establish the necessary infrastructure.

Faculty Welfare noted that disclosure of disciplinary actions to the complainant is still contained in the policy. It remains unclear whether UC is violating its own policy and/or practice by allowing disclosure of disciplinary action taken against students, staff and faculty to the complainant. Long standing practice requires nondisclosure of corrective action taken against an individual.

We continue to have a concern that that criminal nature of sexual violence is being neglected in the policy draft. Policy language should make clear that sexual violence is a criminal act. The policy should articulate the administrative steps involved after law enforcement is engaged. A policy that considers sexual violence and sexual harassment jointly in and of itself may create the perception that UC wishes administrators to become involved simultaneously or rather than law enforcement. This policy should be designed to prevent the possibility of an allegation that UC tried to hide or delay engagement of law enforcement.

Sincerely,

A handwritten signature in blue ink, appearing to read "André Knoesen".

André Knoesen, Chair
Davis Division of the Academic Senate
Professor: Electrical and Computer Engineering



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

October 23, 2015

Dan Hare, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

**RE: Systemwide FINAL Review of Proposed Revisions to the Presidential Policy
on Sexual Harassment and Sexual Violence**

Dear Dan:

At its October 20, 2015 meeting, the Irvine Division Senate Cabinet reviewed the proposed final revisions to the Presidential Policy on Sexual Harassment and Sexual Violence. Both the Council on Faculty Welfare, Diversity and Academic Freedom (CFW) and the Council on Student Experience (CSE) reviewed the policy and, in their report to the cabinet, identified some remaining concerns. The discussion was spirited and focused on how terms are defined, what are the training expectations and parameters, whether there is consistency of reporting requirements, and how are remedies and/or disciplinary action for policy violations implemented.

The chief concerns identified in council reviews of the policy, and supported by the Cabinet, include:

- Many of the terms used within the policy need to be more clearly defined. As an example, it is unclear and inconsistent when references are made to students. At times, these references point to undergraduate or graduate students, and, at other times, no distinction can be inferred. Some of the protocols clearly distinguish between the populations while at other times the distinction may be implied but not stated. The distinction, when made, does not clarify whether the criteria is a function of their academic standing, the fact that graduate students are often employees (TA etc.), or if it is merely a distinction in age.
- The Cabinet continues to have concerns about the mandatory reporting requirements and noted the need for clarification to this section of the policy.
- The Cabinet continues to have concerns about the requirements for annual training, due in large part to the burden of such training and the potential to desensitize faculty and students to these serious issues as a result of its frequency.
- The report from the Council on Faculty Welfare paid particular attention to the distinction between Sexual Harassment and Sexual Violence in terms of protocol. Many articulated concerns about potential contradictions between legal requirements vs. campus procedures, and, in the end, we recognized that weighing in on this distinction was beyond our area of expertise. But, our concern remains that it is not clear how the policy integrates itself with federal and local legal requirements and procedures.

The Irvine Division appreciates the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Alan Terricciano". The signature is written in a cursive, flowing style.

Alan Terricciano, Irvine Division Senate Chair

Attachments: CFW Memo
 CSE Memo

c: Hilary Baxter, Executive Director, Academic Senate

October 15, 2015

ALAN TERRICCIANO, CHAIR
ACADEMIC SENATE – IRVINE DIVISION

Re: Final Review of Proposed Revised Presidential Policy on Sexual Harassment and Sexual Violence

At its meeting on October 13, 2015, the Council on Faculty Welfare, Diversity and Academic Freedom (CFW) reviewed the final revisions to the Presidential Policy on Sexual Harassment and Sexual Violence, which intends to bring the University into compliance with the requirements of the Violence Against Women Act reauthorization of 2013. The U.S. Department of Education mandated that final regulations become effective July 1, 2015. To maintain compliance, the University of California issued an interim policy in June to serve through January 2016 when the final policy is expected to be approved.

The Council was pleased to see that a number of suggestions made by UC Irvine during the first review were adopted and found the new draft to be much improved over the first iteration. However, the Council raised the following concerns:

1. The Council was deeply concerned about the commingling of sexual harassment and sexual violence. Members noted that responses to matters relating to sexual harassment are typically very different from responses related to sexual violence. The Council recommends the policy draw a clearer distinction between the two.
2. Council members suggested clarifying reportable incidents in *Section II. Definitions*. For example, in the case of undergraduate students, the policy does not clearly outline whether there is mandatory report for incidents that have some explicit UC connection or all incidents regardless of distance in either space or time which have affected the student. One recommendation offered was to have mandatory reporting for recent incidents, such as in the last two years, for incidents involving non-undergraduate students and the use of the employee's discretion for incidents that fall outside that period.
3. A number of Council members were uneasy about the mandatory reporting for undergraduate students versus the more open-ended implications of "any other person affiliated with the University" as outlined in *Section II.C.6. Responsible Employee* at the bottom of page 6 of the proposed policy. The Council assumes this section is inclusive of graduate students. Given the difference in age ranges and maturity, Council members debated whether graduate students should be treated differently from undergraduate students, and although the members disagreed about the requirement to report all instances of sexual harassment and sexual violence, members were in agreement that this section needs to be clarified.

4. In *Section II.C.6. Responsible Employee*, third bullet point, the Council suggests clarifying “Managers and Supervisors.” It is unclear whether all faculty members would be included in this group.
5. In *Section V.B.6. Location Responsibilities*, Council members felt strongly that mandatory annual training would be excessive and cause trainees to become desensitized to the information, thereby leading to a reduction in the overall effectiveness of the intended message. The Council alternately suggests adding a sexual violence portion onto the existing sexual harassment training required every other year. Additionally, the Council also suggests adding a sexual harassment and sexual violence component to the training of department chair offered annually by the Office of Academic Personnel.
6. In *Section V.B.4.*, the Council found the language vague and strongly suggests this position be better defined. The Council further recommends it be included with the list of Confidential Resources outlined in *Section II.C.1. Confidential Resources*. The Council would advise that the “Respondent Services Coordinator” be a properly trained resource with functionality similar to the CARE advocate provided for complainants.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in dark ink, appearing to read 'S. Saphores', with a long horizontal line extending to the left.

Jean-Daniel Saphores, Chair
Council on Faculty Welfare, Diversity, and Academic Freedom

c: William Parker, Chair-Elect
Academic Senate

Natalie Schonfeld, Executive Director
Academic Senate

Wendy Chamorro, Analyst
Academic Senate

October 15, 2015

ALAN TERRICCIANO, CHAIR
ACADEMIC SENATE – IRVINE DIVISION

Re: Final Review of Proposed Revised Presidential Policy on Sexual Harassment and Sexual Violence

The Council on Student Experience concluded its electronic review of the final revisions to the Presidential Policy on Sexual Harassment and Sexual Violence on Monday, October 12, 2015. The policy is meant to bring the University into compliance with the requirements of the Violence Against Women Act reauthorized by President Obama in 2013. The U.S. Department of Education mandated that final regulations become effective July 1, 2015. In order to maintain compliance, the University of California issued an interim policy in June to serve through January 2016 when the final policy is expected to be approved.

The Council offers the following points for consideration:

Section II.A. Consent

- In the first sentence, add the word “mutual” between “voluntary, and revocable.”
- Remove the word “alone” from the fourth sentence “Lack of protest, lack of resistance . . . constitute consent.”

Section II.B.1.ii. Sexual Penetration

- The last line of the sentence should include the word “mouth” to be consistent with the first part of the sentence.
- In the first bullet of the *Note* section, the Council would suggest adding the phrase “or future” after the word “immediate.”

Section II.B.1.b.i. Dating Violence

- The last sentence appears to end abruptly with the word “bodily.” The Council suggests adding either “injury” or “harm” at the end.

Section II.B.1.ii. Domestic Violence

- In the first part of the definition, the Council suggests adding “and/or imposing psychological injury” after “threatening to cause bodily injury.”
- The last sentence appears to end abruptly with the word “bodily.” The Council suggests adding either “injury” or “harm” at the end.

Section II.B.c. Stalking

- The Council suggests removing the word “reasonable.”

- The last sentence of *Section II.B.c. Stalking* appears to be incomplete. The Council suggests clarifying the statement by adding additional phrasing such as:

Stalking of a non-sexual nature is addressed by other University **policies** including but not limited to the [Student Code of Conduct, Section 102.10](#).

or

Stalking of a non-sexual nature is addressed by other University **codes of conduct** including but not limited to the [Student Code of Conduct, Section 102.10](#).

Section II.B.2.ii. Hostile Environment

- The Council suggests removing the word “reasonable.”

Section II.B.2.3. Retaliation

- The Council recommends a notation or language be added about the Supervisor’s responsibility to report harassment cases that have been reported to them.

Section III.C.3. Privacy

- The Council recommends adding “and anonymity” in the last sentence after the phrase “to protect the privacy.”

Section V.B.6. (Mandatory Annual Training)

- Members noted that the education and training to students will also involve training students about what can constitute gender-based harassment of professors in the classroom. This type of harassment includes diminishing comments about the professor or the professor's knowledge of the subject he/she is teaching, challenging the professor's authority, heckling the professor, and offensive comments directed towards the professor in the classroom. Engaging in such behavior towards a professor in a classroom will put the student at risk of a sexual harassment complaint or lawsuit initiated by the professor. The Council strongly suggests this be clearly communicated to students upon entering UC Irvine in writing once the policy is finalized.

Appendix IV.vi.

- Members found the respondent’s restrictions in *Appendix IV.vi.* under the second bullet point to be vague in regards to what remedies can be imposed by the Title IX Officer without needing to be “pursuant to Discipline.” The statement indicates that the most severe Remedies must be pursuant to Discipline, but it is unclear which these would be. If this is to be included in the final policy, Remedies should be clarified.

In addition to the section edits offered above, the Council had a dissenting opinion regarding position of the University with respect to sexual harassment and sexual violence. The argument was raised that the University, through the policy, inappropriately attempts to take a legal stance on criminal actions which should be redirected to law enforcement and that a policy echoing existing federal and state laws is redundant and, therefore, unnecessary.

The Council thanks you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephen Tucker", with a stylized flourish at the end.

Stephen Tucker, Chair
Council on Student Experience

c: William Parker, Chair-Elect
Academic Senate

Natalie Schonfeld, Executive Director
Academic Senate

October 26, 2015

Daniel Hare
Chair, Academic Council

Re: Systemwide Senate Review of Proposed Revisions to Presidential Policy on Sexual Violence and Sexual Harassment

Dear Dan,

The Executive Board of the UCLA Academic Senate discussed the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment at its meeting on October 22, 2015. The Executive Board solicited comments from the standing committees of the Senate, as well as the Faculty Executive Committees, to maximize faculty feedback; the individual responses from our various committees are available [online](#).

In general, the committees acknowledge that the revised policy is an improvement over the proposed policy reviewed last spring. However, given that the policy is meant to address three important issues: violence, harassment, and gender discrimination, the result is a lack of clarity about the implications of the policy for the three concerns. Most important, sexual violence should be immediately referred to local law enforcement.

There are still critical issues that need to be resolved along with several concerns as follows:

1. Clarity

- a. Several committees stressed the need for increased clarity. (see individual responses). Overall, the policy should more clearly distinguish sexual harassment and sexual violence. The policy covers so much and such a variety of roles that it would be clearer if there were separate policies (or at least if the policy was broken into subsections) to address sexual violence vs sexual harassment.
- b. There are portions of the document that seem to contradict. Section V.A.4.a. indicates “the Complainant and Respondent have the right to request a Formal Investigation at any time...” However, Section .A.4.b. states “when an individual has requested an investigation, that request will be considered, but is not determinative.” How is this determined?
- c. The definition of harassment versus violence should be made clear; this distinction must be made. Where is this line drawn?

