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*Chair of the Assembly of the Academic Senate
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May 11, 2015

**SUSAN CARLSON, VICE PROVOST
ACADEMIC PERSONNEL**

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

Dear Susan,

As you requested, I distributed for systemwide Senate review the [Proposed Revised Presidential Policy on Sexual Harassment and Sexual Violence](#). Nine Academic Senate divisions (UCB, UCD, UCI, UCLA, UCM, UCR, UCSD, UCSB, and UCSF) submitted comments. Several substantial concerns were expressed by Senate reviews, with the general consensus being that more work is needed before the final policy is issued. We encourage the authors to address as many of the comments as possible before circulating the Policy for another systemwide review. The comments are summarized below and attached for your reference.

First, we understand that UC is modifying its existing policy to meet the requirements of the federal Violence Against Women Act (VAWA) that take effect on July 1 2015, and to incorporate related recommendations issued by President Napolitano's Task Force on Preventing and Responding to Sexual Violence and Sexual Assault. Beyond the need to meet these objectives, the general goals of the revision are sound. A clearer, more comprehensive policy can help engender progressive change in the culture, behavior, and norms around what constitutes sexual harassment and consent, as well as improve the administrative handling of harassment and assault cases.

However, in many places the policy is still unclear and difficult to understand; uses vague, confusing, and/or inconsistent terminology; and occasionally goes beyond what VAWA requires into potentially inappropriate overreach. Please note that several of these issues were [identified by the Senate](#) in February 2014 after the initial systemwide review, but have not been fully addressed in the new revision.

It is our sense that the President's Task Force was primarily focused on students. It did not devote the same level of attention to the roles and responsibilities of faculty as mandated reporters of sexual harassment and assault cases. We ask that the authors now spend time clarifying these and other critical issues.

In particular I want to draw your attention to the detailed and persuasive commentary provided by the UC Irvine Associate Vice Chancellor and Title IX officer (pages 17-47). Council encourages the authors to review her suggestions carefully and incorporate them into a new draft.

Also, the Senate commentary revealed significant confusion from multiple divisions about (1) how the Policy articulates the relative responsibilities of different kinds of UC community members (faculty, students, staff and others) in the reporting process for different kinds of cases of sexual violence or harassment, and (2) the extent to which the reporting process differs for instances of sexual harassment and sexual violence. Terms used within the Policy such as “sexual harassment,” “Designated Employee,” and “representative” (for formal investigations) are not always clear. There is particular confusion about the definition, role, and expectations for “Designated Employees” in different circumstances. We ask the Policy authors to clarify terminology and lines of reporting responsibilities, the extent to which there is a mandate or simply encouragement for “designated employees” to forward a complaint or report, who those designated employees are, and to whom the complaint can or must go (i.e., the Title IX officer or others in authority).

The Policy fails to address certain employee-student relationships. It includes a specific definition of sexual harassment by a student toward another student, but does not provide guidance about how it applies to Graduate Student Instructors (GSIs) who are both students and have a supervisory teaching relationship, and whether a GSI has a reporting obligation as a “designated employee.” The Policy is also unclear about the potential reporting responsibility of emeriti faculty in their status as Senate members but not employees. In addition, the Policy should clarify its geographic reach and the degree to which it covers off-campus activity between and among members of the campus community.

Reviewers raised multiple questions and concerns about the scope and limits of confidentiality within the Policy. First, there is concern that the provision requiring mandatory reporting of all conversations about incidents is too broad and should be balanced with the need for individuals with whom victims can consult confidentially. In many cases, a faculty member may be this individual, but requiring faculty to report all conversations with students about potential harassment could force faculty to breach their student’s trust. Clear cases of sexual assault have strict legal reporting requirements, but that is not true for incidents involving harassment, and the complainant may prefer to raise the matter in confidence. There is also concern that requiring the University to inform respondents of the source of allegations will create a disincentive for victims to report incidents due to fears about retaliation. Finally, several reviewers noted that the draft policy may violate provisions of the Family Educational Rights and Privacy Act (FERPA).

Reviewers also noted that the policy fails to include appropriate language safeguarding the rights of respondents and ensuring that respondents are clearly informed of these rights during an investigation. In addition, several reviewers questioned whether the provision requiring disclosure of any disciplinary actions to the complainant would be in the best interests of the complainant and the campus. One Senate division noted that a respondent may choose to resign to avoid public humiliation, and disclosing sanctions imposed against the respondent would violate standard confidentiality clauses in settlement agreements involving faculty. Senior Vice President Vacca’s cover letter notes that this provision was added as the result of a presidential directive, not a VAWA requirement. We think UC should reconsider or provide a clearer justification for the provision.

There is significant confusion about the relationship of the Policy to the Faculty Code of Conduct (APM 015)—for example, whether a faculty member’s failure to report knowledge of an incident would violate APM 015. Reviewers also noted that the general definition of sexual harassment in the

Policy is inconsistent with the definition of harassment in other related policies it references, including APM 015. Moreover, the Policy appears to call on the Title IX officer to recommend specific sanctions, but Title IX officers do not currently have this role. Specifically, APM 015 outlines a disciplinary process for Senate faculty involving Senate Privilege and Tenure committees. The Policy should clarify the relationship between the Title IX office and Senate committees on Privilege and Tenure to ensure appropriate faculty oversight. At the very least, Senate members should be apprised of their right to appeal to Senate committees for a hearing at all phases of the process, and those committees should receive any relevant written reports from Title IX officers.

In Section V.B.3, “Procedures for Early Resolution,” the authors should clarify under what circumstances such a resolution proceeding would commence—that is, how would it be determined that a Formal Investigation is “not likely” to result in a satisfactory outcome, and who would make that determination. It is also unclear whether complaints of sexual violence and sexual harassment would both include an option for an Early Resolution.

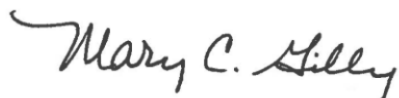
Senate reviewers expressed concern about Policy provisions related to mandatory training. The policy should clarify what kind of training will be mandatory for which campus constituency. Some feel that existing online training and education programs are insufficient and ineffective compared to in-person seminars. Faculty will also need training on how to communicate their role as mandatory reporters.

Finally, the Policy as written is unclear regarding how the University will be expected to interact with the legal system in cases of sexual violence and assault. To be fair, VAWA is putting the University in a difficult position. We believe it makes little sense to ask UC to adjudicate criminal cases through a Title IX process, and the University should consider how it might exert pressure to change the law. As a prominent national University, UC should have a role in shaping national policy, not just our own policy.

The University needs a Policy that helps prevent sexual violence and sexual harassment, strongly discourages repeat offenses by tying violations to appropriate disciplinary action, and addresses systemic problems. To be effective throughout the UC community, it must also provide clear guidance to faculty and contain reasonable protections.

Thank you for the opportunity to review and comment.

Sincerely,

A handwritten signature in dark ink, reading "Mary C. Gilly". The signature is fluid and cursive, with the first name "Mary" being the most prominent part.

Mary Gilly, Chair
Academic Council

Encl.

Cc: Academic Council
Senior Vice President Vacca
Policy Manager Lockwood
Executive Director Baxter
Senate Executive Directors



April 20, 2015

MARY GILLY
Chair, Academic Council

*Subject: Proposed Revised Presidential Policy on Sexual Harassment
and Sexual Violence*

Dear Mary,

On March 30, 2015, the Divisional Council (DIVCO) of the Berkeley Division discussed the proposed revised Presidential Policy on Sexual Harassment and Sexual Violence, informed by reports of the divisional committees on Diversity, Equity, and Campus Climate (DECC); Faculty Welfare (FWEL); Privilege and Tenure (P&T); Graduate Council (GC) and Undergraduate Council (UGC). While DIVCO welcomes the proposed revision as an improvement over the current policy, we agree with the reporting committees that a number of concerns should be addressed before the policy is adopted. Accordingly, to this letter I attach a compilation of divisional commentary on the proposed revision.

DIVCO believes that wider review and consultation will strengthen the proposed revision. Toward that end, we strongly urge the Office of the President to work with experts in this field, including UC law faculty, before circulating it for final review.

In closing, I note that much of the discussion in DIVCO, and in the DECC report, focused on campus-level issues and concerns. We believe that a strong, clear systemwide policy is necessary, but not sufficient to address this important matter. We underscore the need for each campus to develop an implementation plan tailored to local circumstances, and for the allocation of sufficient resources to support these efforts.

Sincerely,

A handwritten signature in black ink, reading 'P Papadopoulos'.

Panos Papadopoulos
Chair, Berkeley Division of the Academic Senate
Chancellor's Professor of Mechanical Engineering

Encl.

Cc: Donna Jones and Christine Wildsoet, Co-chairs, Committee on Diversity, Equity and Campus Climate
Mark Gergen, Chair, Committee on Faculty Welfare
Vern Paxson, Chair, Committee on Privilege and Tenure
Lisa Alvarez-Cohen, Chair, Graduate Council
David Presti, Chair, Undergraduate Council
Andrea Green Rush, Executive Director staffing the Committee on Privilege and Tenure
Linda Song, Associate Director staffing Graduate Council and Undergraduate Council
Diane Sprouse, Senate Analyst, Committee on Diversity, Equity, and Campus Climate
Anita Ross, Senate Analyst, Committee on Faculty Welfare

**Compiled commentary of Berkeley Division reporting committees and
councils
April 21, 2015**

The policy does not address the dual position of Graduate Student Instructors (GSIs) who are both a student and a supervisor. The definition of harassment on p. 3 from Policy 100 on Student Conduct and Discipline § 102.09 covers conduct that is "severe and/or pervasive, objectively offensive, and substantially impairs a person's access to University programs or activities." Under this rule a GSI who made unwanted sexual advances towards an undergraduate who the GSI supervised would be guilty of harassment only if the advances were severe or pervasive and substantially harmed the undergraduate. The general definition of harassment is not nearly so forgiving. It covers any "conduct of a sexual nature . . . that affect's or interferes with a person's . . . education, and/or educational performance." Nor is it clear whether a GSI is a "Designated Employee" who is under a reporting obligation. If the drafters of the policy decide not to address the special issues raised by GSI, then they might make it clear that campuses are expected to develop appropriate rules for GSIs.

We found several items that we think may be worth passing on to be addressed by the appropriate people before the policy is finalized.

At p. 15, second paragraph, the Policy states "When a report is received, managers, supervisors, and designated employees are required to notify the Title IX Officer . . . or other appropriate official designated by the location . . ." Is a failure by a faculty member to report a basis for disciplinary action against the faculty member under APM 15?

On the same point, does the University have discretion with regards to who is a mandatory reporter? It might also be helpful to clarify when a faculty member has a reporting obligation under applicable law apart from the Report. Coming at the last question from the other direction, to what extent does the Policy impose a new reporting obligation?

At p. 2 the Policy defines "sexual harassment" to include "conduct of a sexual nature, including verbal, nonverbal, or physical conduct—behavior that affects or interferes with a person's employment, work, education, and or educational performance." Appendix II (p. 27) explains: "Because the forms of unacceptable behavior listed in the Faculty Code of Conduct also apply to sexual harassment or sexual violence, a violation of the University's Policy on Sexual Harassment and Sexual Violence also constitutes a violation of the Faculty Code of Conduct." APM-015 does indeed prohibit under the Faculty Code of Conduct "Discrimination, including harassment . . ." But it does not define harassment.