2. Reporting

- a. The policy states that reporting is mandatory for “any university employee” when the violation involves an *undergraduate*. Though the focus is primarily on students, there is insufficient clarification about the graduate student as a reporter in their various supervisory roles (as TA, lab supervisor, etc.). Mandatory reporting appears to be less clear for graduate students, faculty, or staff violations of policy. Also, faculty serve as managers and supervisors, although many do not see themselves as such and therefore may not feel any obligation to report. Do faculty understand their role as supervisor in class, out of class, research labs, etc.?
- b. The current policy states specifically that any employee who receives information about possible sexual violence or sexual harassment involving undergraduate students must promptly notify the Title IX officer. However, the policy fails to clearly mention reporting violations involving

graduate students, faculty members and staff. It is unclear in which situations recalled faculty are mandated to report a violation of this policy.

- c. It is presumed that “other academic appointees”, section V.A.2b, is intended to include faculty, but this should be clarified.
- d. The list of possible consequences for noncompliance with the policy is broad, ranging from “informal counseling” to “termination.” The unclear language in this subsection could be a source of confusion when questions arise concerning an individual’s failure to report. What criteria is used to determine consequence? Staff, faculty, and students are being required to act on hearsay evidence or face disciplinary action. Potentially, rumors and innuendo might be reported and action pursued. Only first person accounts from the complainant themselves should be mandatory to pass up the chain.
- e. What constitutes a report and how does one report? There was some confusion expressed about what constitutes a report and whether informal exchanges between a graduate student and an undergraduate student would constitute something official, versus something more casual. Are graduate students legally obligated to report such allegations if the relationship is informal but, at one time, may have been formal?

3. Victim Categories

- a. The current document appears to focus primarily on students, whereas a more comprehensive document should also specifically mention staff, postdoctoral researchers, medical residents, GSRs who oversee labs, and faculty.
- b. The policy focuses on women as victims while all, regardless of gender, can be victims.
- c. There is insufficient clarification of the graduate student as a victim. Also, there are several different types of students at the university, some of whom may not be matriculated UCLA students (i.e., visiting graduate researchers, volunteers, visiting students, summer students) or official employees (fellows and trainees), to whom this policy does not explicitly apply. The policy should also mention these students and trainees.

4. Investigation findings and Confidentiality

- a. The issue of confidentiality in Section III.C.3 provides that efforts will be made to redact written reports and to protect the privacy of individuals. The policy should obligate the University to keep a report confidential as permitted by law. Faculty would like to see language that will add more protection to the disclosure of information following an investigation. Policy states “University policy may also require the disclosure of certain information...” It is not clear under which circumstances the University may be required to disclose information.
- b. Section V.A.4.b. notes that, “the Title IX Officer shall attempt to maintain the identity of the Complainant confidential from the Respondent or inform the Complainant that such confidentiality cannot be maintained.” What are the circumstances under which confidentiality cannot be maintained and the Complainant is identified? Those circumstances should be articulated in this policy.
- c. The rights of the Respondent to contest any findings of “Alternative Resolution” or “Formal Investigation” are not clear. With anonymous third party reporting being encouraged, this becomes particularly important. Does the anonymous third party have the same rights to contest findings?
- d. The last paragraph of Section V.A.5. is unclear and confusing. It states “Any conclusion in a Report finding sexual violence, sexual harassment, or retaliation that involves an assessment of academic merit (either individual or programmatic) or academic freedom may only be made following a referral of that assessment to and an opportunity within 10 working days for a response from the Chief Academic Officer or designee.” This language is confusing; it is unclear where the referral of the assessment needs to be made.

- e. It is not clear how third party reports will be handled. Specifically, will the reporting third party be informed of the summary of any findings?

5. Other

- a. Training. The present document is unclear about training requirements. How will the new policy be incorporated into the existing training modules? It was noted that training should be a central component of implementing any new policy; the faculty emphasized the importance of training on the topics of Sexual Violence and Harassment for both the students and faculty.
- b. Off campus. It is not clear whether the policy transcends the University of California and applies to students participating in study abroad programs. The policy should state explicitly that it applies to any circumstance that could be reasonably construed to be University business, even if off campus, and should specifically reference field work/study.
- c. Timeline. The timeline for reporting should be clearer. Section V.A.1. Note states that reports should be brought forward as soon as possible. Is there a statute of limitations?
- d. Consent. The definition fails to include academic situations in which no consent is possible (prohibited relationships such as professor and supervised student). The policy should reference the Academic Personnel manual on consensual relationships.
- e. Relationship Violence. The word “harm” is omitted in the policy. Page 4, “... placing the Complainant in reasonable fear of serious bodily.” The sentence should read “... fear of serious bodily harm.”

Although not included in the committee responses, the Committee on Faculty Welfare – and the University-wide Committee on Faculty Welfare – believes this exercise responds to the request to establish a policy to respond to the Violence Against Women Act. However, the issues are too broad to address in this policy.

Further, several faculty expressed that there are too many issues for this version of the policy to be final. The faculty respectfully requests another opportunity to review the final revision with the option of revising the policy in the future, especially since there is little time for review and revision at this juncture.

The Executive Board urges you to read through the individual committee responses.

Please feel free to contact me should have any questions.

Cordially,



Leobardo F. Estrada
Chair, Academic Senate
Los Angeles Division

cc: Hilary Baxter, Executive Director, Systemwide Academic Senate
Jim Chalfant, Vice Chair, Academic Council
Michael LaBriola, Principal Policy Analyst, Systemwide Academic Senate
Linda Mohr, Chief Administrative Officer, UCLA Academic Senate
UCLA Academic Senate Executive Board Members



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
EMAIL: JOSE.WUDKA@UCR.EDU

October 26, 2015

Dan Hare, Chair, Academic Council
1111 Franklin Street, 12 Floor
Oakland, CA 94607-5200

RE: Review of Proposed Revisions to Presidential Policy on Sexual Violence and Sexual Harassment

Dear Dan,

The UCR Executive Council discussed the final version of the UC policy for sexual violence and harassment during its Oct. 26 meeting. Though Council did not have specific comments, it did endorse the concerns raised by the following reviewing committees:

- The Committee on Privilege and Tenure (P&T) noted that t section V.A.4.c states that the title IX investigation will replace any fact finding by P&T, in apparent contradiction to Senate bylaws (though 'fact-finding' is not found in the regulations, [SR335.B.2](#) describes these actions in all but name). In addition this same section allows for the report to be reactivated as a means to appeal by the complainant, but 'reactivated' is unspecified. Finally, though section V.A.5 states that the title IX report may be used as evidence in related disciplinary and grievance cases, it is unclear whether P&T can conduct a fact-finding process if the report is *not* so used.
- Committee on Charges noted that the proposed policy may have issues balancing mandatory reporting requirements and victims' rights; and that the policy would benefit from a clearer definition of harassment.
- Finally, the Committee on Diversity and Equal Opportunity noted that the word 'injury' appears to have been omitted from the concluding sentences in sections II.B.b.i and II.B.b.ii.

I attach to this memorandum the full responses from these committees.

The UCR Division appreciates the opportunity to comment.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'J Wudka', is written over a horizontal line.

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

CC: Hilary Baxter, Executive Director of the Academic Senate
Cherysa Cortez, Executive Director of UCR Academic Senate Office

Committee on Privilege & Tenure

October 21, 2015

To: Jose Wudka
Chair, Riverside Division Academic Senate

Fr: Stefano Lonardi
Chair, Committee on Privilege and Tenure

Re: Systemwide Review of the Proposed Revisions to the Presidential Policy
on Sexual Violence and Sexual Harassment

The Committee on Privilege and Tenure has reviewed the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment and is in overall support of the revisions. However, some Committee members expressed concern over the broadness of some policy language, specifically in Section 4.c (page 12, titled "Grievance Procedures for Employees").

Section 4.c reads that if there is a grievance filed on the same matter as a Title IX complaint, the Title IX investigation "will substitute for fact-finding provided under any other report or grievance process." This statement seems to imply that P&T would have to accept the findings of a Title IX investigation. Per Senate Bylaws that govern the P&T process, a Hearing Committee can conduct its own fact-finding and form their own opinion based on the testimonies and the documentary evidence. Moreover, on page 13, Section 5, the policy then reads "The Report may be used as evidence in related disciplinary and grievance proceedings." In this context, the Policy now implies that the Title IX investigation would not be mandated in a separate grievance process. What happens in the event that a Title IX report is not brought into a P&T proceeding? Is the Committee then free to conduct its own fact-finding like it normally would?

Additionally, the last sentence of Section 4.c reads "After completion of the process under this Policy, the report that had been filed via the alternative report process may be reactivated but only as a means of appeal by the Complainant." This statement is unclear. The Committee would like more clarification on what "reactivated" means in this instance and what implication this has on a potential P&T grievance process.

As this section of Policy currently reads, it does seem to imply that the P&T grievance process could be affected and thus, the Committee would like to see further clarification on these statements.

We appreciate the opportunity to review and opine on this systemwide matter.



Committee on Charges

October 21, 2015

To: Jose Wudka
Chair, Riverside Division Academic Senate

Fr: Benjamin Liu
Chair, Committee on Charges 

Re: Systemwide Review of the Proposed Revisions to the Presidential Policy
on Sexual Violence and Sexual Harassment

The Charges Committee has reviewed the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment and has no specific suggestions to add. However, some Committee members did express concern about mandatory reporting interfering with victim's willingness to come forward. While others would like to see more specific definitions of harassment whether sexual or otherwise.

We appreciate the opportunity to review and opine on this systemwide matter.

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

October 22, 2015

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

From: Manuela Martins-Green, Chair 
Committee on Diversity & Equal Opportunity

Re: Proposed Revisions to Presidential Policy on Sexual Violence and Sexual Harassment

At its meeting on October 22, 2015, the Committee on Diversity and Equal Opportunity discussed the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment. The Committee felt the revisions to the policy provided a more thorough and well organized document. By a vote of +8-0-0, the Committee approved the policy as written with a minor change to section b. Relationship Violence under subcategories i. Dating Violence and ii. Domestic Violence to include the word “injury” where it seems to have been inadvertently omitted from the concluding sentences.



COMMITTEE ON FACULTY WELFARE

October 21, 2015

To: Jose Wudka
Riverside Division Academic Senate

From: Jennifer Hughes, Chair 
Committee on Faculty Welfare

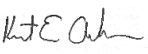
Re: Proposed Revisions to Presidential Policy on Sexual Violence and Sexual Harassment

At its meeting on October 20, 2015, the Committee on Faculty Welfare discussed the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment. The Committee felt the revisions provide a sharper document and by a vote of +8-0-0, unanimously support the changes. However in light of the recent harassment issues apparent at UC Berkley, the Committee noted the ongoing need for clear and subsequent guidance on procedures to follow at the campus level for cases of noncompliance.



October 21, 2015

To: Jose Wudka, Chair
Riverside Division

From: Kurt Anderson, Chair 
Committee on International Education

Re: Proposed Revisions to Presidential Policy on Sexual Violence and Sexual Harassment

The Committee on International Education reviewed the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment by email. The Committee is supportive of the revised changes.

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OFFICE OF THE ACADEMIC SENATE
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senatechair@ucmerced.edu

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5200 NORTH LAKE ROAD
MERCED, CA 95343
(209) 228-7930

October 26, 2015

DAN HARE, CHAIR, ACADEMIC COUNCIL

Re: Presidential Policy on Sexual Violence and Sexual Harassment

The proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment were forwarded to the Merced Division of the Academic Senate standing committees and the three School Executive Committees. Responses were received from the Committees on Faculty Welfare and Academic Freedom, Diversity and Equity, and from the School of Social Sciences, Humanities and Arts Executive Committee, and are appended to this memo.

A Division Council member expressed the following concerns.

RE: Section II. C. 6. Responsible Employees

1. The first paragraph mandating that *everyone* except the confidential resources to report is problematic because *everyone* includes front desk staff for the CARE Office, Ombuds Office, or Counseling Services front desk staff, or employees that may be in those offices at the time someone walks in to speak with a confidential resource. How is a student able to get to a confidential resource if they are unable to even get referred or enter an office without triggering a report? This paragraph should be modified.

2. The proposed policy does not include an exemption for disclosures made at public awareness events. Students and other community members should be able to publicly disclose experiences of interpersonal violence at public awareness events without fear such disclosures could trigger a report. These disclosures can be preventative in that they increase awareness of interpersonal violence. They also present an opportunity for the University to become more aware of the prevalence of interpersonal violence on campus. Eliminating this exemption will limit free speech, stifle communication about these issues, and in effect sweep the problem back under the rug.

We appreciate the opportunity to opine.

Sincerely,

A handwritten signature in black ink, appearing to read "Cristian Ricci".

Cristián Ricci, Chair
Division Council

CC: Division Council
SSHA Executive Committee
Hilary Baxter, Executive Director, Systemwide Academic Senate

Fatima Paul, Interim Director, Merced Academic Senate
Simrin Takhar, Principal Analyst, Merced Academic Senate

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

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

October 5, 2015

To: Cristián Ricci, Chair, Division Council

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

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

Re: Proposed Revisions to Presidential Policy on Sexual Violence and Harassment

The Committee on Faculty Welfare and Academic Freedom is pleased to endorse the proposed revisions.

cc: FWAF members
Division Council
Senate office

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ACADEMIC SENATE, MERCED DIVISION
COMMITTEE FOR DIVERSITY AND EQUITY
TANYA GOLASH-BOZA, CHAIR
tgolash-boza@ucmerced.edu

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

October 6, 2015

To: Cristián Ricci, Chair, Division Council

From: Tanya Golash-Boza, Chair, Committee for Diversity and Equity

A handwritten signature in cursive script, reading "Tanya Golash-Boza".

Re: Proposed Revisions to Presidential Policy on Sexual Violence and Sexual Harassment

The Committee for Diversity and Equity endorses the proposed revisions as they address the concerns presented in the first round of review.

cc: Committee for Diversity and Equity
Senate Office



SCHOOL OF SOCIAL SCIENCES, HUMANITIES AND ARTS

UNIVERSITY OF CALIFORNIA, MERCED
5200 NORTH LAKE ROAD
MERCED, CA 95344
(209) 228-7843
FAX (209) 228-4007

October 19, 2015

To: Cristián Ricci, Chair, Division Council

From: Kurt Schnier, Chair, Executive Committee, SSHA

Re: Presidential Policy on Sexual Harassment and Sexual Violence Policy

The SSHA Executive Committee has reviewed the President Policy on Sexual Harassment and Sexual Violence Policy. The SSHA Executive Committee supports the revision to policy, however there is one area that we are concerned about. It appears as though every faculty and graduate student is a mandatory reporter of sexual violence and sexual harassment. We are concerned that this may take agency away from survivors of sexual assault. It should be up to survivors whether or not to report their victimization to the police or other authorities. This is potentially a serious problem for a survivor who is victimized when an assignment is due on or around final exam time, for example. Victimization can make it difficult for a student to focus on their studies and they may need extra time to complete an assignment or prepare for an exam. They may feel that they are unable to come to a faculty member to discuss their situation if they know that the faculty member (or graduate student or lecturer) is a mandatory reporter. The American Psychological Association (Ullman 2010) has documented how victims of sexual violence can be further traumatized when they report their crime, and how this can have negative mental and physical health consequences for them. We strongly encourage the UC to adopt a policy that prioritizes the mental and physical health of survivors. Instructional staff (faculty, lecturers and graduate students) should not be mandatory reporters.

Reference:

Ullman, Sarah E. 2010. Talking About Sexual Assault: Society's Response to Survivors. Washington, DC: American Psychological Association.

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

October 26, 2015

Dan Hare, Chair
Academic Council

RE: Sexual Violence and Sexual Harassment Policy Revisions

Dear Dan,

The following groups opined on the second version of the Sexual Violence and Sexual Harassment Policy: Council on Faculty Issues and Awards (CFIA), Graduate Council (GC), Undergraduate Council (UgC), the Committee on Research Policy and Procedures (CRPP), the Committee on Diversity and Equity (CDE), the Committee on International Education (CIE), the Letters and Science Faculty Executive Committee (L&S FEC) and the College of Creative Studies Faculty Executive Committee (CCS FEC). While all groups support the idea underlying the proposed policy, and its revisions, there continue to be significant concerns, in particular about regarding definitions and procedures. There are also some editorial suggestions. Below, I outline the comments from each group, in turn.

The Undergraduate Council (UgC) is concerned about the policy language in section IIID regarding the violation of anti-discrimination laws with freedom of speech; they are concerned that students may mistakenly believe that federal and state law takes precedence over the Constitutional protection of freedom of speech. In addition, UgC suggested that the policy gives the impression that the university's priority is "to avoid liability rather than to demonstrate empathy and mitigate harm to victims of sexual assault and harassment," rather than a policy that places the welfare of students as primary.

The Committee on Equity and Diversity (CDE) comment that the policy uses "student" throughout the document, but it is not clear if the policy applies equally to graduate students and undergraduate students. They note that graduate students are rarely mentioned who have, at times, a unique status. CDE also had questions about geographic jurisdiction. With reference to Section V-2-b they point to a sentence that the policy has jurisdiction over "students, staff and other academic appointees." However, later in that same section, the policy states: "For incidents involving student Respondents, the University may exercise jurisdiction over off-campus conduct that would violate other University Policies if it occurred on campus." CDE finds this language contradictory: "it is unclear why this latter statement specifies "students" when the former statement seems to imply that jurisdiction may extend beyond campus limits for staff and faculty as well." CDE also asked what policy difference amongst faculty, staff and students. CDE also recommends, a point echoed by the Committee on Research Policy and Procedures, that the resource sections be streamlined as these sections are "cumbersome and confusing". For example, they note that for some hyperlinks the reader is directed to websites of resources, and, at times, to additional lists of websites. CDE considers that this is unlikely to be helpful to "someone who is emotionally distraught and seeking help." Further, CDE also notes that the list of resources does not provide adequate information about what a particular resource will provide: the role of an

office, the pros and cons of reporting to one resource over another, or even whether counseling is available. They suggest that a table be drawn up of resources, a description of what each resource will do, and contact information.

Graduate Council suggests that specific training about the reporting requirements of the policy be included in the mandatory training for Graduate Student Employees. The policy should also, they suggest, be included in the Graduate Student Handbook of each department. More specifically, GC suggests that the available resources be widely communicated to graduate students so they are aware and can guide undergraduate students appropriately.

The L&S Faculty Executive Committee requests that there be more and specific language about non-physical harassment, especially in electronic/social media, given growing concerns in this arena.

The Committee on International Education recommended that professional translation be utilized to translate the policy into multiple languages to ensure appropriate representation of native cultures, values and views.

Several groups made editorial suggestions about language as follows:

- Page 3 of 25, section B, line 6: add "mouth"
- Page 4 of 25, line 19 and 30: missing one word at the end of the sentence, "serious bodily [harm]"
- Page 6 of 25, line 5: CARE should be defined/spelled out
- Page 22, following the second bullet regarding medical attention, there should be a comma following the word "drink."
- Page 22 of 25, section "seek support" – the intent is good but the language "if you feel comfortable" is not necessarily most fitting; the Committee suggested: "It is strongly recommended that you seek support from someone you are comfortable with."

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Kum - Kum Bhavnani". The signature is written in a cursive, flowing style.

Kum-Kum Bhavnani, Chair
Santa Barbara Division



1156 HIGH STREET
SANTA CRUZ, CALIFORNIA 95064

Office of the Academic Senate
SANTA CRUZ DIVISION
125 CLARK KERR HALL
(831) 459 - 2086

October 26, 2015

Dan Hare, Chair
Academic Council

Re: Systemwide Review of Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment

Dear Dan,

The UC Santa Cruz Division has reviewed and discussed the proposed revisions the Presidential Policy on Sexual Violence and Sexual Harassment. Our Committees on Affirmative Action and Diversity (CAAD), Faculty Welfare (CFW), Privilege and Tenure (P&T), and Graduate Council (GC), have responded. Each committee raised concerns about the lack of clarity in the policy, the need for revision to improve readability, and cited different sections of the proposed policy that need to be revised. Given the detail and purview specific perspective present in the committee responses, we are forwarding you the complete responses. Please find the documents attached.

Sincerely,

A handwritten signature in dark ink, appearing to read "Don Brenneis", is written over a light blue rectangular background.

Don Brenneis, Chair
Academic Senate
Santa Cruz Division

cc: Miriam Greenberg, Chair, Committee on Affirmative Action and Diversity
James Zachos, Chair, Committee on Faculty Welfare
Jorge Hankamer, Chair, Committee on Privilege and Tenure
Don Smith, Chair, Graduate Council

October 22, 2015

Don Brenneis, Chair
Academic Senate

Re: Updated Presidential Policy on Sexual Violence and Sexual Harassment

Dear Don,

At its meeting of October 19, 2015, the Committee on Affirmative Action and Diversity (CAAD) reviewed the updated Presidential Policy on Sexual Violence and Sexual Harassment. The committee raised concerns about two issues: 1) the document's lack of clarity as currently written, and 2) the potential limitations in perspective and/or conflict of interest of the UC legal consultants who drafted the policy, and need for an outside consultant to review the document. In light of a recent nationally publicized incident of sexual harassment by a professor at UC Berkeley in which many who knew of the violations did not follow reporting procedures, and when some did and the professor in question was found in violation, there were not significant consequences leveled, the committee felt that addressing these two issues would be both timely and important.

In terms of the style of the document, members noted that much of it is written in legalistic and vague terms, and may be challenging for the average employee or student to interpret. For instance, on page 9, committing an act of sexual harassment or violence is referred to as "Noncompliance with the Policy," which is then explained in terms of other policies, stating that it is "governed by this Policy and the Policy on Student Conduct and Discipline, Personnel Policies for Staff Members 61, 62, 63, 64, 65, and 67 pertaining to disciplinary and separation matters, The Faculty Code of Conduct (APM - 015) and University Policy on Faculty Conduct and the Administration of Discipline (APM - 016), Non-Senate Academic Appointees/Corrective Action and Dismissal (APM-150), and as applicable, collective bargaining agreements, and other policies..." Ultimately, readers arrive at the sentence "Non-compliance with this Policy, other than violations of Prohibited Conduct, *may result* in employment or educational consequences up to and including informal counseling, education, adverse performance evaluations, corrective actions, and termination." (Emphasis added.)

In addition to the dense, highly technical prose, the committee highlighted the open-endedness of the term "may," and expressed concern that those reading the document might conclude from this that non-compliance may or may not result in any legal consequences for the respondent. Thus CAAD is concerned that the draft document as written makes it difficult to understand the appropriate process for handling an issue of sexual violence or harassment, or to assess the merits of reporting a violation, and fears that an employee or student consulting the policy would be perplexed on both counts. In part, the committee recommends revising the document, or creating another companion version of it, to make the policy more user-friendly and accessible to multiple audiences.

In addition, given that the policy has significant legal impacts on both the complainant and the respondent, CAAD suggests that it be reviewed by an outside expert in the field who is not affiliated with the University of California, such as a sexual harassment/violence survivor advocacy group, or a lawyer specializing in such cases. CAAD assumes that the policy has been drafted and vetted by UC lawyers with the best interest of the university and its employees in mind. In order to ensure that the policy also represents and protects the complainant appropriately, CAAD suggests that an outside expert be consulted.