The Policy may broaden the definition to cover conduct that was not heretofore considered sexual harassment and raising concerns for over breadth. This possibility is suggested by the narrower definition of "sexual harassment" in the

Student Code of Conduct, which the Policy incorporates by references on p. 3 as “unwelcome conduct of a sexual nature that effectively denies equal access to the University’s resources and opportunities because such conduct is severe and/or pervasive, objectively offensive and substantially impairs a person’s access to University programs or activities.”

The definition of harassment that applies to a faculty member does not require sexual conduct that is severe and/or pervasive, objectively offensive, and substantially affects or interferes with a person’s employment, work, education, and or educational performance. This raises a possible concern for over breadth. The Committee thought this concern could adequately be addressed by adding the word reasonable to the definition so it covers: “unreasonable conduct of a sexual nature, including verbal, nonverbal, or physical conduct, that affects or interferes with a person’s employment, work, education, and or educational performance.”

Overall, the document appears very comprehensive, although we have identified some areas in need of clarification and/or deficiencies ... Nonetheless, our more serious concern is to ensure that implementations of this policy lead towards the goal mandated by the Title IX investigations: to ensure that students are not denied the ability to participate fully in educational and other opportunities due to sex.

Thus the policy and its recommendations ought to lead to notable improvements not just in community culture and behavior on the UC Berkeley campus, but also in the administrative handling of assault reports ...

A. Areas in need of clarification

P6 and related later sections (e.g. page 9), states in relation to mandatory reporting responsibilities that *“Generally, this includes all employees, including academic appointees unless s/he has been identified as an employee who can provide confidential consultations for the University community pursuant to Section V.F. of this Policy. Designated employees must be informed of their own reporting responsibilities.”* Given the relatively limited resources available to support victims in distress and the potential value of having access to people (faculty &/or staff) that such people may already know and trust, this clause seems very restrictive and counter to the needs of the victim. Trained ombudspersons, strategically placed in units across the campus, may go some way to dealing with this problem. Also, victims of violence (sexual or otherwise) should automatically be assigned an advocate who can keep information confidential as requested by the victim.

P7. *“Any staff, student or academic employee in violation of this Policy may be subject to disciplinary action, up to and including dismissal.”* This sentence sets the wrong tone – a violation should always come with disciplinary action, which itself can be tailored to the nature of the violation.

P8. *“For example, policies that concern faculty-student relationships are found in The Faculty Code of Conduct.”* This sentence needs to be expanded to cover all teaching

relationships, including those between graduate student instructors and undergraduate students. It would also have more impact if the relevant sections of the Faculty Code of Conduct were extracted and clarified, or at least added as an appendix to this policy.

Clarifications are needed e.g. in what may or may not constitute a supervisory role. We recommend an unmistakable discouragement of faculty-undergraduate relationships such as in the recent Harvard policy: “No faculty member shall request or accept sexual favors from, or initiate or engage in a romantic or sexual relationship with, any undergraduate student.” Similarly clear ground rules are needed for faculty-graduate student and GSI-undergraduate relationships.

“While the University understands the desire for confidentiality and will consider such a request, the University also has a legal responsibility to the respondent. Depending on the situation, there are cases in which the University needs to inform the respondent of the source of the allegation. (Information regarding confidentiality can be found in Section V.E and F.)” This clause will always work against reporting by victims, due to fears of retaliation and various forms of likely damage to the victims academic career. It is also not clear from related sections in this document (e.g., P10), just how well developed and so fail-safe are the processes to monitor for and protect against retaliation. As an educational institution, rather than following fixed legal procedures, we ought to have a right (and in fact mandate) to prioritize the protection of victims over procedural interests of perpetrators - in particular in cases of proven and repetitive patterns of seriously harmful offenses.

P10: *“Generally, disciplinary action will be taken when the conduct is sufficiently severe, persistent, or pervasive that it alters the conditions of employment or limits the complainant’s opportunity to participate in or benefit from educational programs.”*

It is not clear that this wording covers the case of the repeat offender, involving multiple different victims.

P11. *“Each location is responsible for describing each type of disciplinary proceeding used by the location.”* Might it not be of value for at least all UC campuses to work together to reach a consensus on what represents acceptable behavior and processes for dealing with unacceptable behavior? It would send a message to the community at large that UC is committed to effectively addressing this pervasive problem.

P12. A. *Location Responsibilities*

“3. Provide mandatory training and education about sexual harassment and sexual violence prevention to all students, faculty, other academic staff, and staff.”

Other than for students, training is limited to on-line programs and is insufficient, if the aim is to change culture.

“10. Designate trained individuals to serve as resources for members of the University community who have questions or concerns regarding behavior that may be sexual harassment or sexual violence.” How are these people selected for this tasks, i.e., what credentials are required, and how will they be identified by those in

need?

“11. Conduct proceedings that incorporate these additional elements:

- Timely access to any information that will be used after the fact-finding investigation, but during informal and formal disciplinary meetings and hearings, to the complainant, the respondent, and appropriate officials.”*

Who will do the fact-finding? What procedures will be in place for ruling out officials with conflicts of interest etc.? Will all cases be handled the same or is there a need for specialized personnel with extra training to handle cases involving violence?

“P14. The responsibilities of the Title IX Officer (Sexual Harassment Officer) include, but may not be limited to, the duties listed below:

- Identify and address any patterns or systemic problems that arise during the review of sexual harassment and sexual violence complaints.”*

Little mention is made in this policy document of the confidential reporting mechanisms. This would seem a mechanism for identifying systemic patterns and/or repeat offenders, which should be highlighted in relevant places in this document.

“P18. The individual(s) accused of conduct violating the Policy must be provided with a copy of the written request for Formal Investigation or otherwise given a full and complete written statement of the allegations, and a copy of the Policy; and The individual(s) conducting the investigation must: iv) For cases involving allegations of sexual violence, the individual(s) conducting the investigation must receive annual training on issues related to sexual violence. Such training includes how to conduct an investigation that protects the safety of the complainants and promotes accountability.”

A set of selection criteria needs to be developed as part of this process, to screen out as possible committee members, those prone to stereotyping and/or overly affected by unconscious biases.

P22. *“F. Resources, Confidentiality of Consultation and Reporting Sexual Harassment and/or Sexual Violence*

Such confidential resources include:

- a survivor advocacy office,*
- licensed counselors in employee assistance programs, and*
- licensed counselors in student counseling centers.*

Individuals who consult with confidential resources will be advised that their discussions in these settings are not considered actual reports of sexual harassment or sexual violence. Without additional action by the individual, these discussions will not result in any formal action by the University to resolve their concerns.”

Victims choosing not to report otherwise should be made aware of and strongly encouraged to use the anonymous ethicspoint reporting system as a mechanism to identify systemic problems and/or repeat offenders.

We found the reference to abuse against “one’s self” in the context of dating and domestic violence confusing (see the first bullet under section C, “Abuse”, on p. 4 of clean copy). That reference should either be clarified or removed.

Members agreed that the focus of the proposed policy on protections for and consideration of the rights of complainants was appropriate and were aware of the devastating consequences that failure to take accusations of sexual violence seriously in the past has wrought. Members were also keenly aware of the potentially devastating consequences of an unsubstantiated or false accusation, especially given the potential of social media to spread hearsay. While there is adequate protection of the rights of respondents in terms of privacy and due process, members would like to see language that ensures that respondents are clearly informed about their rights in this process. Members also agreed that the potential for ambiguity, confusion, and damaging ramifications from claims of and instances of sexual harassment and sexual violence highlights the need to educate students about definitions, processes, and consequences.

Indeed, members believe that changing norms around what constitutes consent in particular makes education by the university imperative. We were thus pleased to learn that UCOP and the campus are developing mandatory training along these lines and endorse these efforts.

Members were troubled by the statement on page 4 (clean copy) that this policy will only cover stalking that could be construed as sexual or gender based in nature because it seems to place the responsibility on students to differentiate between different types of stalking, which could confuse them regarding what this policy covers, and thus might limit its protections.



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April 28, 2015

MARY GILLY, CHAIR

UC Academic Council

1111 Franklin Street, 12th Floor

Oakland, California 94607-5200

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

The proposed revised Presidential Policy on Sexual Harassment and Sexual Violence was forwarded to all standing committees of the Davis Division of the Academic Senate, including school and college Faculty Executive Committees. Responses were received from the Committee on Faculty Welfare, Undergraduate Council and Graduate Council. The following comments and discussion points resulted:

The Divisional Academic Senate felt that online training, such as the one suggested for graduate students is not sufficiently effective compared to traditional in-person training such as seminars and workshops. Included in the training discussion were cultural competency issues that are linked to the possibility of actions perceived as harassment in this society but not so perceived in the home culture/society of the student, staff or faculty.

Additionally, sexual harassment and sexual violence should not be conflated with one another. We would suggest separating the two issues into two separate policy documents, rather than mixing them together in the same policy. If sexual violence and sexual harassment are to be covered by a single policy document, the wording and organizational structure should be improved to better distinguish between the special circumstances and needs associated with each issue.

Perhaps there is also a need to migrate towards California's move to "yes means yes" as opposed to "no means no" to emphasize the need for conscious positive consent. In addition, there is a need for due process to deal with the possible (albeit rarer) cases of false accusations.

It was also recommended that the fact sheet at the end of the package be rewritten as two fact sheets, one for sexual harassment and the other for sexual violence. At the head of each fact sheet there should be a short definition of what unacceptable behavior is, along with a short summary of the University Policy.

Lastly, the following points are specific editorial comments to help improve the clarity of the policy:

- Section II.A. The wording on student to student harassment seems to be more detailed than for other harassment possibilities. Is there a reason for this?
- Section II.B. Definition of sexual violence: Perhaps "...is unable to consent..." should be changed to "cannot consent" to be consistent with later wording.
- Section II.G. Regarding reporting obligation (page 8 of 52), there should be additional clarification of those who are required to report incidents. While the policy explicitly states "academic appointees," it is unclear whether all academic-related personnel, such as graduate teaching assistants, are included.
- Section II.F. Definition of consent: Perhaps change "...can only give his/her true consent if there is no force, threats, or intimidation..." to "...can give his/her true consent only if it has not been influenced by force, threats, or intimidation..."
- Section III.D. Response to reports of sexual harassment...violence: This section seems to be related only to harassment, and not violence, so we suggest adding wording (*in italics*) to indicate this: "Generally, *in cases of sexual harassment*, disciplinary action will be taken..."
- In the definition of incapacitation, the following sentence could be confusing: "Being intoxicated by drugs, alcohol, or other medication does not give another party permission to ignore whether consent was given." The following is offered to improve clarity: "Being intoxicated by drugs or alcohol does not diminish one's own responsibility to obtain consent from the potential partner one wishes to engage in the activity with."
- In this same section, should under age victims be also specifically mentioned as unable to give consent (does this depend on the age of the older person compared to the victim?)
- III B. Consensual Relationships: "also are..." should be "may also be" since not all consensual romantic relationships are subject to campus policies (such as of-age student romantic relationships; staff at equal appointment levels in different working groups, etc.)
- III C. Some minimum frequency of informing the campus community should be codified (for example, annual?)
- IIIG. Again, the frequency of training, or a minimum frequency, should be codified in the policy, in this section, for the community, not just for a few investigators and officers.
- IV B. Should the senate role in advising with UCOP be included explicitly here?
- V A 1. Should the official name of the office be codified as "CARE" in the document, or can we have different names on different campuses. There is some value in a standardized name to make sure people know where to turn to no matter which campus they're at.
- V A 3. Again, the frequency of training, or a minimum frequency, should be codified in the policy, in this section. Also, maybe wording on training on first entry into the UC system/campus would be pretty important.
- V A 4. Maybe a similar section should be added for sexual harassment, for prevention programs, right now seems limited to sexual violence.