Sincerely,

/s/

Miriam Greenberg, Chair

Committee on Affirmative Action and Diversity

cc: James Zachos, Chair, Committee on Faculty Welfare
Jorge Hankamer, Chair, Committee on Privilege and Tenure
Abel Rodriguez, Chair, Committee on Planning and Budget

October 21, 2015

Don Brenneis, Chair
Academic Senate

Re: Updated Presidential Policy on Sexual Violence and Sexual Harassment

Dear Don,

At its meeting of October 8, 2015, the Committee on Faculty Welfare reviewed the updated Presidential Policy on Sexual Violence and Sexual Harassment. In general, the revised draft represents an improvement over the initial draft. Issues regarding reporting requirements and training for faculty have been better defined. There are, however, a few minor issues, some passages and/or terms that are vague or ambiguous, that might require additional clarification. For example;

Section III., C., 1. Immunity: *To encourage reporting, neither a Complainant nor witness in an investigation of sexual violence will be subject to disciplinary sanctions for a violation of the relevant university conduct policy at or near the time of the incident, unless the violation placed the health or safety of another at risk, involves plagiarism, cheating, or academic dishonesty, or was otherwise egregious.*

What does the relevant university conduct policy include or exclude? Presumably *otherwise egregious* might include underage drinking or illegal drug use? Could a non “egregious” violation be illegal under local statutes, and subject a complainant or witness to prosecution by the local authorities?

Section V., A. 4a. Alternative Resolution

What is meant by *disciplinary action*? This could cover a wide range of actions, some possibly severe. How can disciplinary action be imposed, particularly more severe action without a formal investigation (& lack of representation)? It seems disciplinary action as part of an alternative resolution needs to be limited.

In all, CFW supports the policy and its intended goals, but suggests further revisions to increase the overall clarity of the policy and make it more user friendly.

Sincerely,

/s/

James Zachos, Chair
Committee on Faculty Welfare

cc: Miriam Greenberg, Chair, Committee on Affirmative Action and Diversity
Jorge Hankamer, Chair, Committee on Privilege and Tenure
Abel Rodriguez, Chair, Committee on Planning and Budget

October 26, 2015

Don Brenneis, Chair
Academic Senate

RE: Systemwide Review of Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment

Dear Don,

At its meeting of October 22, 2015, Graduate Council reviewed the proposed revised Presidential Policy on Sexual Violence and Sexual Harassment. The Council's deliberation raised several issues of concern related to the clarity of the proposed policy, definitions of reporting responsibilities and contexts in which these responsibilities are in effect, and the adequacy of the policy as proposed to sufficiently protect graduate students in their multiple and shifting roles as students and university employees. I should also note that Council's review and discussion of this draft policy was somewhat limited by the short timeframe available to us.

The policy, as proposed, is not sufficiently clear around definitions of mandated reporter, and especially concerning, about graduate student requirements as mandated reporters and when this definition applies to them and when it does not. This left the Council wondering if the draft policy provides sufficient tools for addressing sexual violence and sexual harassment for graduate students. When is a graduate student required to be a mandated reporter? In what contexts (as university employees, as graduate students) and sites (within the university, at university sanctioned events, outside of the university)? What consequences exist if a graduate student does not report, both for the student and for the institution more broadly?

The Council also found Section II. C. 6 of the proposed policy confusing and inadequate. The definition of "responsible employee" is problematic because of the far reaching implications of making all employees (including graduate students serving in that capacity) mandated to report even confidential disclosures, but also because it lacks specific protections for graduate students themselves as potential complainants. The policy states that "any university employee...who receives information about possible sexual violence or sexual harassment involving an **undergraduate student** must promptly notify the Title IX officer or designee." The Council believes this section of the proposed policy excludes and leaves graduate students without explicit protection if this policy is adopted.

The Council was further concerned that the proposed policy includes separate definitions of sexual harassment for general situations (Section II. B. 2. a) and sexual harassment between students outside of an employment context (Section II.B. 2. b). The Council is concerned about the particular impact on graduate students if the university adopts distinct definitions, as proposed here. Graduate students can be students and/or university employees at different times, making the proposed policy particularly difficult to apply to this population. Second, having distinct definitions, as proposed here, makes instances of sexual harassment outside of an employment context subject to a different, and higher standard before being defined as sexual harassment. The language for Section II.B.2.b sets a higher standard, leaving the Council with questions such as: how is severity and pervasiveness defined, and by whom? Does the wording of the proposed policy leave it susceptible to the unintended consequences of making it harder to "prove" sexual harassment, and even silencing potential complainants and deterring reporting?

The issue of how we define mandated reporter, when it is applicable, and the consequences and liabilities for both individuals and the institution are also unclear and potentially far reaching for faculty. These issues need to be further considered and reviewed before the policy is adopted.

Finally, a note on process. The Council is concerned about the short timeline for Senate review and response on this critical issue. We request that the concerns raised by the Council and other Senate committees be carefully reviewed and addressed, and that a revised version is again circulated for systemwide review with sufficient time for careful deliberation, particularly on the issues of implications for graduate students and faculty noted above.

Sincerely,

/s/

Dean Mathiowetz, Chair *Pro Tem*
Graduate Council

cc: CAAD Chair Greenberg
CFW Chair Zachos
P&T Chair Hankamer
CPB Chair Rodriguez

October 22, 2015

Don Brenneis, Chair
Academic Senate

Re: Updated Presidential Policy on Sexual Violence and Sexual Harassment

Dear Don,

The Committee on Privilege and Tenure (P&T) reviewed the updated Presidential Policy on Sexual Violence and Sexual Harassment. The committee notes several issues which it would like to see addressed during the revision process:

- B.1.b.i and B.1.b.ii There is a word missing at the end of these paragraphs, probably “harm” (page 4).
- B.1.c A word is missing after “other University...” probably ‘policy’. The pronoun ‘their’ is incorrect (page 9).
- If the Title IX officer provides both the Complainant and the Respondent with a written summary of the allegations, how can the Title IX officer “attempt to maintain the identity of the Complainant confidential from the Respondent” (page 11)?
- B.5.a “...ensures the response is trauma-informed...”
This terminology is unclear (page 15).
- B.8: The commas should be removed.
- B.10.f: The language is unclear (page 16).
- VIII Revision History: The language is unclear (page 18).

In addition to these potentially important missing words and clarifications, we noted vagueness in the language used to describe voyeurism. It is unclear in the document if voyeurism constitutes assault, or what the legal ramifications for voyeurism should be. It is clear that this type of behavior constitutes sexual harassment, though this is not as defined as it should be. We propose that this prohibited activity and its legal ramifications be better classified in the final document.

Sincerely,
/s/
Jorge Hankamer, Chair
Committee on Privilege

cc: James Zachos, Chair, Committee on Faculty Welfare
Miriam Greenberg, Chair, Committee on Affirmative Action and Diversity
Abel Rodriguez, Chair, Committee on Planning and Budget

October 26, 2015

Daniel Hare, Chair
Academic Senate

Re: Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment

Dear Chair Hare:

We applaud the over-arching goal of the proposed Policy on Sexual Violence and Sexual Harassment: to make the University of California an environment that is free of sexual violence and sexual harassment. However, the decision to define as a “responsible employee” virtually every employee on campus, including faculty and graduate student teaching assistants, will work counter to the overall goal of the policy. (1) The policy will have a chilling effect and will harm survivors of sexual violence and harassment. (2) Requiring faculty to dishonor student requests for confidentiality damages the relationship of trust between faculty and students. (3) Such a broad designation of “responsible employee” is not legally required. We urge Academic Council to recommend that the definition of “responsible employee” be limited and not include Senate faculty, lecturers, or graduate student instructors.

(1) Harm to Survivors

Rape, sexual assault, and sexual harassment are traumatic in part because the victim loses control over his or her own body. A clearly established principle for recovery from these traumatic experiences is to rebuild trust and to reestablish a sense of control over one’s own fate and future.^{1,2,3} When a survivor’s experience of sexual victimization is reported to authorities, in disregard of her or his explicit request for confidentiality, great psychological distress is a likely result.^{4,5,6} Moreover, the likelihood that the survivor will continue to engage with the investigation of the offense is reduced.⁷ Reactions from other people that involve attempts to control a survivor’s actions and choices lead to increased post-traumatic stress disorder (PTSD) symptoms^{8,9}. The act of reporting against the will of the survivor is a violation of trust that may be experienced as institutional betrayal which is associated with anxiety and other psychological symptoms¹⁰.

Ironically, the sample Policy Fact Sheet that accompanies the Policy as Appendix III acknowledges this point when it states: “Immediately reporting a case to the police could be more traumatic for the victim than beneficial. *Let them make the decision to report (or not report).*” (emphasis added). This is exactly the right advice and applies as much to institutional (e.g., Title IX) reports as it does to police reports.

(2) Faculty-Student Relationship

APM 15 makes clear the importance of the faculty-student relationship and how trust is integral to it: “The integrity of the faculty-student relationship is the foundation of the University’s educational mission. This relationship vests considerable trust in the faculty member, who, in turn, bears authority and accountability as mentor, educator, and evaluator.” APM 15 also quotes the AAUP Statement on Professional Ethics: “[Professors] respect the confidential nature

of the relationship between professor and student.”¹¹ Requiring faculty to violate student trust places us in a precarious position with respect to the ethics of our profession.

(3) Legal Requirements

Universities are not required by law to designate all employees as responsible employees; they have discretion. Harvard Law professor Vicki C. Jackson, a Reporter for The American Law Institute, one of the most respected legal research institutions in America, has recently written this about federal guidance: “Nothing in the official OCR [Office of Civil Rights] regulations or guidance appears to require that all faculty be designated as mandatory reporters.”¹²

Although the 2011 *Dear Colleague Letter* from the Office of Civil Rights¹³ led to some confusion on this point, OCR’s 2014 Q&A document affirms university discretion: “A school must make clear to all of its employees and students *which staff members are responsible employees* so that students can make informed decisions about whether to disclose information to those employees.”¹⁴ The clear implication is that not all university employees need be designated as responsible employees.

Other universities have chosen policies that define responsible employee more narrowly. For example, here is text from the policy of the University of North Carolina, Chapel Hill:

*“Employees with administrative or supervisory responsibilities on campus or who have been designated as Campus Security Authorities, are considered Responsible Employees. This includes, for example, members of the Board of Trustees, the Chancellor, Vice Chancellors, Deans, Directors, Department Chairs, Coaches, Student Affairs professionals (including Resident Advisors), and faculty who serve as advisors to student groups.”*¹⁵

Because a broad definition of “responsible employee” is not required by law, will damage the recovery and well-being of survivors, will harm the relationship between faculty and students, and will work counter to the goal of eliminating sexual harassment and sexual violence on campuses, we ask Academic Council to urge that the Policy be modified to more narrowly define the category of responsible employee, and to exclude Senate faculty, lecturers, and graduate student instructors and teaching assistants from this designation.

Sincerely,

Eileen Zurbriggen, Professor of Psychology, UCSC
Heather Bullock, Professor of Psychology, UCSC
Regina Langhout, Associate Professor of Psychology, UCSC
Nameera Akhtar, Professor of Psychology, UCSC
Gail Hershatter, Distinguished Professor of History, UCSC
Ben Crow, Professor of Sociology, UCSC
Christine King, Kresge College Lecturer, UCSC
Christine Hong, Assistant Professor of Literature, UCSC
B. Ruby Rich, Professor of Film and Digital Media, UCSC

Carla Freccero, Distinguished Professor of Literature, History of Consciousness, and Feminist Studies, UCSC
 Ronnie D. Lipschutz, Chair & Professor of Politics, UCSC
 Sean Keilen, Associate Professor of Literature, UCSC
 Jennifer Derr, Assistant Professor of History, UCSC
 Megan Moodie, Associate Professor of Anthropology, UCSC
 Jean Fox Tree, Professor of Psychology, UCSC
 Helene Moglen, Professor Emerita of Literature, UCSC
 Chelsea Blackmore, Assistant Professor of Anthropology, UCSC
 Megan Thomas, Associate Professor of Politics, UCSC
 Deborah Gould, Associate Professor of Sociology, UCSC
 Guriqbal Singh Sahota, Assistant Professor of Literature, UCSC
 Jessica K. Taft, Assistant Professor of Latin American and Latino Studies, UCSC
 Craig Reinerman, Professor of Sociology, UCSC
 Andrea Steiner, Continuing Lecturer in Community Studies, UCSC
 Maureen Callanan, Professor of Psychology, UCSC
 Shelly Grabe, Associate Professor of Psychology, UCSC
 Sylvanna Falcón, Assistant Professor of Latin American and Latino Studies, UCSC
 Leslie López, Director, Oakes CARA Program and Lecturer in Community Studies, UCSC
 Giulia Centineo, Lecturer in Languages and Applied Linguistics, UCSC
 Campbell Leaper, Professor of Psychology, UCSC
 Sharon Daniel, Professor of Digital Arts and New Media, UCSC
 Cindy Cruz, Associate Professor of Education, UCSC
 Lisa Rofel, Professor of Anthropology, UCSC
 Chris Connery, Professor of Literature, UCSC

¹ Herman, J. L. (1997). *Trauma and recovery*. New York: Basic Books.

² Ranjbar, V., & Speer, S. A. (2013). Revictimization and recovery from sexual assault: Implications for health professionals. *Violence and Victims*, 28, 274-287.

³ Frazier, P. A. (2003). Perceived control and distress following sexual assault: A longitudinal test of a new model. *Journal of Personality and Social Psychology*, 84, 1257-1269.

⁴ Campbell, R., Greeson, M. R., Bybee, D., & Fehler-Cabral, G. (2012). Adolescent sexual assault victims and the legal system: Building community relationships to increase prosecution rates. *American Journal of Community Psychology*, 50, 141-154.

⁵ Campbell, R., Greeson, M. R., Fehler-Cabral, G., & Kennedy, A. C. (2015). Pathways to help: Adolescent sexual assault victims' disclosure and help-seeking experiences. *Psychology of Women Quarterly*, 21, 824-847.

⁶ Patterson, D., & Campbell, R. (2010). Why rape survivors participate in the criminal justice system. *Journal of Community Psychology*, 38, 191-205.

⁷ Campbell, R., Greeson, M. R., Fehler-Cabral, G., & Kennedy, A. C. (2015). Pathways to help: Adolescent sexual assault victims' disclosure and help-seeking experiences. *Psychology of Women Quarterly*, 21, 824-847.

⁸ Orchowski, L. M., Untied, A., & Gidycz, C. (2013). Social reactions to disclosure of sexual victimization and adjustment among survivors of sexual assault. *Journal of Interpersonal Violence*, 28, 2005-2023.

⁹ Peter-Hagene, L., & Ullman, S. (2014). Social reactions to sexual assault disclosure and problem drinking: Mediating effects of perceived control and PTSD. *Journal of Interpersonal Violence*, 29, 1418-1437.

¹⁰ Smith, C. P., & Freyd, J. J. (2013). Dangerous safe havens: Institutional betrayal exacerbates sexual trauma. *Journal of Traumatic Stress*, 26, 119–124

¹¹ <http://www.aaup.org/report/statement-professional-ethics>

¹² Vicki C. Jackson, Harvard Law School, Reporter, “Project on Sexual and Gender-Based Misconduct on Campus: Procedural Frameworks and Analysis,” The American Law Institute, Preliminary Draft No. 1, October 23, 2015, at 16.

¹³ Available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>

¹⁴ <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (April 14, 2014) (emphasis added).

¹⁵ Univ. of N. Carolina Chapel Hill, “Policy on Prohibited Discrimination, Harassment and Related Misconduct including Sexual and Gender-Based Harassment, Sexual Violence, Interpersonal Violence and Stalking,” available at <http://policies.unc.edu/files/2013/04/PPDHRM.pdf> (emphasis added).



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October 26, 2015

Professor Dan Hare
Chair, Academic Senate
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

SUBJECT: Response to revised UC Policy on Sexual Violence and Sexual Harassment

Dear Dan:

The revised UC Policy on Sexual Violence and Sexual Harassment was discussed at the October 12th Senate Council meeting. In response to this second round of revisions, the San Diego Division would like to reiterate the concerns expressed in its letter submitted on April 20, 2015 in response to the first round of revisions. We continue to have concerns regarding due process protections and the efficacy of settlement processes as outlined in that response, but recognize the complexity of this issue. The previous letter is enclosed.

The San Diego Division would also like to note that, given the particular sensitivity of this issue due to recent events, the short deadline for expedited review runs the risk of cutting off meaningful discussion. While the Division appreciates the need to return comments in a timely fashion, there is an equal need to ensure that responses regarding important issues are not unduly rushed. We hope that in light of the President's recently formed Joint Committee of the UC Administration and the Academic Senate with a focus on the process for handling cases of sexual violence, assault and harassment involving UC faculty, that Divisions will be provided further opportunity to fully discuss such an important topic.

Sincerely,

Robert Continetti, Chair
Academic Senate, San Diego Division

Enclosure

cc: K. Roy
R. Rodriguez
H. Baxter



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9500 GILMAN DRIVE
LA JOLLA, CALIFORNIA 92093-0002
TELEPHONE: (858) 534-3640
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April 20, 2015

Professor Mary Gilly
Chair, Academic Senate
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

SUBJECT: Response to proposed revisions to the UC Policy on Sexual Harassment and Sexual Violence

Dear Mary,

The proposed revisions to the UC Policy on Sexual Harassment and Sexual Violence were reviewed by the Divisional Committee on Diversity and Equity, the Committee on Faculty Welfare, the Committee on Privilege and Tenure, the Committee on Academic Personnel and the Committee on Academic Freedom, and were discussed at the April 13th Senate Council meeting. Several questions and general concerns arose concerning the role that a campus should play in the adjudication of matters that cross into criminal conduct. A summary of those questions and concerns follows.

The proposed revision to Section V(B)(4)(j)(i)(2) will affect confidentiality clauses in faculty settlement agreements, because the sanction imposed against the respondent will now be disclosed to the complainant. Traditionally, settlement agreements that remove a faculty member from a campus include a confidentiality clause. When the facts of a case are not in dispute, a faculty member may choose to resign rather than face an extended Privilege and Tenure hearing. One condition of the resignation is almost always a confidentiality clause. What impact will the effect of this change in policy have on those settlement agreements, and will this effect be in the best interests of the complainant and the campus?

And related to this question, would the disclosure violate the Family Educational Rights and Privacy Act?

Senate Council would like to see the relationship between Divisional Committees on Privilege and Tenure and the Title IX Offices on the campuses better defined to ensure that the process does not break down between the two entities and also to ensure that there is faculty oversight where appropriate. While the staff in the Title IX Offices are acknowledged to be well-trained professionals, a good process should include the appropriate checks and balances.

Another issue raised at Senate Council was whether appropriate safeguards were in place to ensure that the respondents' due process rights are not infringed. Of note is the rise in cases being brought against universities by students complaining that their due process rights were denied in the adjudication of cases against them. The Senate noted that the policy did not clarify the rights of the respondents, and while addressing the complainants' cases with the proper respect and expediency is important, without specific processes or guarantees in place, the rights of respondents may be violated.

To ensure that the respondent's rights are not violated, perhaps some type of (Miranda-like) warning should be given prior to questioning of the respondent when an administrator is conducting an investigation.

Broadly speaking, the Senate Council's discussion turned to the overall appropriateness of treating a criminal matter, sexual assault, as a Title IX issue and placing its adjudication in the hands of a university, which is not equipped to handle criminal matters. If the complainant files a criminal complaint, trained law enforcement professionals will be engaged in the investigation. Should the complainant be encouraged to file a criminal complaint and the legal process leveraged by the university?

Thank you for the opportunity to comment on this important subject.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerry Boss". The signature is fluid and cursive, with the first name "Gerry" and last name "Boss" clearly distinguishable.

Gerry Boss, Chair
Academic Senate, San Diego Division

cc: R. Continetti
R. Rodriguez
H. Baxter

October 26, 2015

J. Daniel Hare, Ph.D.
Academic Council
Systemwide Academic Senate
University of California Office of the President
1111 Franklin Street, 12th Floor
Oakland, CA 94607-52000

Re: Draft Presidential Policy on Sexual Violence and Harassment

Dear Dan,

The San Francisco Division of the Academic Senate has reviewed the revised draft of the proposed Presidential Policy on Sexual Violence and Harassment. In general, the working group should be commended on a draft that meets the requirements of the federal Violence Against Women Act (VAWA), which takes effect on July 1 2015; it also addresses many of the criticisms of the earlier version of the Policy by the Academic Senate. However, members of UCSF's Equal Opportunity Committee (EQOP) and Graduate Council feel that the policy could be improved – mainly in the clarification of certain definitions contained in the policy. These include the definitions of a *Confidential Resource*, a *Responsible Employee*, and the various types of harassment outlined in the Policy:

Mandatory Reporting

EQOP made a general comment that mandatory reporting may not necessarily improve compliance, as this is more of an issue of University culture. That being said, it seems appropriate to include mandatory reporting for faculty as they are in supervisory positions. Indeed, faculty in the health professions and K-12 education are already familiar with the concept of mandatory reporting for other issues such as suspected child and elder abuse. However, some stakeholders feel strongly that mandatory reporting is not a good idea in the sexual assault arena, and current evidence regarding the impact of mandatory reporting in this area should be reviewed to provide guidance. EQOP also recommends regular evaluations on the implementation and impact of the Policy.

Confidential Resources

The Policy defines those University employees as “confidential resources” as those who can provide confidential consultation in their professional capacity, and are exempted from reporting to the Title IX office (but must still comply with the UC CANRA and reporting obligations under the Clery Act). These individuals include: 1) CARE advocates; 2) Ombuds; 3) licensed counselors in employee assistance programs; 4) licensed counselors in student counseling centers; 5) any persons with a professional license requiring confidentiality (excluding campus legal counsel); and 6) *any health sciences center employees with a professional license requiring confidentiality, or someone who is supervised by such a person*. Given the large number of employees with professional licenses requiring confidentiality at UCSF and other health

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Ruth M. Greenblatt, MD
Chairperson

David Teitel, MD
Vice Chair

Arthur Miller, PhD
Secretary

Todd Giedt, MA
Executive Director

Committees

Academic Freedom
Academic Personnel
Academic Planning &
Budget
Clinical Affairs
Committee on Committees
Coordinating
Courses of Instruction
Educational Policy
Equal Opportunity
Faculty Welfare
Graduate Council
Library & Scholarly
Communication
Privilege and Tenure
Research
Rules and Jurisdiction
Sustainability

Faculty Councils

School of Dentistry
School of Medicine
School of Nursing
School of Pharmacy

University of California
Academic Assembly of UC
Academic Council of UC

sciences campuses, UCSF's Graduate Council feels that this definition would benefit from a description of any circumstances under which an employee with a professional license requiring confidentiality would not constitute a confidential resource for the purposes of this policy.

Responsible Employees

The new Policy adds a definition on "responsible employees." In short, these responsible employees (who are not confidential resources), and receives information about possible sexual violence or sexual harassment involving an undergraduate student are required to promptly notify the Title IX Officer or designee. Given that UCSF does not enroll any undergraduate students, the UCSF Graduate Council recommends that we recommend that the definition of responsible employee include any University employee who is not a confidential resource and who receives information about possible sexual violence and sexual harassment involving *any* student, including graduate students.