- V A 6. Advertising and other continuing notification of the community of the location of the resources would be advisable.
- V B Suggest that there be a deadline consistent with related criminal code statutes of limitations involved with both sexual harassment and violence.
- V B 4. Shouldn't the age of any community member be included, in case visitors, etc. might be under legal age? Not just students.
- VB4e. Why can't witnesses have the right to representation without the approval of the investigator?

Sincerely,



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



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April 15, 2015

Mary Gilly, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

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

Dear Mary:

At its April 7, 2015 meeting, the Irvine Division Senate Cabinet reviewed the proposed 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) had initially reviewed the policy and identified some concerns. In addition, CFW consulted with UCI's OEOD (Office of Equal Opportunity and Diversity) and we concur with the concerns they raised (see attached to CFW memo). The concerns identified in their reviews of the policy, and supported by the Cabinet, include:

- With the expansion of the policy to include sexual violence, the training required of faculty needs to similarly expand. In addition, the faculty recommended that training on how best to communicate the need to report conversations of potential harassment and violence be provided.
- Terms such as sexual harassment, designated employee, and representative (for formal investigations) as used within the policy are either incorrectly defined or unclear.

The Irvine Division appreciates the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Molzon".

William Molzon, Irvine Division Senate Chair

Attachments: CFW Memo
CSE Memo

c: Hilary Baxter, Executive Director, Academic Senate
Natalie Schonfeld, Executive Director, Academic Senate, Irvine Division

April 2, 2015

WILLIAM MOLZON, CHAIR
ACADEMIC SENATE – IRVINE DIVISION

Re: SYSTEMWIDE REVIEW OF PROPOSED REVISED PRESIDENTIAL POLICY – SEXUAL HARASSMENT AND SEXUAL VIOLENCE

At its meeting on March 2, 2015, the Council on Student Experience (CSE) reviewed the proposed revisions to the President Policy on Sexual Harassment and Sexual Violence. The proposed revisions are meant to bring the University into compliance with the requirements of the Violence Against Women Act reauthorized by President Obama in 2013. The Final Regulations issued by the U.S. Department of Education will become effective July 1, 2015.

The Council identified two areas of concern in the suggested modifications listed below.

Reporting

The first sentence of the fifth paragraph in Section V.B. of the draft policy states that incidents should be *brought forward as soon as possible*. The Council found the statement to be unnecessary given the explanation for reporting timeframes outlined in the sentence that follows and suggested it be removed from the document.

Representation for Hearings

The Council noted representation for hearings as outlined is ambiguous. The first sentence in Section V.B.4.e. for formal hearing procedures references that *(t)he complainant and respondent may each request to have a representative present*. The Council strongly suggested this sentence be clarified for intent. If the complainant and respondent can always have a representative present, then the word *request* should be either removed or replaced with another term such as *elect*. If, however, representation must be approved by the investigator, then additional wording should be added to clarify representation has to be approved.

The Council thanks you for the opportunity to comment. If you have any questions, please do not hesitate to let me know.

Sincerely,



Amihai Glazer, Chair
Council on Student Experience

c: Alan Terricciano, Chair-Elect
Academic Senate

Natalie Schonfeld, Executive Director
Academic Senate

Wendy Chamorro, Analyst
Academic Senate

April 3, 2015

**WILLIAM MOLZON, CHAIR
ACADEMIC SENATE – IRVINE DIVISION**

**Re: SYSTEMWIDE REVIEW OF PROPOSED REVISED PRESIDENTIAL POLICY – SEXUAL
HARASSMENT AND SEXUAL VIOLENCE**

At its meeting on March 10, 2015, the Council on Faculty Welfare, Diversity and Academic Freedom (CFW) reviewed the proposed revisions to the President Policy on Sexual Harassment and Sexual Violence. The proposed revisions are meant to bring the University into compliance with the requirements of the Violence Against Women Act reauthorized by President Obama in 2013. The Final Regulations issued by the U.S. Department of Education will become effective July 1, 2015.

The Council identified three areas of concern in the proposed revisions with respect to reporting, training, and language.

Reporting

CFW members noted a high level of discomfort exists among faculty related to the requirement to report all conversations of potential harassment. Many members regarded this as a breach of confidentiality between faculty and students, however, were unable to resolve the issue as reporting is federally mandated. The Council recommends exploring possible language to address reporting that would allow faculty to retain their student's trust.

Training

The Council recommends integrating training on sexual violence with the existing required training for sexual harassment.

Language

The Council identified several areas of the policy with ambiguous language and recommends the suggestions submitted by the Office of Equal Opportunity and Diversity be taken into consideration. The office's response letter inclusive of comments relating to the various sections is enclosed.

Sincerely,



William Parker, Chair
Council on Faculty Welfare, Diversity, and Academic Freedom

Attachments (2)

c: Alan Terricciano, Chair-Elect
Academic Senate

Natalie Schonfeld, Executive Director
Academic Senate

Wendy Chamorro, Analyst
Academic Senate



OFFICE OF EQUAL OPPORTUNITY AND DIVERSITY
103 MULTIPURPOSE SCIENCE & TECHNOLOGY BLDG
IRVINE, CALIFORNIA 92697-1130

March 26, 2015

To Whom It May Concern,

I have reviewed the proposed *Policy on Sexual Harassment and Sexual Violence* distributed on February 18, 2015. In addition to the specific suggestions and comments that I have included on the enclosed red-lined policy draft, I have several general comments which I have summarized as follows:

1. **The definition of sexual harassment is incorrect.** See Section II A (page 2)

By bulleting this section, the Policy has substantially changed the definition, making it appear that *any* of the bullets could constitute sexual harassment. The current structure eliminates unwelcomeness and the reasonable person standard.

2. **The student on student sexual harassment standard is unclear.** Section II A (page 3)

Both this version and the prior version of the Policy have a different definition of sexual harassment for “harassment of one student by another student.” What is unclear is the appropriate standard to be used for 1) harassment of a student by an employee, such as a faculty member, and 2) harassment of an employee by a student.

3. **The term and use of “Designated Employee” is problematic.** Section II G (page 6)

The definition of “Designated Employee” is “all employees” except those identified as confidential. Under this definition, *all* employees must report incidents of sexual harassment or sexual violence to the Title IX coordinator. The definition does not clarify which employees are responsible for *responding to* sexual harassment complaints.

Section II C (page 8) implies that people can report sexual harassment or sexual violence to “these designated employees.” This is problematic because, while we may want all employees to report, we do not necessarily want all employees to be reported to.

Under section V A (p. 14), the Policy requires the University to “Train University employees who are responsible for reporting or responding to reports of sexual harassment.” Under the Policy, then, ALL employees must be “trained,” but the Policy is silent on how they are to be trained or how often.

Under section V B (p. 14), “Reports of sexual harassment . . . may also be brought to any manager, supervisor or **other designated employee** who is responsible for responding to reports of sexual harassment or sexual violence.” There is potential confusion about the role of “Designated Employees” with respect to their obligations to respond. A similar potential confusion occurs on the top of page 15.

4. **The amnesty section is overbroad and misplaced.** Section II E (page 9)

This section offers amnesty to both students and employees who report sexual harassment or sexual violence for “policy violations at or near the time of the incident, unless the University determines that the violation was egregious.”

This section was originally intended for students, who are currently offered amnesty for drug and alcohol violations. If we intend to extend to staff, we will receive amnesty requests for policy violations other than drugs and alcohol. By moving this section to the drugs and alcohol section, it will provide a better context for the types of amnesty we intend to consider.

5. **The retaliation section needs a standard.** Section II F (page 9)

6. **The training requirements are undefined and overbroad.** Section VA 3 (page 12), and VA 12 (page 14)

Although the locations are required to “provide mandatory training and education about sexual harassment and sexual violence prevention to *all students, faculty, other academic staff and staff*” there is no clear understanding of what kind of training that should be, what happens in the event of noncompliance, and how this will or will not overlap with AB1825. Also, how frequently will locations be required to provide this mandatory training to all?

Further, section V A 12 (page 14), requires the Title IX Office to “Train University employees who are responsible for reporting or responding to reports of sexual harassment.” If all employees are responsible for reporting sexual harassment complaints, then all employees would need to be trained under this section as well.

7. **Required written notifications for reports of sexual violence is overbroad.**
Section VB 1(page 15)

This section suggests that we provide written notice to students and employees for incidents that occur off campus regardless of University nexus. I suggest that this section be amended to require that our obligations adhere when there is a nexus to the University.

8. **Providing notice of sanction in sexual harassment cases violates the law.** Section V B 4 j (page 20)

This section provides that “any sanction that is imposed against the respondent; and...the rationale for the result and the sanction” will be provided to the complainant at the conclusion of any sexual harassment case.

The law is clear that victims of sexual assault / sexual violence are entitled to know the sanctions and the University has and does comply with that requirement. However, this new requirement runs afoul of privacy law related to both students and employees in the case of sexual harassment. It is also a bad idea. Complainants are often satisfied with a finding of policy violation. They will be much less

happy with the resulting sanction. This is a substantial departure from prior practice and should be very carefully reviewed by legal counsel.

Thank you for the opportunity to comment. I look forward to reviewing the next Policy draft.

Sincerely,

A handwritten signature in blue ink that reads "Kirsten K. Quanbeck" followed by a stylized monogram.

Kirsten K. Quanbeck
Associate Vice Chancellor
Title IX Officer

Sexual Harassment and Sexual Violence

[Para la traducción en Español, oprima aquí](#)

[中國版本，請按這裡](#)



Academic Officer:	Vice Provost – Academic Personnel and Programs
Academic Office:	APP – Academic Personnel and Programs
Student Officer:	VP – Student Affairs
Student Office:	SA – Student Affairs
Staff Officer:	VP – Human Resources
Staff Office:	HR – Human Resources
Issuance Date:	XX/XX/2015
Effective Date:	XX/XX/2015
Last Review Date	XX/XX/2015
Scope:	This policy applies to all University employees, students and University campuses, the Lawrence Berkeley National Laboratory, Medical Centers, the Office of the President, Agriculture and Natural Resources, and all University programs and activities

Comment [KKQ1]: As suggested in earlier reviews, the policy “owners” listed on this page are not the individuals or even the units to which we want to refer. If we they must remain identified on this page for purposes of consistency, I suggest we add Title IX Officers.

For assistance with incidents of dating violence, domestic violence, sexual assault, sexual harassment, sexual violence, and stalking, please contact your local CARE Advisor, at <http://sexualviolence.universityofcalifornia.edu>

Comment [KKQ2]: The CARE Advocates or Advisors work with sexual violence and offense, NOT sexual harassment. I would eliminate this term from the statement. If you need to include a “where to go for Sexual Harassment statement here, direct folks to the Title IX Officer.

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Sexual Harassment and Sexual Violence

For questions about this policy, please contact:

	Academic	Student	Staff
Contact:	Janet Lockwood	Eric Heng	Jeannene Whalen
Email:	janet.lockwood@ucop.edu	eric.heng@ucop.edu	jeannene.whelen@ucop.edu
Phone:	(510) 987-9499	(510) 987-0239	(510) 987-0853

Comment [KKQ3]: Confusing to have both a "policy summary" and a "policy statement: which include different language.