Types of Harassment

EQOP also suggests elements that might be added to the different types of harassment defined in the policy:

- *Relationship Violence* [Section II (B)(1)(b)]: Dating violence is often more than just about bodily injury. It might be wise to consider including the terms "physical, sexual or psychological harm including substantial emotional distress."
- *Sexual Harassment* [Section II (B)(2)(a)]: EQOP asks if repeatedly asking someone for a date be automatically considered "of a sexual nature," or would this fall under general harassment? This section does not address advances that may not be overtly sexual, yet could still fall under the term "sexual harassment."
- *Sex Discrimination* [Section II (C)(1)]: The placement of this item is incongruous. It should be a numbered item on the list of prohibited conduct.

Finally, EQOP commends the task force for the inclusion of the policy in the Spanish and Chinese languages, but recommends that campuses be given sufficient resources to offer the Policy in additional languages. On that point, EQOP members noted that a correction is needed for the Chinese translation of "Chinese Version, Please click here." In particular, "中國版本" should be replaced by "中文版本".

The Academic Senate appreciates the opportunity to review this important Presidential Policy. If you have any specific questions on the comments provided, please do not hesitate to contact me.

Sincerely,



Ruth Greenblatt, MD
2015-2017 Chair
UCSF Academic Senate

CC: Systemwide Academic Senate Executive Director Hilary Baxter

Encl. (2)

October 22, 2015

Ruth Greenblatt, MD
UCSF Academic Senate
500 Parnassus Avenue
San Francisco, CA 94143

Re: The University of California's Presidential Policy on Sexual Violence and Sexual Harassment

Dear Chair Greenblatt:

The UCSF Academic Senate Committee on Equal Opportunity (EQOP) reviewed the revised final draft of the University of California's Presidential Policy on Sexual Violence and Sexual Harassment. EQOP appreciates this opportunity to review the policy and respectfully submits the following comments.

General Comments

- EQOP applauds the inclusion of the policy in Spanish and Chinese languages and recommends that campuses be given the resources in order to offer the policy in additional languages to meet the needs of their constituents.
- There is a concern that mandatory reporting will not necessarily improve compliance as this is more of an issue of University culture. That being said, it seems appropriate to include mandatory reporting for faculty as they are in supervisory positions. Faculty in health professions and K-12 education are already familiar with the concept of mandatory reporting for other issues such as suspected child and elder abuse; however, some stakeholders feel strongly that mandatory reporting is not a good idea in the sexual assault arena. It would be useful to review current evidence regarding the impact of mandatory reporting and have experts on this issue provide guidance. We also recommend regular evaluations on implementation and impact of the policy.

Mandatory Reporting [Section II (C)(6)]

EQOP recommends that there not be different requirements depending on type of student, namely undergraduate and graduate. There is a power differential in all cases, and the concern is that when requirements differ, the likelihood of taking appropriate action decreases. Current UCSF language posted publicly is as follows: "You should feel free to talk to a trusted friend or colleague. Keep in mind that managers, supervisors and certain employees such as faculty and principal investigators are required to report to the Title IX officer (sexual harassment officer)." This [site](#) also provides an avenue for anonymous reporting.

Relationship Violence [Section II (B)(1)(b)]

Dating violence is often more than just about bodily injury. Consider including these terms "physical, sexual or psychological harm including substantial emotional distress."

Sexual Harassment [Section II (B)(2)(a)]

Would repeatedly asking someone for a date be automatically considered "of a sexual nature," or would this fall under general harassment? This section does not address advances that may not be overtly sexual, yet could still fall under the term "sexual harassment."

Note on Sex Discrimination [Section II (C)(1)]

The placement of this item is incongruous. It should be a numbered item on the list of prohibited conduct.

Other Definitions [Section II (C)]

The list of definitions (including Confidential Resources, Complainant, Location, Preponderance Evidence, Respondent, and Responsible Employee) should be made available at the beginning of Section II, since these terms are mentioned in Section II (A) and Section II (B).

Language Translation *[Page 1]*

Correction is needed for the Chinese translation of "Chinese Version, Please click here." 中國版本 should be replaced by 中文版本.

Thank you again for the opportunity to opine.

Sincerely,

A handwritten signature in blue ink, appearing to read "Janice Tsoh", with a stylized, flowing script.

Janice Tsoh, PhD

Chair, UCSF Academic Senate Committee on Equal Opportunity

October 16, 2015

Ruth Greenblatt, MD
UCSF Academic Senate
500 Parnassus Avenue
San Francisco, CA 94143

Re: The University of California's Presidential Policy on Sexual Violence and Sexual Harassment

Dear Dr. Greenblatt:

The Graduate Council of the San Francisco Division of the University of California Academic Senate reviewed and discussed the revised final draft of the University of California's Presidential Policy on Sexual Violence and Sexual Harassment. The UCSF Graduate Council appreciates this opportunity to review the policy and respectfully submits the following comments.

Confidential Resource

The current revised draft adds the definition of confidential resources. Any employees with a professional license requiring confidentiality (excluding campus legal counsel), or someone who is supervised by such, and any health sciences center employees with a professional license requiring confidentiality, or someone who is supervised by such a person can provide confidential consultation in their professional capacity. Confidential consultation exempts these individuals from reporting to the Title IX office.

The University of California San Francisco is the only campus in the University of California system exclusively dedicated health sciences. Many of the employees at UCSF have a professional license requiring confidentiality. The revised final draft does not specify if there are circumstances under which a person with a professional license requiring confidentiality would not be exempt from reporting to the Title IX office.

To ensure that employees at the University of California San Francisco understand reporting requirements, we recommend a description of the circumstances under which an employee with a professional license requiring confidentiality would not constitute a confidential resource for the purposes of this policy.

Responsible Employee

The revised draft also adds the definition of responsible employee. Any University employee who is not a confidential resource and who receives information about possible sexual violence or sexual harassment involving an undergraduate student must promptly notify the Title IX Officer or designee.

The University of California San Francisco neither offers undergraduate courses nor enrolls undergraduate students. The revised final draft does not specify if any University employee who is not a confidential resource and who receives information about possible sexual violence or sexual harassment involving a graduate student must promptly notify the Title IX Officer or designee.

To ensure that the University of California creates and maintains a community free of sexual violence and sexual harassment for every individual, including graduate students, we recommend that the definition of responsible employee include any University employee who is not a confidential resource and who receives information about possible sexual violence and sexual harassment involving any student.

Sincerely,

Jason Rock PhD, Chair
Graduate Council

UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

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COORDINATING COMMITTEE ON GRADUATE AFFAIRS (CCGA)

Valerie Leppert, Chair
vleppert@ucmerced.edu

ACADEMIC SENATE

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

October 26, 2015

ACADEMIC COUNCIL CHAIR DAN HARE

Dear Dan:

At its October 7 meeting, the Coordinating Committee on Graduate Affairs (CCGA) discussed the final draft of the University of California's Presidential Policy on Sexual Violence and Sexual Harassment (formerly Sexual Harassment and Sexual Violence). The committee appreciated having Janet Lockwood, Director, Academic Policy and Compensation, present at its discussion to answer members' questions. Overall, much progress seems to have been made in clarifying the policy. CCGA welcomes the emphasis on education and training made in the new policy, and hopes that this is an indicator that attention will continue to be paid to appropriate graduate student training in its implementation. That should help TAs to better understand their reporting responsibilities under VAWA.

Remaining concerns of CCGA members are mainly centered on issues of scope – the situations and personnel for which the policies are applicable, due to the variety of both in the university context. Of particular concern is the ability of graduate students to interpret and act on the policy, given the various roles a graduate student may take on in the context of working with undergraduate students (for example, both formal and informal mentoring). Here again, the importance of training, as discussed above, is apparent. Members are also still unclear as to whether liability rests with the individual or with the institution in the case of mandatory reporters. A small typo was also noted. In the Domestic Violence section of the policy, the last sentence should close with “reasonable fear of serious bodily harm” or possibly injury, not “reasonable fear of serious bodily.”

CCGA also received feedback (attached) from UCSF's Graduate Council related to concerns that are particular to that campus. First, in order to ensure that UCSF employees understand reporting requirements, a description in the policy is requested of the circumstances under which an employee with a professional license requiring confidentiality would NOT constitute a confidential resource. Second, due to the absence of undergraduate student courses and enrollment on that campus, and to help ensure an environment free of sexual violence and harassment across the University, they recommend that responsibility for reporting be extended to all University employees who are not confidential resources, for sexual violence and harassment issues involving *any* student.

Sincerely,

A handwritten signature in cursive script that reads "Valerie J. Leppert".

Valerie Leppert, Ph.D.
Chair, CCGA

cc: Jim Chalfant, Academic Council Vice Chair
CCGA Members
Hilary Baxter, Academic Senate Executive Director
Michael LaBriola, Academic Council Analyst

Enclosure (1)

October 16, 2015

Valerie Leppert, Ph.D.
Science & Engineering Building, Suite 270
5200 North Lake Road
University of California
Merced, CA 95343

Re: The University of California's Presidential Policy on Sexual Violence and Sexual Harassment

Dear Dr. Leppert:

The Graduate Council of the San Francisco Division of the University of California Academic Senate reviewed and discussed the revised final draft of the University of California's Presidential Policy on Sexual Violence and Sexual Harassment. The UCSF Graduate Council appreciates this opportunity to review the policy and respectfully submits the following comments.

Confidential Resource

The current revised draft adds the definition of confidential resources. Any employees with a professional license requiring confidentiality (excluding campus legal counsel), or someone who is supervised by such, and any health sciences center employees with a professional license requiring confidentiality, or someone who is supervised by such a person can provide confidential consultation in their professional capacity. Confidential consultation exempts these individuals from reporting to the Title IX office.

The University of California San Francisco is the only campus in the University of California system exclusively dedicated health sciences. Many of the employees at UCSF have a professional license requiring confidentiality. The revised final draft does not specify if there are circumstances under which any person with a professional license requiring confidentiality would not be exempt from reporting to the Title IX office.

To ensure that employees at the University of California San Francisco understand reporting requirements, we recommend a description of the circumstances under which an employee with a professional license requiring confidentiality would not constitute a confidential resource for the purposes of this policy.

Responsible Employee

The revised draft also adds the definition of responsible employee. Any University employee who is not a confidential resource and who receives information about possible sexual violence or sexual harassment involving an undergraduate student must promptly notify the Title IX Officer or designee.

The University of California San Francisco neither offers undergraduate courses nor enrolls undergraduate students. The revised final draft does not specify if any University employee who is not a confidential resource and who receives information about possible sexual violence or sexual harassment involving a graduate student must promptly notify the Title IX Officer or designee.

To ensure that the University of California creates and maintains a community free of sexual violence and sexual harassment for every individual, including graduate students, we recommend that the policy expand the definition of responsible employee to include any University employee who is not a confidential resource and who receives information about possible sexual violence and sexual harassment involving any student.

Sincerely,



Jason Rock PhD, Chair
UCSF Graduate Council

UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

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UNIVERSITY COMMITTEE ON AFFIRMATIVE ACTION AND DIVERSITY (UCAAD)

Colleen Clancy, Chair

ceclancy@ucdavis.edu

ACADEMIC SENATE

University of California

1111 Franklin Street, 12th Floor

Oakland, California 94607-5200

October 26, 2015

DANIEL HARE
ACADEMIC COUNCIL CHAIR

Dear Dan:

UCAAD has been asked to comment on the proposed presidential policy that will bring the University of California into compliance with the Federal Violence Against Women Reauthorization Act (VAWA). Unfortunately, the timeline for review of the new policy was not sufficient for UCAAD members to thoroughly review and discuss the policy. As such, I am providing you with a concatenation of written comments that we received from UCAAD members that represent issues that were raised and discussed at their respective campus level Committees on Affirmative Action and Diversity.