I. POLICY SUMMARY

The University of California is committed to creating and maintaining an atmosphere free of harassment, exploitation, and/or intimidation for every individual in our community. Every member of the community should be aware that the University prohibits sexual harassment and sexual violence, and that such behavior violates both law and University policy. The University will respond promptly and effectively to reports of sexual harassment and sexual violence, and will take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates this policy on Sexual Harassment and Sexual Violence (hereafter referred to as *Policy*).

Comment [KKQ4]: Use this language here and in Section III A; III D; VA(8); VA(12), and VB2.

This *Policy* complies with the law and with the University's commitment to the highest standards of ethical conduct, which are outlined in the University's [Statement of Ethical Values and Standards of Ethical Conduct](#).

II. DEFINITIONS

A. Sexual Harassment: Includes

- unwelcome sexual advances,
- requests for sexual favors,
- conduct of a sexual nature, including verbal, nonverbal, or physical conduct that creates an environment in which a reasonable person finds the behavior intimidating, hostile, or offensive, and
- conduct of a sexual nature, including verbal, nonverbal, or physical conduct – behavior that affects or interferes with a person's employment, work, education, and/or educational performance.

Comment [KKQ5]: Bulleting this language implies that each and every builet could constitute sexual harassment under the policy, which is not accurate. Reasonableness and unwelcomeness are required in every case.

Sexual harassment may include incidents ~~between~~ involving any members of the University community, including:

- faculty and other academic appointees
- staff
- student employees

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- students
- coaches
- residents
- interns
- non-student or non-employee participants in University programs (e.g., vendors, contractors, visitors, and patients).

Sexual harassment can occur in all types of relationships: hierarchical, between peers, or between individuals of [any gender or gender identity](#) ~~the same sex or opposite sex~~. The University will respond to reports of any such conduct between any such members of the University community, according to the *Policy*.

To determine whether any reported conduct constitutes sexual harassment, the University will consider the record of the conduct as a whole including the circumstances and context in which the conduct occurred.

Harassment of one student by another student is defined as unwelcome conduct of a sexual nature that effectively denies equal access to the University's resources and opportunities because such conduct is severe and/or pervasive, objectively offensive, and substantially impairs a person's access to University programs or activities. (See the University of California Policies Applying to Campus Activities, Organizations, and Students, [Policy 100.00 on Student Conduct and Discipline, Section 102.09](#))

Comment [KKQ6]: Need to clarify standard where 1) students harasses employee and 2) employee harasses student

B. Sexual Violence: [Physical](#), sexual [or gender based](#) acts, engaged in without the consent of the other person, or when the other person is unable to consent. Sexual violence includes any of the following:

Comment [KKQ7]: Not always physical, for instance some forms of stalking

- sexual assault
- [rape](#)
- sexual battery
- domestic violence
- dating violence
- stalking

Comment [KKQ8]: This is a form of sexual assault

Comment [KKQ9]: Not defined

1. **Sexual Assault:** Occurs when physical, sexual activity is engaged without the consent of the other person, or when the other person is unable to consent to the activity. The activity or conduct may include the following:

- physical force
- violence
- threat
- intimidation
- ignoring the objections of the other person

Sexual Harassment and Sexual Violence

- causing the other person's intoxication or incapacitation (through the use of drugs or alcohol)
- taking advantage of the other person's incapacitation (including voluntary intoxication)
- sexual battery

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2. **Dating Violence:** Abuse committed by a person who is, or has been, in a romantic and/or intimate relationship with the victim.

Comment [KKQ10]: Suggest the following definition: "**Dating violence**" is behavior that includes physical, sexual, verbal, emotional or psychological abuse committed by a person who has been in a relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on consideration of factors such as length of relationship, type of relationship, and frequency of interaction between persons involved in the relationship.

3. **Domestic Violence:** Abuse committed against:

- an adult or a minor who is a
 - spouse or former spouse
 - cohabitant or former cohabitant
- someone with whom the abuser has
 - a child
 - an existing dating or engagement relationship
 - a former dating or engagement relationship

Comment [KKQ11]: Suggest the following definition: "**Domestic violence**" is behavior that includes physical, sexual, verbal, emotional or psychological abuse by a current or former spouse, by a person with whom the Complainant shares a child in common, by a person who is cohabitating or has cohabitated with the Complainant as a spouse, by a person similarly situated to a spouse of the Complainant under the laws of the jurisdiction, or any other person against an adult or youth victim who is protected from that person's acts under the domestic violence laws.

4. **Stalking:** Behavior in which someone repeatedly engages in conduct directed at a specific person. This conduct places the targeted person in reasonable fear of his or her safety or the safety of others or causes the targeted person to suffer substantial emotional distress. This policy intends to address stalking that could be reasonably construed as sexual or gender based in nature. Other forms of stalking of a non-sexual nature may be addressed by other University policies.

C. **Abuse:** In the context of dating and domestic violence, abuse is defined as any act of violence, whether it's a single act or an ongoing pattern of behavior, and/or any threatened act of violence, against:

Comment [KKQ12]: Suggest the following definition: "**Abuse**" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable fear of imminent serious bodily injury to himself or herself or another. Abuse may include:

- one's self
- one's sexual or romantic partner, spouse or former spouse
- the family and/or friends of one's sexual or romantic partner, spouse or former spouse
- one's cohabitant or former cohabitant
- someone with whom the abuser has a child,
- someone with whom the abuser has an existing dating or engagement relationship
- someone with whom the abuser has had a former dating or engagement relationship

- Physical abuse involves acts such as hitting, slapping, pushing, punching, kicking, and choking. It could involve using a weapon or object to threaten or hurt someone. It also includes throwing, smashing, or breaking personal items and hurting or killing of pets.
- Sexual abuse involves pressuring or forcing someone to engage in nonconsensual sexual acts, including creating pictures or videos.
- Verbal abuse involves put downs, name calling, yelling or swearing.
- Emotional abuse involves ignoring someone or using looks or actions or speaking in ways that are frightening or threatening.

"Abuse" includes but is not limited to conduct that a reasonable person in similar circumstances and with similar identities would find intimidating, frightening, terrorizing, or threatening, including:

Comment [KKQ13]: This just restates the type of relationship – belongs back in the dating and domestic violence definitions, not here

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- physical violence
- sexual violence
- emotional abuse
- economic abuse
- threats
- assault
- property damage, [including pets](#)

~~D. **Awareness Programs:** Any community-wide programming, initiatives, and/or strategies that increase awareness, and share information and resources to prevent sexual violence, promote safety, and reduce acts of abuse.~~

~~E.D. **Complainant:** Any person who [makes files](#) a report of sexual harassment or sexual violence.~~

~~F.E. **Consent:** Consent is a *decision*; an unambiguous, affirmative, and conscious decision by each person, to engage in mutually agreed-upon sexual activity. (For the purposes of this *Policy*, the age of consent is consistent with California Penal Code Section 261.5.)~~

Consent is *voluntary*. Consent means a willing and positive cooperation in an act, or expressing a desire to engage in an act. A person can only give his/her true consent if there is no force, threats, or intimidation. Ultimately, consent is an exercise of free will. Silence does not mean consent.

Consent is *revocable*. At any point, in any context, consent can be denied and be taken back. More specifically:

- Consent to sexual activity, on one occasion, does not mean consent has been given to *any* form of sexual activity, on *any* occasion.
- A past dating experience or sexual relationship, by itself, is not enough to assume consent. Even in the context of a relationship, there always has to be mutual consent to engage in any sexual activity at any time.
- Consent is ongoing; meaning at any point during a sexual encounter consent has to be given, and can be withdrawn. Once consent is withdrawn, the sexual activity must stop immediately.

Consent cannot be given when a person is [incapacitated](#). A person cannot consent if s/he is unconscious or coming in and out of consciousness.

A person cannot consent if s/he is under the threat of violence, bodily injury, or other forms of intimidation.

A person cannot consent if s/he cannot understand the act because of a physical or mental impairment.

Sexual Harassment and Sexual Violence

G.F. Designated Responsible Employee: Any employee, who must report incidents of sexual harassment or sexual violence to the Title IX coordinator or other appropriate University designees. Generally, this includes all employees, including academic appointees unless s/he has been identified as an employee who can provide confidential consultations for the University community pursuant to Section V.F. of this Policy. Designated employees must be informed of their own reporting responsibilities.

Comment [KKQ14]: Do we want all employees designated to receive complaints? See Sec VB. I think we want to limit

H.G. Executive Officer: The University President, Chancellor, Lawrence Berkeley National Laboratory Director, or Vice President of Agricultural and Natural Resources.

I.H. Incapacitation: The physical and/or mental inability to make informed and rational judgments. States of incapacitation include, but are not limited to:

- unconsciousness
- sleep
- blackouts

Alcohol, drugs, or other medication can also be a factor. Incapacitation is defined with respect to how the alcohol or other drugs that were consumed affects a person's:

- decision-making capacity,
- awareness of consequences,
- ability to make fully informed judgments, and
- ability to communicate.

Being intoxicated by drugs, alcohol, or other medication does not give another party permission to ignore whether consent was given.

The factors to be considered when determining whether consent was given include whether the respondent knew, or whether a reasonable person should have known, that the complainant was incapacitated.

J.I. Ongoing Prevention and Awareness Campaigns: Programming, initiatives, and strategies that aim to increase understanding and awareness of sexual violence among a variety of audiences. These campaigns further aim to develop skills that address such issues and occurrences. The campaigns will cover topics relevant to dating violence, domestic violence, sexual assault, and stalking.

K.J. Primary Prevention Programs: Programming, initiatives, and strategies that have been created based on research, and/or assessed for their value, effectiveness, and/or outcome. These programs focus on preventing dating violence, domestic violence, sexual assault, and stalking. Therefore, these programs promote behaviors that foster healthy and respectful relationships, while also encouraging a

Sexual Harassment and Sexual Violence

safe environment for bystanders to intervene in a potential case of dating violence, domestic violence, sexual assault, and stalking.

Comment [KKQ15]: Add to Procedures or FAQ section rather than Policy

L.K. Proceeding: All activities involved when an institutional complaint is made requiring a non-criminal resolution. These activities include, but are not limited to:

- fact-finding investigations, and
- formal and informal meetings and hearings.

"Proceeding" does not include communications and meetings between officials and complainants when it concerns a complainant's accommodations/protective measures.

M.L. Respondent: A person ~~about~~ ~~against~~ whom a report of sexual harassment or sexual violence is ~~made~~ ~~filed~~.

N.M. Risk Reduction: Strategies designed to decrease perpetration and bystander inaction, and create an environment where bystanders step in when abuse occurs, rather than remaining silent. These options would ultimately increase victim empowerment by reaching out to individuals and communities to:

- promote safety,
- extend help, and
- address conditions that facilitate violence.

Comment [KKQ16]: Add to Procedures or FAQs

O.N. Trauma-Informed: Methods designed to acknowledge the impact of violence and trauma on people's lives and the importance of addressing trauma in education. Services are influenced by an understanding of the impact of interpersonal violence and victimization on an individual's life and development. To provide trauma-informed services, all staff of an organization must understand how violence impacts the lives of the people being served, so that every interaction is consistent with the recovery process and reduces the possibility of re-traumatization.

Comment [KKQ17]: Do we need this in the Policy?