The UC Berkeley DECC comments on the Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment:

Because of the UCOP imposed deadline for campus responses, the committee had insufficient time to review and consider a document of such detail and importance. Thus, our remarks will be brief. DECC rejects the revisions made to the Presidential Policy on Sexual Violence and Sexual Harassment (SVSH)

- While the document stresses the importance of compliance, this draft lacks the appropriate attention to effective strategies to enforce or remedy instances of sexual harassment or sexual violence. Given the troubling findings of the Marcy case in the Department of Astronomy, the committee finds it particularly distressing that the document does not stress the University's commitment to providing support services for victims of sexual assault—by means of the implementation of a confidential, timely and *detailed* investigation, and assistance in the continuation of the victim's education or work.
- DECC's negative assessment of the University SVSH revisions should be understood in the context of the considerable shortcomings we have observed in the campus grievance procedures for sexual harassment and sexual violence. The bulk of Title IX resources are dedicated to campus-wide compliance. The grievance procedure is byzantine and resources to guide or assist victims through the grievance procedure scant. DECC asserts that any policy announcement must first address this crucial structural problem.

The UCSB Committee on Diversity & Equity has reviewed the most recent proposed revisions to the Presidential Policy on Sexual Violence & Sexual Harassment.

The committee offers the following comments and questions:

STREAMLINING RESOURCE REFERRALS: CDE recommends a streamlining of the process of resource referrals. Following various hyperlinks, one is directed to websites of resources that often are links to additional lists of even more websites. This process can be cumbersome and confusing, in particular to someone who is emotionally distraught and seeking help. CDE reiterates its recommendation from last spring (April 14, 2015) in which we suggested developing a clearer way of presenting resource information, for example “in the form of a table or perhaps a flowchart – describing and comparing the various reporting options.” Furthermore, we restate our original comments:

Currently, there is a long list of campus resources to which a survivor of sexual harassment/sexual violence may seek help. But what is missing is a way for someone to know the role of each, pros and cons of reporting to one versus another, whether each is confidential or not, whether each provides counseling/emotional support or not, whether there is mandatory reporting to Police/Judicial Affairs, etc. Additional information would be useful to better understand and evaluate the various reporting options. Such a table of information should also include easy access to contact information (phone number, email address, physical location, etc.). Relevant to the issue of confidentiality: One member with broad experience on various “ad hoc” committees suggested that even greater specification be offered about the limits of confidentiality; both faculty and students remain remarkably unaware of the limits of the promise of confidentiality.

GEOGRAPHIC JURISDICTION: CDE is unclear about the geographic jurisdiction of the policy and to what extent it applies beyond campus grounds. Section V-2-b (*Jurisdiction over Reports of Sexual Violence or Sexual Harassment*) in the revised draft indicates: “The University has jurisdiction over alleged violations of this Policy by students, staff and other academic appointees that occur on University grounds and facilities such as offices and residence halls, or that occur in connection with University activities, programs, or events.” However, later in that same section, it states that “For incidents involving student Respondents, the University may exercise jurisdiction over off-campus conduct that would violate other University Policies if it occurred on campus.” The committee is unclear why this latter statement specifies “students” when the former statement seems to imply that jurisdiction may extend beyond campus limits for staff and faculty as well. CDE wonders what policy differences – if any – exist between students, faculty, and staff.

MEANING OF “STUDENT”: CDE members recommend that the entire document be vetted to clarify if every mention of “student” means both undergraduate and graduate student. Throughout the document, graduate students are rarely mentioned, and it remains unclear to some if every aspect of the policy is meant to cover the unique status of these differently situated students.

The UCSF Academic Senate Committee on Equal Opportunity (EQOP):

General Comments

EQOP applauds the inclusion of the policy in Spanish and Chinese and recommends that campuses be given the resources in order to offer the policy in additional languages to meet the needs of their constituents.

There is a concern that mandatory reporting will not necessarily improve compliance, as this is more of an issue of University culture. That being said, it seems appropriate to include mandatory reporting for faculty, as they are in supervisory positions. Faculty in health professions and K-12 education are already familiar with the concept of mandatory reporting for other issues such as suspected child and elder abuse; however, some stakeholders feel strongly that mandatory reporting is not a good idea in the sexual assault arena. It would be useful to review current evidence regarding the impact of mandatory reporting and have experts on this issue provide guidance. We also recommend regular evaluations on implementation and impact of the policy.

Mandatory Reporting: EQOP recommends that there not be different requirements depending on type of student, namely undergraduate and graduate. There is a power differential in all cases, and the concern is that when requirements differ, the likelihood of taking appropriate iGATE action decreases. Current UCSF language posted publically is as follows: ""You should feel free to talk to a trusted friend or colleague. Keep in mind that managers, supervisors and certain employees such as faculty and principal investigators are required to report to the Title IX officer (sexual harassment officer)."

Relationship Violence: Dating violence is often more than just about bodily injury. Consider including these terms "physical, sexual or psychological harm including substantial emotional distress."

Sexual Harassment: Would repeatedly asking someone on a date be automatically considered "of a sexual nature," or would this fall under general harassment? This section does not address advances that may not be overtly sexual, yet could still fall under the term "sexual harassment."

Note on Sex Discrimination: The placement of this item is incongruous. It should be a numbered item on the list of prohibited conduct.

Other Definitions: The list of definitions (including Confidential Resources, Complainant, Location, Preponderance Evidence, Respondent, and Responsible Employee) should be made available at the beginning of Section II, since these terms are mentioned in Section II (A) and Section III (B).

The UC Santa Cruz Committee on Affirmative Action and Diversity wrote the following:

At its meeting of October 19, 2015, the Committee on Affirmative Action and Diversity (CAAD) reviewed the updated Presidential Policy on Sexual Violence and Sexual Harassment. The committee raised concerns about two issues: 1) the document's lack of clarity as currently written, and 2) the potential limitations in perspective and/or conflict of interest of the UC legal consultants who drafted the policy, and need for an outside consultant to review the document. In light of a recent nationally publicized incident of sexual harassment by a professor at UC Berkeley in which many who knew of the violations did not follow reporting procedures, and when some did and the professor in question was found in violation, there were not significant consequences leveled, the committee felt that addressing these two issues would be both timely and important.

In terms of the style of the document, members noted that much of it is written in legalistic and vague terms, and may be challenging for the average employee or student to interpret. For instance, on page 9, committing an act of sexual harassment or violence is referred to as "Noncompliance with the Policy," which is then explained in terms of other policies, stating that it is "governed by this Policy and the Policy on Student Conduct and Discipline, Personnel Policies for Staff Members 61, 62, 63, 64, 65, and 67 pertaining to disciplinary and separation matters, The Faculty Code of Conduct (APM 015) and University Policy on Faculty Conduct and the Administration of Discipline (APM -016), Non-Senate Academic Appointees/Corrective Action and Dismissal (APM150), and as applicable, collective bargaining agreements, and other policies..." Ultimately, readers arrive at the sentence "Non-compliance with this Policy, other than violations of Prohibited Conduct, may result in employment or educational consequences up to and including informal counseling, education, adverse performance evaluations, corrective actions, and termination." (Emphasis added.)

In addition to the dense, highly technical prose, the committee highlighted the open-endedness of the term "may," and expressed concern that those reading the document might conclude from this that non-compliance may or may not result in any legal consequences for the respondent. Thus CAAD is concerned that the draft document as written makes it difficult to understand the appropriate process for handling an issue of sexual violence or harassment, or to assess the merits of reporting a violation, and fears that an employee or student consulting the policy would be perplexed on both counts. In part, the committee recommends revising the document, or creating another companion version of it, to make the policy more user-friendly and accessible to multiple audiences.

In addition, given that the policy has significant legal impacts on both the complainant and the respondent, CAAD suggests that it be reviewed by an outside expert in the field who is not affiliated with the University of California, such as a sexual harassment/violence survivor advocacy group, or a lawyer specializing in such cases. CAAD assumes that the policy has been drafted and vetted by UC lawyers with the best interest of the university and its employees in mind. In order to ensure that the policy also represents and protects the complainant appropriately, CAAD suggests that an outside expert be consulted.

The UC Davis Division Committee on Affirmative Action and Diversity concurred with the content of the Santa Cruz Letter above

The UC Merced Division Committee on Affirmative Action and Diversity also concurred with the content of the Santa Cruz Letter above and noted the additional issues to be addressed:

RE: Section II. C. 6. Responsible Employees

1. The first paragraph mandating that everyone except the confidential resources to report is problematic because everyone includes front desk staff for the CARE Office, Ombuds Office, or Counseling Services front desk staff, or employees that may be in those offices at the time someone walks in to speak with a confidential resource. How is a student able to get to a confidential resource if they are unable to even get referred or enter an office without triggering a report? This paragraph should be modified.
2. The proposed policy does not include an exemption for disclosures made at public awareness events. Students and other community members should be able to publicly disclose experiences of interpersonal violence at public awareness events without fear such disclosures could trigger a report. These disclosures can be preventative in that they increase awareness of interpersonal violence. They also present an opportunity for the University to become more aware of the prevalence of interpersonal violence on campus. Eliminating this exemption will limit free speech, stifle communication about these issues, and in effect sweep the problem back under the rug

The UCLA representative expressed the need for additional clarification and detail on the following items:

- 1) Separation of sexual violence and sexual harassment;
- 2) Rights of accused;
- 3) Seems focused on undergraduates;
- 4) Ignores related issues, e.g., the LGBT communities;
- 5) Needs clarification about reporting of observed acts.

Additional comments from UCAAD:

Overall, the definitions in the draft policy are very clear and comprehensive (except for the few comments cited above).

If additional procedures are going to be developed and implemented locally, as indicated in section IV.A, UCAAD recommends that each campus provide a plan/policy of local procedures to the Office of the President for approval and oversight.

Section IVd: UCAAD recommends that the designee for monitoring, enforcing and reporting policy compliance must be the same person at each campus for consistency. (Title IX Office?) We also suggest that OP consider having every campus submit a report each year to the Office of the President in this regard so that monitoring is more active (and not passive). The report should include things such as the number and nature of complaints, form of resolution, issues with repeat offenders, number of people completing trainings, people not completing the trainings, plans for completion, etc.

Given the challenges related to compliance with the current “mandatory” sexual harassment training, we recommend sanctions for not completing the required training (e.g., inability to go up for merit or promotion, etc.).

Section IV E: Information is provided to prevent sexual harassment in employment and for the protection of students specifically. Are there any enforcement agencies that oversee the protection of other members of the University (staff or faculty)? If so, that information should be provided. If not, the policy should state that no such agency exists to avoid confusion.

Section IV F: The policy should make it clear that non-compliance with policy for violations "other" than prohibited conduct is provided here because sanctions for prohibited conduct are already covered by the additional policies indicated.

Also, since this policy refers to other policies for how compliance will be handled, these other policies were reviewed for completeness.

What is the burden of proof for enforcing the student code of conduct; it is not indicated.

More clarity is needed about procedures for disciplinary action regarding students. Procedures are well-spelled-out for faculty but not for students in terms of burden of proof, evidentiary standards, etc.

The Faculty Code of Conduct needs to be changed given that it only lists discrimination and harassment. It should be brought into compliance with this new policy. Additionally, UCAAD is very concerned about the three-year limit on disciplinary action. Part III A.3 needs to be changed. It imposes a three-year limit on disciplinary action. This should either be removed or increased to a minimum of seven years to protect students and junior faculty. The need for such change is evidenced by the recent Marcy case at UC Berkeley. Also, there is inequity in such actions between students and faculty. There is no such limit imposed upon students. All relevant policies should be changed including, but not limited to, SBL 335, 336 and anywhere else this three-year limit is imposed.