III. POLICY STATEMENT

A. General Overview/Prohibited Behavior

The University prohibits sexual harassment and sexual violence. ~~This behavior violates both the law and University policy.~~ The University will respond ~~as quickly as possible~~ ~~promptly~~ to any reports of sexual harassment and/or sexual violence. The University will take ~~any and all~~ appropriate action to prevent, correct, and when necessary, discipline behavior that violates this *Policy*. Any staff, student or academic employee in violation of this *Policy* may be subject to disciplinary action, up to and including dismissal.

Comment [KKQ18]: Language should be consistent with that in Section I, IIIA, IIID, VA(8), VA(12) and VB

Sexual Harassment and Sexual Violence

Harassment that may not be sexual, but still contributes to a hostile work or academic environment, also could violate the University's non-discrimination policies.¹ To determine if there has been sexual harassment or sexual violence, the University may take into account *any* acts of discrimination based on gender, gender identity, gender expression, sex- or gender-stereotyping, or sexual orientation.

B. Consensual Relationships

While romantic relationships between members of the University community may begin as consensual, they are not immune to instances of sexual harassment and/or sexual violence. Consensual romantic relationships between members of the University community also are subject to other University policies. For example, policies that concern faculty-student relationships are found in [The Faculty Code of Conduct](#). The various locations may have local policies about consensual relationships.

C. Reporting Sexual Harassment or Sexual Violence

Each location will notify the campus community about where reports of sexual harassment and/or sexual violence ~~should can~~ be made. ~~Any member of the University community can report acts of sexual harassment or sexual violence to these designated employees, supervisors, managers, or Title IX Officer (Sexual Harassment Officer).~~

Comment [KKQ19]: Need to think carefully about who we wish to "designate"

~~When a responsible employee receives a report of sexual harassment or sexual violence, they~~ All designated employees must immediately forward the reports to the Title IX Officer (Sexual Harassment Officer). The reports will be reviewed and appropriate action will be taken in accordance with this Policy. Any manager, supervisor, or other ~~responsible designated~~ employee who must report or respond to sexual harassment or sexual violence, who knew about an incident, and who took no action to stop or report it may be subject to disciplinary action.

Each location will identify staff who can provide confidential consultations to members of the University community seeking resources, information, and/or advice about making a sexual harassment and/or sexual violence report. ~~While the University understands the desire for confidentiality and will consider such a request, the University also has a legal responsibility to the respondent. Depending on the situation, there are cases in which the University needs to inform the respondent of the source of the allegation. (Information regarding confidentiality can be found in Section V.E and F.)~~

Comment [KKQ20]: Redundant

¹ [University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff](#); [Nondiscrimination and Affirmative Action Policy Statement for University of California](#); [Academic Personnel Manual \(APM\) Section 035, Affirmative Action and Nondiscrimination in Employment](#); [Personnel Policies for Staff Members 12, Nondiscrimination in Employment](#); [University of California Policies Applying to Campus Activities, Organizations, and Students](#); and [Nondiscrimination Policy Statement for University of California Publications Regarding Student-Related Matters](#).

Sexual Harassment and Sexual Violence

An individual may file a complaint or grievance alleging sexual harassment or sexual violence under the University complaint resolution or grievance procedure ([Section V, Procedures](#); [Appendix I: University Complaint Resolution and Grievance Procedures](#)).

D. Response to Reports of Sexual Harassment or Sexual Violence

All locations will provide a prompt, fair, and neutral response to reports of sexual harassment or sexual violence, which may include Early Resolution ~~or~~, Formal Investigation, ~~and/or targeted prevention training or educational programs~~. (See [Section V, Procedures](#) for more information.)

If an individual reports to the University that s/he has been a victim of domestic violence, dating violence, sexual assault, or stalking, s/he will be provided with a written explanation of his/her rights, as well as options, regardless of whether the offense occurred on- or off-campus, or on any University location.

If the University confirms an occurrence/occurrences of sexual harassment or sexual violence, the University may offer remedies to the individual or individuals harmed by the harassment and/or violence. These remedies will be consistent with “applicable complaint resolution” and “grievance procedures” ([Appendix I: University Complaint Resolution and Grievance Procedures](#)). Such remedies may include:

- counseling,
- repeating course work without penalty,
- changing student housing assignments, and
- other appropriate interventions, such as changes in academic, living, transportation, or working situations.

Any member of the University community who engaged in sexual harassment or sexual violence is subject to disciplinary action including dismissal, in accordance with the applicable University disciplinary procedure. ([Appendix II: University Disciplinary Procedures](#)).

Generally, disciplinary action will be taken when the conduct is sufficiently severe, persistent, or pervasive that it alters the conditions of employment or limits the complainant’s opportunity to participate in or benefit from educational programs.

E. Protection for Complainants and Witnesses

To encourage reporting of sexual violence incidents, complainants and witnesses who participate in an investigation of sexual violence will not be subject to disciplinary sanctions or corrective actions for policy violations at or near the time of the incident, unless the University determines that the violation was egregious, including, but not limited, to an action that places the health or safety of any person at risk.

F. Retaliation

This *Policy* prohibits retaliation against a person who reports sexual harassment or sexual violence. This protection also extends to anyone who assists someone with a

Comment [KKQ21]: We offer advocacy as part of our “response” which is not neutral

Comment [KKQ22]: Use consistent language, see VA(8).

Comment [KKQ23]: These are included as part of early resolution.

Comment [KKQ24]: This reads as though we need to confirm SH before taking any measure. We offer interim measures, many like those listed below long before a finding. Perhaps moving this paragraph below the “discipline” paragraph will help the reader understand this is a remedy after a finding – and not get confused with interim measures.

Comment [KKQ25]: This seems a back end way to add a new element to the definition. The investigation will need to make a finding on this in order to be used and thus this element should be included in the definition section.

Comment [KKQ26]: Place this section in the alcohol and drugs section and/or limit to students. Otherwise a very large loophole in the employment context.

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report and anyone involved in an investigation or resolution of a sexual harassment or sexual violence report. Retaliation includes, but is not limited to:

- threats,
- intimidation,
- reprisals, and/or
- harmful (adverse) actions related to employment or education.

Comment [KKQ27]: Unbullet; include a standard. Also "related to ..." is very low standard.

Any member of the University community who participates in retaliation may be subject to disciplinary action, including dismissal, according to the University disciplinary procedures ([Appendix II: University Disciplinary Procedures](#)).

G. Provision of Educational Programs/Employee Training and Dissemination of the Policy

To promote compliance with this *Policy* and familiarity with the procedures, each location must provide training and make preventive educational materials available to all members of the University community. In addition, the University will provide annual training to investigators and hearing officers. Each location must post a copy of this *Policy* in a prominent place on its website ([See Section V. Procedures](#)).

As part of the University's commitment to provide a working and learning environment free from sexual harassment and sexual violence, this *Policy* must be distributed to the entire University community through:

Comment [KKQ28]: The campus policy is what should be distributed – confusing to distribute both. Because this UC Policy directs locations to create their own implementing policy we must do so and rely and distribute THAT.

- publications,
- websites,
- new employee orientations,
- student orientations, and
- other appropriate channels of communication.

H. Free Speech and Academic Freedom

The faculty and other academic appointees, staff, and students of the University of California enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section I of the California Constitution. This *Policy* is intended to protect members of the University community from discrimination, not to regulate protected speech. This *Policy* shall be implemented in a manner that recognizes the importance of rights to freedom of speech and expression.

The University also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this *Policy* shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums. However, freedom of speech and academic freedom are not limitless and do

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not protect speech or expressive conduct that violates federal or state anti-discrimination laws.

I. Additional Enforcement Information

The federal Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH) investigate complaints of unlawful harassment, including sexual violence, in employment. The U.S. Department of Education Office for Civil Rights (OCR) investigates complaints of unlawful harassment and sexual violence by students in educational programs or activities. These agencies may serve as neutral fact finders and attempt to facilitate the voluntary resolution of disputes with the parties. For more information, contact the nearest office of the EEOC, DFEH or OCR.

IV. COMPLIANCE / RESPONSIBILITIES

A. Implementation of the Policy

Responsible Officers have the authority to develop procedures or other supplementary information to support the implementation of this *Policy*. Responsible Officers may apply appropriate and consistent interpretations to clarify the *Policy* provided that the interpretations do not result in substantive changes to the *Policy*.

Comment [KKQ29]: Please define

The Executive Officer at each location is authorized to establish and is responsible for local procedures to implement the *Policy*. Local procedures must be consistent with the *Policy*. Exceptions to procedures required by the *Policy* must be approved by the Executive Officer.

Comment [KKQ30]: Please define

Executive Officers and Responsible Officers are authorized to delegate responsibility for establishing local procedures necessary to implement the *Policy*.

Comment [KKQ31]: Please define

Each location is responsible for describing each type of disciplinary proceeding used by the location. This includes the steps, anticipated timelines, and decision-making process for each type of disciplinary proceedings. The procedures must also describe how the campus determines which type of proceeding to use based on the circumstances of an allegation.

B. Revisions to the Policy

The President approves the *Policy* and has the authority to approve revisions upon recommendation by the Responsible Officers.

The Responsible Officers have the authority to initiate revisions to the *Policy* consistent with approval authorities and applicable Bylaws, Standing Orders, and Policies of The Regents.

Sexual Harassment and Sexual Violence

The UC Provost and Executive Vice President of Academic Affairs, and the UC Executive Vice President – Chief Operating Officer have the authority to ensure that the *Policy* is reviewed regularly and updated in a manner that is consistent with other University policies.

C. Approval of Actions

Actions within the *Policy* must be approved according to local procedures.

D. Compliance with the Policy

The Executive Officer at each location will designate the local management office that is responsible for monitoring, enforcing, and reporting *Policy* compliance.

The Senior Vice President – Chief Compliance and Audit Officer will periodically audit and monitor compliance with the *Policy*.

E. Noncompliance with the Policy

Noncompliance with the *Policy* is managed according to the [Policy on Student Conduct and Discipline](#), Personnel Policies for Staff Members [61](#), [62](#), [63](#), [64](#), [65](#), and <http://policy.ucop.edu/doc/4010416> pertaining to disciplinary and separation matters, and according to other University policies, including but not limited to, [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 \(APM-150\)](#) or, as applicable, collective bargaining agreements. Reference Section VI and Appendices I and II.

V. REQUIRED PROCEDURES

A. Location Responsibilities

Each location must do the following:

1. Establish an independent, confidential Advocacy Office for sexual violence, dating violence, domestic violence, stalking, and sexual assault called CARE: Advocacy Office for Sexual and Gender-Based Violence and Misconduct.
2. Establish a consistent response team model consisting of two teams:
 - a. A Case Management Team (CMT) which maintains consistent coordination of reported sexual violence cases, ensures all cases are addressed efficiently and effectively, and ensures the response is trauma-informed; and
 - b. A Coordinated Community Review Team (CCRT) responsible for a campus collaborative approach to preventing and addressing sexual misconduct. The CCRT serves in an advisory capacity to campus leadership and community members about best practices in policies, education, prevention and response to sexual misconduct.

Sexual Harassment and Sexual Violence

3. Provide mandatory training and education about sexual harassment and sexual violence prevention to all students, faculty, other academic staff, and staff.
4. Offer primary prevention programs and awareness campaigns to the University community, to promote ongoing awareness of:

- rape and acquaintance rape
- domestic violence
- dating violence
- sexual assault
- stalking

These campaigns will include, but are not limited to, education about:

- the definition of consent,
- prohibited consensual relationships,
- options for bystander intervention, and
- risk reduction awareness information.

5. Offer comprehensive, annual training, for individuals conducting formal investigations of reports or conducting hearings on responding to sexual violence, including trauma-informed approaches as defined in this *Policy*.
6. Provide all members of the University community with a process for reporting sexual harassment or sexual violence according to the *Policy*.
7. Identify on- and off-campus resources for reporting sexual harassment or sexual violence, including law enforcement, medical, and victim support services.
8. Provide prompt and effective response to reports of sexual harassment, sexual violence, or reports of retaliation related to reports of sexual harassment or sexual violence, according to the *Policy*.
9. Provide written notification as outlined in Section V.B.1 of the *Policy*.
10. Designate trained individuals to serve as resources for members of the University community who have questions or concerns regarding behavior that may be sexual harassment or sexual violence.
11. Conduct proceedings that incorporate these additional elements:
 - Timely notice of meetings, at which the respondent or complainant, or both, may be present.

Comment [KKQ32]: A definition of "mandatory" and "training" is needed. What happens when faculty do not comply? The Title IX Officers, who are most likely to be tasked with this do not have the authority or ability to direct faculty (or staff or students) to do anything. Also what does "training" mean – can this be an instructional email? An online program? How does this fit (or not) with AB1825?

Comment [KKQ33]: Rape and Acquaintance rape are not defined in policy and are covered under sexual assault

Comment [KKQ34]: What does this mean? Relationships prohibited under a policy?

Comment [KKQ35]: Use consistent language

Comment [KKQ36]: See comments in that section

Comment [KKQ37]: Who is this? Title IX Officers? Sexual Harassment Advisors? CARE? Not all campuses have Sexual Harassment Advisors.

Sexual Harassment and Sexual Violence

- Timely access to any information that will be used after the fact-finding investigation, but during informal and formal disciplinary meetings and hearings, to the complainant, the respondent, and appropriate officials.
 - Timely proceedings conducted by officials who do not have a conflict of interest, or bias for or against the complainant or the respondent.
12. Establish and designate a Title IX Officer (Sexual Harassment Officer). The names and contact information for the Title IX Officer (Sexual Harassment Officer) as well as any designated, trained, sexual harassment or sexual violence advisors, will be posted with the *Policy* and local procedures on the location's website and will be readily accessible to the University community. The responsibilities of the Title IX Officer (Sexual Harassment Officer) include, but may not be limited to, the duties listed below:
- Coordinate with other responsible units to ensure that local sexual harassment and sexual violence prevention education and training programs are offered and provided, as required by the *Policy*.
 - Disseminate the *Policy* to the University community.
 - Provide educational materials to promote compliance with the *Policy* and familiarity with local reporting procedures.
 - Train University employees who are responsible for reporting or responding to reports of sexual harassment.
 - Provide prompt and effective response to reports of sexual harassment or sexual violence according to the *Policy*.
 - Maintain records of reports of sexual harassment and sexual violence at the location, as well as any actions taken in response to reports, including records of investigations, voluntary resolutions, and disciplinary action, as appropriate.
 - Identify and address any patterns or systemic problems that arise during the review of sexual harassment and sexual violence complaints.
13. Distribute and post this Policy. Each location is required to distribute this policy to students, faculty, other academic staff and staff. Examples include, websites, student information boards, student handbook, faculty handbook and staff websites and information boards and during training and student orientation.

B. Procedures for Reporting and Responding to Reports of Sexual Harassment Or Sexual Violence

All members of the University community are encouraged to contact the Title IX Officer (Sexual Harassment Officer) if they observe or encounter conduct that may violate the *Policy*. This includes conduct by employees, students, or third parties.

Comment [KKQ38]: Who is this? everyone? The earlier referred to Sexual Harassment Advisors? The "Designated" or "responsible" employees?

Sexual Harassment and Sexual Violence

Reports of sexual harassment or sexual violence may be brought to the Title IX Officer (Sexual Harassment Officer). They may also be brought to any manager, supervisor, or other designated employee who is responsible for responding to reports of sexual harassment or sexual violence.

Comment [KKQ39]: Who is this? If everyone, as suggested in in Definition section II.G, this is problematic.

If the person to whom harassment normally would be reported is actually the individual being accused of harassment, reports may be made to another manager, supervisor, or other designated employee.

When a report is received, managers, supervisors, and all designated employees are required to notify the Title IX Officer (Sexual Harassment Officer) or another appropriate official designated by the location, who will then review the sexual harassment and sexual violence complaints and take appropriate action in accordance with this Policy.

Reports of sexual harassment or sexual violence should be brought forward as soon as possible after the alleged conduct occurs. While there is no stated timeframe for reporting, prompt reporting will make it easier for the University to respond to the report, determine the issues, and provide an appropriate remedy and/or action. All incidents should be reported, even if a significant amount of time has passed. However, delaying a report may make it difficult for the University to conduct an investigation and/or to take appropriate remedial actions.

1. Required Notifications For Reports of Sexual Violence

When the University receives a report that a student or employee has been a victim of sexual violence, the University will provide a written explanation of rights and available options to the complainant, including procedures to follow. This will be provided regardless of whether the offense occurred on campus whenever there is a connection with any University program or activity, or in connection with any University program. The written information shall include:

Comment [KKQ40]: Overbroad as written. This section should require some nexus to campus. We have no jurisdiction for incidents off campus unrelated to the University. For instance, the spouse of an employee who is a victim of DV has no complaint process or resources on campus.

Comment [KKQ41]: Again, where unconnected to the University and off campus, we will be required to provide information regarding resources far beyond our jurisdiction.

- How and to whom the alleged offense should be reported.
- Options for reporting to and/or notifying law enforcement and campus authorities; the right to be assisted by campus authorities in notifying law enforcement authorities, if the complainant so chooses; and the right to decline to notify such authorities.
- The rights of complainants regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by criminal or civil courts, as well as the University's responsibilities regarding such orders.
- The importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order.
- Existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, and other services available both within the institution and the community.

Comment [KKQ42]: I read 34 CFR 668.46 (b)(11)(iv) to suggest that this is to be included in the annual security report (ASR) NOT the policy and not the informational letter we send victims.

Sexual Harassment and Sexual Violence

- Options for, and available assistance to, change academic, living, transportation, and working situations, if the complainant requests, and if such options are reasonably available—regardless of whether the victim chooses to report the crime to campus police or local law enforcement;
- Any applicable procedures for institutional disciplinary action.

2. Options for Resolution

Individuals reporting sexual harassment or sexual violence must be informed about their options. These options include but are not limited to:

- Early Resolution,
- Formal Investigation, and
- Filing complaints or grievances under the applicable University complaint resolution or grievance procedures.

Individuals making reports must also be informed about the confidentiality of reporting under this *Policy* (see Section V.FG below).

Locations must respond promptly and effectively to reports of sexual harassment and sexual violence regardless of whether the reports are brought forth anonymously or by third parties who are not directly involved in the asserted offenses. However, the response to such reports may be limited if the information in the report cannot be verified by independent facts.

Individuals reporting sexual harassment and sexual violence must be informed about the range of possible outcomes of the report including:

- temporary protections,
- remedies for the individual harmed by the incident,
- disciplinary actions that might be taken as a result of the report, and
- information about the procedures leading to such outcomes.

An individual who experiences retaliation (e.g., threats, intimidation, reprisals, or adverse employment or educational actions) may report it. Retaliation could be experienced by those who:

- reported sexual harassment or sexual violence, in good faith;
- assisted someone with a report of sexual harassment or sexual violence; or
- participated in any manner in an investigation or resolution of a report of sexual harassment or sexual violence

(The report of retaliation shall be subject to the procedures in [Section V.B.3](#) and [Section V.B.4](#) below.)

Comment [KKQ43]: Section F seems to be about Confidential Resources, such as advocates, licensed counselors, Ombuds, etc. If someone "makes a report" their option to speak completely confidentially has passed. This line should be removed or redrafted.

Comment [KKQ44]: Use consistent language

Comment [KKQ45]: How are the procedures an "outcome"?

Sexual Harassment and Sexual Violence

3. *Procedures for Early Resolution*

The goal of Early Resolution is to resolve concerns with the cooperation of all parties involved, at the earliest stage possible. Locations are encouraged to use Early Resolution options only when the people involved desire to do so, or when a Formal Investigation is not likely to lead to a satisfactory outcome. Participation in the Early Resolution process is voluntary. Therefore, the University does not require that parties attempt to participate in Early Resolution before a Formal Investigation. Mediation, even if voluntary, may not be used in cases involving sexual violence. Some reports of sexual harassment may not be appropriate for mediation, and may ~~first and foremost~~ require a Formal Investigation. The University will not compel a complainant to engage in mediation.

Early Resolution may include an inquiry into the facts, but typically does not include a formal investigation. Means for Early Resolution should be flexible and include a full range of possible and appropriate outcomes.

Early Resolution includes, but is not limited to, the following options:

- mediating an agreement between the parties (not for incidents of sexual violence),
- separating the parties,
- referring the parties to counseling programs,
- negotiating an agreement for disciplinary action,
- conducting targeted preventive educational and training programs,
- providing remedies for the individual harmed by the offense,
- discussions with the parties,
- making recommendations for resolution, and
- conducting a follow-up review after a period of time to assure that the resolution has been implemented effectively.

Early Resolution might be appropriate for responding to anonymous reports and/or third party reports. All of the steps taken to encourage Early Resolution, and any agreements reached through Early Resolution, should be documented.

4. *Procedures for Formal Investigation*

In cases where Early Resolution is inappropriate or unsuccessful, a location may conduct a Formal Investigation.

In such cases, the individual making the report may be asked to file a written request for Formal Investigation. The wishes of the individual making the request will be considered, but will not solely determine whether a Formal Investigation into the report of sexual harassment or sexual violence is conducted.

Sexual Harassment and Sexual Violence

In cases where there is no written request, the Title IX Officer (Sexual Harassment Officer) or other appropriate, designated officials, will make a preliminary inquiry into the facts. Such officials could then initiate a Formal Investigation.

In cases where a complainant states that he or she does not want to pursue a Formal Investigation, the Title IX Officer (Sexual Harassment Officer) should inform the complainant that the ability to investigate may be limited. When determining whether to go forward with a Formal Investigation, the Title IX Officer (Sexual Harassment Officer) may consider:

- the seriousness of the allegation,
- the age of the student in the case of a student complainant,
- if there have been other complaints or reports against the respondent,
- if there will be a formal proceedings with sanctions, and
- if the accused individual has the right to receive information about the complainant and/or the allegations.

Even if a complainant does not want to pursue an investigation, under some circumstances, the Title IX Officer (Sexual Harassment Officer) may have to investigate a complaint. For example, there could be a risk to the campus community if the respondent remains on campus. The complainant should be made aware that there could be this independent obligation to investigate the complaint.

(a) To provide a prompt, fair, and impartial investigation ~~and resolution~~, any Formal Investigation of reports of sexual harassment and/or sexual violence must incorporate the following standards:

The individual(s) accused of conduct violating the *Policy* must be provided with a copy of the written request for Formal Investigation or otherwise given a full and complete written statement of the allegations, and a copy of the *Policy*; and

The individual(s) conducting the investigation must:

- i) Be familiar with the *Policy*;
- ii) Have training or experience in conducting investigations;
- iii) Be familiar with the relevant policies and procedures specific to students, staff, faculty, academic appointees, and visitors; and,
- iv) For cases involving allegations of sexual violence, the individual(s) conducting the investigation must receive annual training on issues related to sexual violence. Such training includes how to conduct an investigation that protects the safety of the complainants and promotes accountability.