Overall, UCAAD believes there are still significant issues with this policy and is not in support of it as is. We recommend that the issues raised herein be addressed and another round of review be initiated with the Academic Senate.

We appreciate the opportunity to comment on this important policy change and look forward to continued exchange to improve it.

Best regards,



Colleen E. Clancy, Ph.D.
Chair, UCAAD

cc: Jim Chalfant Academic Council Vice Chair
Hilary Baxter, Academic Senate Executive Director
UCAAD Members
Michael LaBriola, Senate Analyst



UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM (UCAFP)
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October 8, 2015

**DAN HARE, CHAIR
ACADEMIC SENATE**

RE: Expedited Review of Proposed Revisions to Presidential Policy on Sexual Violence and Sexual Harassment

Dear Dan,

UCAF conducted a thorough review of the proposed revisions to the Policy on Sexual Violence and Sexual Assault when it was first issued earlier this year. During the March teleconference, the committee agreed that the protections for academic freedom in the policy are adequate. UCAF appreciates the opportunity to comment again during this expedited review and has no additional feedback.

Sincerely,

A handwritten signature in cursive script, reading "Kathleen Montgomery".

Kathleen Montgomery, Chair
UCAF

UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

UNIVERSITY COMMITTEE ON RESEARCH POLICY (UCORP)
Judith Habicht Mauche
Email: judith@ucsc.edu

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Academic Senate
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October 26, 2015

**J. DANIEL HARE, CHAIR
ACADEMIC COUNCIL**

Re: Systemwide Review of Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment

Dear Dan:

UCORP reviewed the proposed revised SVSH policy with particular concern for two issues related to the conduct of research at the University. These concerns are:

1. that the policy not have the unintended consequence of limiting or sanctioning legitimate academic discussions or research programs;
2. that the policy be inclusive of incidents that occur off campus in a university related research context (e.g., at remote research facilities, at field sites, at academic conferences, etc.).

After a careful reading and discussion of the proposed policy, we are satisfied that the current revision adequately addresses these concerns.

Sincerely,

A handwritten signature in black ink, reading "Judith A. Habicht Mauche".

Judith A. Habicht Mauche
Chair, UCORP

Cc: UCORP Representatives
Hilary Baxter, UC Systemwide Academic Senate Executive Director



UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
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October 26, 2015

**DAN HARE, CHAIR
ACADEMIC COUNCIL**

RE: Proposed Revisions to Presidential Policy on Sexual Violence and Sexual Harassment

Dear Dan,

The University Committee on Faculty Welfare has met and discussed the redrafted revisions to the Presidential Policy on Sexual Violence and Sexual Harassment. While the committee finds the current draft an improvement, we highlight several issues for further clarification.

- 1) Definition of supervisor: Section II.C.6 (pp. 6-7) contains a rule imposing a reporting obligation on any university employee “who receives information about possible sexual violence or sexual harassment involving an **undergraduate student**” (emphasis in original). Our question concerns the obligation to forward a report *not* involving an undergraduate student. This obligation is limited to defined categories of individuals: “Managers and supervisors, including Deans, Department Chairs, and Directors of an Organized Research Unit (ORU).” The natural interpretation of this is that the category does not include faculty members other than Deans, Department Chairs, and ORU Directors. But we understand faculty members are classified as supervisors under other University policies. Clarifying language is needed.
- 2) Consequences of failure to report: Section IV.F (p. 9) is quite clear that a failure to fulfill a reporting obligation is not considered to be “Engaging in Prohibited Conduct” (which is covered by the first sentence). Our question concerns the second sentence: “Non-compliance with this Policy, other than violations of Prohibited Conduct, may result in employment or educational consequences up to and including informal counseling, education, adverse performance evaluations, corrective actions and termination.” We expect the flexibility is purposeful, but it could be a source of confusion when a question arises concerning an individual’s failure to report. From a faculty welfare perspective, the uncertainty could be eliminated by rewriting this subsection to state that non-compliance with the policy, for cases of inaction, when the conduct in question is also a violation of the Faculty Code of Conduct, may result in “adverse performance evaluations, corrective actions and termination” and that this will be done through the usual Senate processes. Alternatively, this subsection could be rewritten to state that consequences more severe than informal counseling and education may be imposed only pursuant to the rules and procedures governing the employee.
- 3) Disposition of reports: Section V.A.7 (p. 13) states that the report is to be forwarded “to the appropriate administrator.” Rather, the Title IX Officer should forward the Investigation Report

to the appropriate office of the Academic Senate when the purpose is to discipline a Senate member.

- 4) Disposition of reports and standards of proof: Section V.A.5 (p. 13) outlines the permissible use of Investigation Reports in disciplinary and grievance proceedings. It is important to clarify that while the Report may be used in disciplinary and grievance proceedings for the purpose of assessing a violation of the proposed Presidential policy, those same findings are *not* binding in a subsequent proceeding, particularly when the further proceeding has a standard of proof higher than preponderance of the evidence. We appreciate the reasons for making the burden of proof preponderance of the evidence for this policy: 1) Consider the streamlined procedures, the possible need to withhold evidence from the Complainant and the Respondent, the absence of a right to cross-examination, and the absence of other normal procedural safeguards. 2) The absence of normal procedural safeguards is unobjectionable given the limited remedies available to an Investigator under Appendix IV. The Appendix appropriately states the more serious remedies “may be imposed only pursuant to Discipline.” (p. 24) Consequently, and consistent with this contextualized approach, the findings in a Report should not be binding in a later proceeding.
- 5) Confidentiality: Section III.C.3 (p. 8) provides that “Efforts will be made to redact written reports and to protect the privacy of individuals, to the extent possible.” The Policy should obligate the University to keep a report confidential to the extent permitted by law.

UCFW appreciates the importance of this policy and looks forward to helping UC become a leader in this area. In addition to the suggestions for improving specific sections outlined above, some on the committee asserted that the apparent impetus for the revisions – to react to federal requirements, to indemnify the University in a narrow legal sense, and to show responsiveness in the media – was not aspirational enough. UC should proactively promote inclusive and respectful behavior of students and employees, but this aspect is still absent.

Sincerely,

Calvin Moore, UCFW Chair

Copy: UCFW
Hilary Baxter, Executive Director, Academic Senate



UNIVERSITY COMMITTEE ON PLANNING AND BUDGET (UCPB)
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October 26, 2015

**J. DANIEL HARE, CHAIR
ACADEMIC COUNCIL**

RE: Proposed Revisions to Presidential Policy on Sexual Violence and Sexual Harassment

Dear Dan,

We would like to affirm that maintaining an open and supportive environment, free of sexual harassment or violence, and fear of retribution, should be the highest priority. Mishandling of sexual harassment and assault in its community may have significant consequences for the University, financially and otherwise. The physical and psychological safety of our students, faculty and staff should always come first. In that sense the specificity of the document represents significant progress. Since UCPB has no particular expertise in the legal arena, we leave a detailed discussion of the text to other committees.

However, we would like to point out that this document is not sufficient by itself and should be accompanied by serious review of all the policies and processes, which are applicable to sexual harassment and violence. We provide a few examples.

A primary policy question is the compatibility and necessary harmonization with APM 15, which has very little emphasis on sexual harassment/violence. This leads to difficult questions, on which we do not believe consensus has been reached. The defense of academic freedom and due process protection against baseless charges, as spelled out in APM 15, are absolutely essential and should be compatible with the effective enforcement of a strict code of conduct and the protection of our students and community. But are they in practice? Recent cases come to mind, but a knee-jerk reaction should not obviate the need for thoughtful, reasoned analysis and change. The 3 year statute of limitation (APM 15, Senate Bylaws 335 & 336) may also be problematic in cases where a pattern of repeated incidents over a number of years has been alleged.

In cases that are not obviously of criminal behavior, the draft policy raises difficult issues of compatibility with our education mission: for instance, the confidentiality of findings may impair the ability of colleagues to intervene in early stages for the protection of students; the mandatory reporting to Title IX office may discourage effective mentoring of victim and alleged perpetrator, at the beginning of questionable behavior.

The perception among potential complainants is that the barriers to reporting are too high at the Title IX office and that the outcome is too uncertain. The "alternate resolution methods" outlined in document may need to be more often applied. Filing a Title IX complaint is seen as a significant personal and professional risk for a victim. This is especially true for young academics (graduate students, postdocs and residents,

assistant professors), who are very dependent on recommendations for appointments and tenure cases. This issue, specific to an academic institution, is not mentioned by the document but needs to be effectively addressed, e.g., by the appointment of senior faculty advocates.

There seem to be a number of concerns that implicate the effectiveness of Title IX offices. A review of these offices may be in order to determine whether the pace is due to the due process requirements, legal concerns, lack of resources or other insufficiency.

The effectiveness of the current state-mandated sexual harassment training of faculty and staff should also be examined. It is not a substitute for a general effort to improve institutional climate, address cultural stereotypes and correct the underrepresentation of women in academia and campus leadership.

Thank you for considering these points in relation to this important issue.

Sincerely,

A handwritten signature in dark ink, appearing to read "Shane N. White", enclosed within a hand-drawn oval.

Shane N. White, Chair
UCPB

cc: UCPB
Hilary Baxter, Executive Director, Systemwide Academic Senate



Jeff Lansman, Ph.D.
Chair, University Committee on Privilege and Tenure
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October 27, 2015

ACADEMIC COUNCIL CHAIR DAN HARE

Re: Expedited Review of Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment

Dear Dan:

The UCP&T members individually reviewed the proposed policy as the committee has not yet met this year. The following concerns were raised.

Different standards of evidence: A concern was noted about the difference in the standard of evidence cited in this policy (p. 12, #5. "The Investigation Report) and that used in disciplinary cases (Senate Bylaw 336). The former is "a preponderance" while the latter is "clear and convincing." If a faculty member found to have violated this policy, which has the lower standard, is cleared in a subsequent discipline proceeding given the higher standard, it may create the perception that the university is letting "guilty" people go unpunished. In addition, it could result in pressure to dilute the standard of proof in Bylaw 336 to preponderance of evidence, at least in sexual violence/harassment cases. It would be important to distinguish investigation reports under this revised policy from outcomes of formal faculty discipline proceedings.

Issues related to grievances: The section on "Grievance Procedures for Employees" (p. 12, #4.c.) is worrisome as it seems to indicate the Title IX officer's conclusions about fact must be accepted by P&T if a P&T grievance is filed in the same matter. Also, it is unclear what is intended with the specification that reports filed under alternative procedures "will be held in abeyance" pending resolution under this policy and "may be reactivated but only as a means of appeal by the Complainant." Finally, a question was raised as to why a complainant would be allowed to pursue the same grievance under two different processes, using the second one as an appeal from the first. This arrangement differs from APM 150-40 where a grievant must choose one grievance process.

Lack of clarity in definition that makes reference to undergraduate students: Under the definition of "responsible employee" (p.6, #6), the policy states that, "Any University employee who is not a confidential resource and who receives information about possible sexual violence or sexual harassment involving an undergraduate student must promptly notify the Title IX Officer or designee." It is not specified whether there is any reporting requirement when the harassment does

not involve an undergraduate student. Also, it seems that the reporting requirement applies even if the perpetrator is an undergraduate student but the victim is not, because an undergraduate student is "involved". These two issues should be clarified.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff B. Lansman", with a long horizontal flourish extending to the right.

Jeff Lansman, Ph.D.
Department of Cellular & Molecular Pharmacology
University of California, San Francisco

cc: UCP&T