Sexual Harassment and Sexual Violence

(b) If the alleged conduct is also the subject of a criminal investigation, the campus may not wait for the end of the criminal investigation to begin an investigation under to this *Policy*. However, a campus may need to coordinate its fact-finding efforts with the police investigation. Once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any criminal charges), the campus must promptly resume and complete its fact-finding for the sexual harassment or sexual violence investigation.

(c) To conduct a fair and thorough investigation, disclosing facts to parties and witnesses should be limited to what is reasonably necessary. Participants in an investigation may be advised to maintain the confidentiality of an investigation if it is essential to protect the investigation's integrity. The investigation generally should include:

Comment [KKQ46]: See previous version

- interviews with the parties, if available;
- interviews with other witnesses as needed; and
- a review of relevant documents as appropriate.

(d) The investigator shall apply a preponderance of the evidence standard to determine whether there has been a violation of this *Policy*.

(e) The complainant and the respondent may each request to have a representative present when he or she is interviewed, and at any other proceeding or related meeting. Other witnesses may also have a representative present if approved by the investigator, or if required by University policy or a collective bargaining agreement.

(f) At any time during the investigation, the investigator can recommend that certain ~~interim measures temporary protections~~ or solutions be provided by appropriate University officials for the parties or witnesses. These protections or remedies may include:

- separating the parties,
- placing limitations on the contact between the parties, or
- making alternative working or student housing arrangements.

Failure to comply with the terms of ~~interim measures temporary protections~~ may be considered a separate violation of this *Policy*.

(g) The investigation should be completed as quickly as possible and in most cases within 60 working days from the date that the formal investigation started. This deadline can be extended if the designated University official approves. Timeframe extensions will only be made for good cause, with written notifications to the complainant and the respondent, including the reason for the delay.

Sexual Harassment and Sexual Violence

(h) Generally, an investigation results in a written report. The report is submitted to the appropriate a designated University official with the authority to implement the necessary actions that aim to resolve the complaint. The report can be used as evidence in other related procedures, for example: future complaints, grievances and/or disciplinary actions.

Comment [KKQ47]: Don't use a term that currently has another meaning in this policy.

(i) According to University policy that governs privacy and access to personal information, 1) the complainant and the respondent may request a copy of the investigative report, and 2) the report must be redacted to protect the privacy of any personal and confidential information regarding all individuals other than the individual requesting the report.

(j) At the conclusion of any proceeding, the complainant and the respondent will simultaneously be informed of the following in writing:

i. The outcome of any University proceeding, including

1. the final determination with respect to the alleged offense;
2. any sanction that is imposed against the respondent; and
3. the rationale for the result and the sanction;

Comment [KKQ48]: This is a substantial departure from previous policy and procedures, and likely runs afoul of both privacy and FERPA. Not to mention that a good number of sanctions in the area of low level sexual harassment will cause more disrupt and unhappiness. Complainants often feel good about a finding of policy violation. They will feel less good when they see the sanction.

ii. Whether there is a The right of appeal and if so, and the procedures for both the complainant and respondent to appeal the outcome of any University disciplinary proceeding;

Comment [KKQ49]: Who will be responsible for writing this? Discipline and sanction are not administered by the Title IX Officer.

iii. Any change to the results that occurs prior to the time that such results become final; and

iv. When results become final.

Comment [KKQ50]: This works for students in SV cases, but not other cases.

C. Complaints or Grievances Involving Allegations of Sexual Harassment or Sexual Violence

Instead of, or in addition al to, reporting to a Title IX Officer (Sexual Harassment Officer) or other appropriate designated officials, an individual who believes he or she has been subjected to sexual harassment or sexual violence can file a complaint or grievance. A complaint or grievance alleging sexual harassment or sexual violence must meet all of the requirements under the applicable complaint resolution or grievance procedure, including time limits for filing, listed in Appendix I: University Complaint Resolution and Grievance Procedures.

Comment [KKQ51]: Is this limited to employees? If so, state that. Otherwise, this needs to be modified for the student context

If a complaint or grievance is filed in addition to a report made to the Title IX Officer (Sexual Harassment Officer), the complaint or grievance must be put on temporary hold, subject to the requirements of any applicable complaint resolution or grievance procedure. It will remain suspended until there is an outcome reached from the Early Resolution or Formal Investigation procedures. If the individual wishes to proceed with the complaint or grievance, the Early Resolution or Formal Investigation will then become the first step or steps of the applicable complaint resolution or grievance procedure.

Sexual Harassment and Sexual Violence

A complainant or respondent can also file a complaint or grievance stating that the actions taken in response to the report of sexual harassment or sexual violence did not follow *Policy*. Such a complaint or grievance cannot be used to address the disciplinary sanction, if any, that was imposed upon the respondent. Any complaint or grievance regarding the resolution of a report of sexual harassment or sexual violence must be filed in a timely manner. The time period for filing begins on the latest of the dates on which the individual was notified of:

- the outcome of the investigation,
- any other resolution process according to this *Policy*, and/or
- the actions that the administration took in response to the report of sexual harassment or sexual violence.

D. Remedies and Referral to Disciplinary Procedures

If the *Policy* was violated, and a report of sexual harassment or sexual violence results in a recommendation for disciplinary action, there are applicable, disciplinary action procedures that should be followed ([Appendix II](#)). In addition, these procedures should guide any remedies for the complainant.

Procedures under this *Policy* will be coordinated with all local complaint resolution, grievance, and disciplinary procedures, to avoid any duplication in the fact-finding process whenever possible. Violations of the *Policy* may include:

- engaging in sexual harassment or sexual violence,
- retaliating against a complainant who reports sexual harassment or sexual violence, and
- violating interim protections.

Investigative reports made according to this *Policy* can be used as evidence in any future complaint resolution, grievance, and disciplinary proceedings as permitted by the applicable procedures.

E. Privacy

The University will protect the privacy of individuals involved in a report of sexual harassment or sexual violence to the extent permitted by law and by University *Policy*. A report of sexual harassment or sexual violence can result in gathering extremely sensitive information about individuals in the University community.

While such information is considered confidential, University policy may also require the disclosure of certain information during an investigation. In such cases, every effort will be made to redact the records to protect the privacy of individuals.

The complainant will be informed of the results of a disciplinary proceeding against the respondent, in accordance with [Section V.B.4.j.](#), including information regarding disciplinary action taken against the respondent.

Comment [KKQ52]: What is this process and where do we think it should live? If grievance, is it only available to employees? More discussion is needed here.

Comment [KKQ53]: See previous comment. Note that we are able and do do this in SV cases, but not SH

Sexual Harassment and Sexual Violence

F. Resources, Confidentiality of Consultation and Reporting Sexual Harassment and/or Sexual Violence

For any member of the University community seeking resources, information, and/or advice about making a sexual harassment and/or sexual violence report, each location will offer confidential consultations with designated personnel. These resources

- provide such individuals with a safe place to discuss their concerns and learn about the procedures and potential outcomes involved, and
- will be posted on each location's website.

Such confidential resources include:

- ~~a survivor~~ advocacy office,
- licensed counselors in employee assistance programs, and
- licensed counselors in student counseling centers,
- ~~ombuds office~~.

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Individuals who consult with confidential resources will be advised that their discussions in these settings are *not* considered actual reports of sexual harassment or sexual violence. Without additional action by the individual, these discussions will not result in any formal action by the University to resolve their concerns.

The locations will notify the University community that certain University employees, such as the Title IX Officer (Sexual Harassment Officer), managers, supervisors, and other designated employees, have an obligation to respond to reports of sexual harassment or sexual violence, even if the individual making the report requests that no action be taken.

Comment [KKQ54]: ? everone? Designated? Responsible? Officers and administrators?

Comment [KKQ55]: See previous comments regarding this term.

While the University understands the desire for confidentiality, and will do its best to fulfill these requests when determining an appropriate response, the University also has a legal responsibility to the respondent. Depending on the situation, there are cases in which the University will need to inform the respondent of the source of the allegation. This level of disclosure may be necessary to ensure a complete and fair investigation.

Comment [KKQ56]: This section is confusing because it suggests that completely confidential resources, like those listed above, may not be. Redraft or place in the reporting section.

G. Retention of Records Regarding Reports of Sexual Harassment and Sexual Violence

The office of the Title IX Officer (Sexual Harassment Officer) is responsible for maintaining records relating to sexual harassment and sexual violence reports, investigations, and resolutions. Records will be maintained according to University records policies. Records that fall under the scope of the Clery Act will be retained for 7 years, according to federal law. All records pertaining to pending litigation, or a request for records, will be maintained according to instructions from legal counsel.

Sexual Harassment and Sexual Violence

VI. RELATED INFORMATION

- A. [Violence Against Women Reauthorization Act \(VAWA\) of 2013](#)
- B. [University of California Statement of Ethical Values](#)
- C. [Standards of Ethical Conduct](#)
- D. [Academic Personnel Manual \(APM\) Section 015](#), The Faculty Code of Conduct (referenced in Section III.D, footnote 1)
- E. [Academic Personnel Manual \(APM\) Section 016, University Policy on Faculty Conduct and the Administration of Discipline](#) (referenced in Section III.D, footnote 1)
- F. footnote 1)
- G. [Academic Personnel Manual \(APM\) Section 035, Affirmative Action and Nondiscrimination in Employment](#) (referenced in Section III.D, footnote 2)
- H. [Academic Personnel Manual \(APM\) Section 150](#), Non-Senate Academic Appointees/Corrective Action and Dismissal
- I. [Nondiscrimination and Affirmative Action Policy Statement for University of California Publications Regarding Employment Practices](#) (referenced in Section III.D, footnote 2)
- J. [Nondiscrimination Policy Statement for University of California Publications Regarding Student-Related Matters](#) (referenced in Section III.D, footnote 2)
- K. [Personnel Policies for Staff Members 12 \(Nondiscrimination in Employment\)](#) (referenced in Section III.D, footnote 2)
- L. [Policy on Student Conduct and Discipline](#)
- M. [Student-Related Policy Applying to Nondiscrimination on the Basis of Sex](#)
- N. [University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment](#) (referenced in Section III.D, footnote 2)
- O. [UC Business and Finance Bulletin RMP-8, Legal Requirements on Privacy of and Access to Information](#)
- P. [University of California Policies Applying to Campus Activities, Organizations, and Students](#) (referenced in Section III.D, footnote 2)
- Q. [Business and Finance Bulletin RMP-2: Records Retention and Disposition: Principles, Processes, and Guidelines](#)
- R. [University of California Non-Discrimination Policy](#)
- S. [Guidelines on Sexual Harassment and Sexual Violence Outcome Reporting](#)
- T. [Government Code 12950.1](#)

Comment [KKQ57]: There are SEVEN nondiscrimination policies listed on this page. Talk about confusing and unhelpful!

Comment [KKQ58]: What is this?

Sexual Harassment and Sexual Violence

VII. FREQUENTLY ASKED QUESTIONS

1. Who can be considered a Representative as described in Section V (B)(4)(e)?

A representative includes any individual who provides the complainant or respondent support, guidance, or advice (including attorneys). The institution cannot limit the choice of an advisor, but may establish certain restrictions regarding the extent to which the advisor can participate in the proceedings as long as the restrictions apply equally to both parties.²

2. What is a “result” or “outcome” of a disciplinary proceeding?

A result or outcome includes any initial, temporary, and final decision made by any official or authorized person, that aims to resolve a disciplinary matter within the institution. The result must include any **sanctions** imposed by the institution. The result must also include **the rationale for the result and the sanctions**. For more information, please see the “Guidelines on Sexual Harassment and Sexual Violence outcome reporting”.

Comment [KKQ59]: Without more, this section is fairly worthless. Perhaps move some of definitions and training sections here. Or take the FAQ from the website.

Comment [KKQ60]: I'm not sure what this is.

² Proposed regulation 34 C.F.R. 668.46(k)(2)(iii)-(iv) provides: (k) *Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking*. As required by paragraph (b)(11)(vi) of this section, an institution must include in its annual security report a clear statement of policy that addresses the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking and that - ... (2) Provides that the proceedings will....

(iv) ***Not limit the choice of advisor*** or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the ***institution may establish restrictions regarding the extent to which the advisory any participate in the proceedings, as long as the restrictions apply equally to both parties.***

Sexual Harassment and Sexual Violence

VIII. REVISION HISTORY

XX/XX/2015 –

02/25/104 - This policy was reformatted into the standard University of California policy template effective .

Future revisions to this policy will be circulated under standard procedures for Presidential Policies; in the case of this policy, the review will include circulation under the standard Academic Personnel Manual (APM) process, with final authority resting with the President.

As a result of the issuance of this policy, the following documents are rescinded as of the effective date of this policy and are no longer applicable:

- University of California Policy on Sexual Harassment, dated February 10, 2006
- University of California Procedures for Responding to Reports of Sexual Harassment, dated December 14, 2004
 - University of California Policy on Sexual Harassment and Complaint Resolution Procedures, dated April 23, 1992
 - University of California Policy on Sexual Harassment and complaint Resolution Procedures, dated March 10, 1986

Sexual Harassment and Sexual Violence

APPENDIX I: University Complaint Resolution and Grievance Procedures

The following are the resolution and grievance procedures for members of the University community:

Academic Personnel:

Members of the Academic Senate	Senate Bylaw 335
Non-Senate Academic Appointees	APM - 140
Exclusively Represented Academic Appointees	Applicable collective bargaining agreement

Students:

[Policies Applying to Campus Activities, Organizations and Students, Section 110.00](#)

Staff Personnel:

Senior Managers	PPSM II-70
Managers and Senior Professionals, Salary Grades VIII and IX	PPSM 71
Managers and Senior Professionals, Salary Grades I – VII; and Professional and Support Staff	PPSM 70
Exclusively Represented Staff Personnel	Applicable collective bargaining agreement
Lawrence Berkeley National Laboratory Employees	Applicable Laboratory policy

All:

The [University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities \(Whistleblower Policy\)](#) and the [University of California Policy for Protection of Whistleblowers from Retaliation and Guidelines for Reviewing Retaliation Complaints \(Whistleblower Protection Policy\)](#), which govern the reporting and investigation of violations of state or federal laws or regulations and University policy, including sexual harassment.

Sexual Harassment and Sexual Violence

APPENDIX II: University Disciplinary Procedures

The following are the disciplinary procedures and policies if a report of sexual harassment or sexual violence results in a recommendation for disciplinary action:

- A. [The Faculty Code of Conduct \(APM - 015\)](#) (as approved by the Assembly of the Academic Senate and by The Regents)
- outlines the ethical and professional standards which University faculty are expected to observe, and
 - identifies various forms of unacceptable behavior which apply in cases of sexual harassment or sexual violence.
- Because the forms of unacceptable behavior listed in *The Faculty Code of Conduct* also apply to sexual harassment or sexual violence, a violation of the University's *Policy on Sexual Harassment and Sexual Violence* also constitutes a violation of the *Faculty Code of Conduct*. The [University Policy on Faculty Conduct and the Administration of Discipline \(APM - 016\)](#), as approved by the Assembly of the Academic Senate and by The Regents, outlines sanctions and disciplinary procedures for faculty.
- B. Provisions of the policy on [Non-Senate Academic Appointees/Corrective Action and Dismissal \(APM - 150\)](#) (which are applicable to non-exclusively represented academic appointees) and collective bargaining agreements that are applicable to exclusively represented academic appointees allow for corrective action or dismissal for conduct which violates University policy.
- C. The [Policies Applying to Campus Activities, Organizations, and Students](#) sets forth in Section 100.00 the types of student misconduct that are subject to discipline and the types of disciplinary actions that can be imposed for each of those violations of University policies or campus procedures.
- D. Provisions of the [Personnel Policies for Staff Members](#), and the Lawrence Berkeley National Laboratory personnel policies (applicable to non-exclusively represented staff employees), and collective bargaining agreements (applicable to exclusively represented staff employees) prohibit conduct that violates University policy for sexual harassment or sexual violence and provide for disciplinary action for violating University policy.
- [PPSM-62: Corrective Action](#)
 - [PPSM-63: Investigatory Leave](#)
 - [PPSM-64: Termination of Career Employees – Professional and Support Staff](#)
 - [PPSM-65: Termination of Career Employees - Managers & Senior Professionals, Salary Grades I through VII](#)
 - [PPSM-67: Termination of Career Employees – Managers & Senior Professionals, Salary Grades VIII and IX](#)

Sexual Harassment and Sexual Violence

APPENDIX III: SAMPLE Policy Fact Sheet



The University of California is committed to creating and maintaining an atmosphere free of harassment, exploitation, and/or intimidation for every individual in our community. The University's policy on Sexual Harassment and Sexual Violence establishes the University's staunch position, as well as the various means of addressing any such instances of sexual harassment and/or sexual violence.

For assistance with incidents of dating violence, domestic violence, sexual assault, sexual harassment, sexual violence, and stalking, please contact:

On Campus Resources	
CARE Advocate Confidential 24 hour counselor available for crisis support and referral services (510) 642-4444 CAREAdvisor@campus.edu	The UC Police Department (510) 643-7985 (24-hour line) (510) 642-3333 (24-hour emergency line)
Off Campus Resources	
A Safe Place Oakland hotline, shelter, crisis referral, advocacy, counseling, emergency food, clothing and transportation. 24-hr. crisis line: (510) 536-SAFE (7233)	BAWAR 24-hr hotline staffed by trained counselors. Accompanies survivors to police dept, hospitals & courts. Offers short term counseling and support groups, and referrals for long-term counseling. Special outreach to Latina survivors. 24-hr. crisis line: (510) 845-RAPE (7273)

What do I do if I've been sexually assaulted?

- **Find a safe location away from your attacker.** If you cannot get somewhere safe, call 911 right away.
- **Get medical attention.** Do not shower, eat, drink go to the bathroom, brush your teeth or change your clothes before going to the hospital.
 - If you want to change your clothes, put them in a paper (not plastic) bag and bring them to the hospital.
 - Seeking medical attention right away will reduce your risk of pregnancy and STI's.
- **Seek support.** Sexual assault is a traumatic experience. If you feel comfortable, seek support from a CARE Advisor, friend or family member.

How can I help someone who may have been sexually harassed or sexually assaulted??

- Remember that the victim's wellbeing must be considered before all other matters.
- 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).
- Talk to the person and reinforce that they are not at fault. However, if the individual does not wish to talk to you, respect their decision.
- Contact resources below for information on how to best support a friend though his or her healing process.

See the [UC Sexual Harassment and Sexual Violence policy, for further information on:](#)

- Prohibited conduct and Affirmative Consent
- Confidentiality of Reports of Sexual Harassment and Sexual Violence
- Procedures for Reporting and Responding to Reports of Sexual Harassment or Sexual Violence
- University Complaint Resolution and Grievance Procedures

April 20, 2015

Mary Gilly
Chair, UC Academic Council

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

Dear Mary,

The Executive Board of the UCLA Academic Senate discussed the proposed revisions to the Presidential Policy on Sexual Harassment and Sexual Violence at its meeting on April 16, 2015. The individual responses from our various committees are available [online](#).

We were aided in our discussion by the newly appointed Title IX Coordinator Kathleen Salvaty, as well as the former Interim Title IX Coordinator Cherie Scricca. In general, the committees are supportive of the effort to have an in-depth policy, but based on both what the Senate committees wrote and the comments from the UCLA Title IX Office, the Board members feel that the policy still lacks clarification in several areas important to effective implementation. Our Privilege and Tenure Committee, as the disciplinary partner of the Vice Chancellor of Academic Personnel, had many questions about how to integrate the policy with Senate processes.

Areas of clarification requested:

Who reports to whom?

Several committees found the language about who reports to whom somewhat confusing. The definition of “designated employee” in the policy states that this “generally includes all employees, including academic appointees.” [Section III.C](#) states that “all designated employees must immediately forward the reports to the Title IX Officer.” However, the same section also uses “can report.” [Section V.B](#) uses the language “are encouraged to contact” and “may be brought to the Title IX Officer . . . may also be brought to any manager, supervisor, or other designated employee who is responsible. . . .” Another committee pointed out that the [Appendix III](#) “Sample Policy Fact Sheet” indicates that not reporting is an option. This may be because the fact sheet includes both sexual violence and sexual harassment. Likewise, [Section V.C](#) seems to indicate that complainants can use another grievance process on campus “instead of” the Title IX Officer’s report.

It was suggested that it might be helpful to address these concerns by providing a breakdown of who reports (is a designated or “mandatory” reporter) and to whom by type of complaint/complainant in the following situations: (1) the complaint involves sexual violence; (2) the complainant is a student; (3) the complainant is an employee, including (a) Senate members; (b) Staff; (c) non-Senate academic appointees; (d) Post-doctoral or fellow; and (4) complainant is not a member of the University community, but a guest or participant in a University-sponsored activity. The Committee on Emeriti Affairs also indicated they would appreciate clarification of their status as reporters if they are Senate members but no longer employees.

Finally, is there a statute of limitations for filing a complaint, and if so, what is it?

Early Resolution

In [Section V.B.3](#), “Procedures for Early Resolution,” the College FEC asked for clarification of “when a Formal Investigation is not likely to lead to a satisfactory outcome.” If a Formal Investigation is only to be waived if both parties agree to an Early Resolution option, when would a decision be made to not go forward because the outcome would not be satisfactory? Who would be allowed to make that decision?

Also, as with reporting/reporters, are the options for Early Resolution different depending on the complaint/complainant?

Outcome of a Formal Investigation

Remedies/Discipline

The Board also received questions asking for clarifications about the procedures once a Formal Investigation is complete. As written, the policy seems to blend the ‘remedies’ response with campus disciplinary processes. Likewise, the policy seems to blend an appeal of the Title IX investigation outcome with campus grievance processes. According to the UCLA Title IX Officers, at least with harassment, their report only addresses remedies to end and prevent the harassment as well as any remedy to address its effect. However, in the section on Formal Investigations, the policy uses “sanction” (a disciplinary term) rather than “remedy” and refers to “final determination” and “University disciplinary proceedings.” [Section V.B.4(j)]

Is it the intent of the policy that a Title IX investigation makes disciplinary recommendations in addition to imposing remedies? If not, it may be helpful to clarify that a formal investigation makes a determination whether or not the respondent has violated the policy and, if so, imposes remedies for the complainant and outlines the necessary actions to end the harassment as well as prevent future harassment. The policy can then state that the findings will be referred to the respective campus disciplinary processes for possible disciplinary sanctions.

The Privilege and Tenure Committee expressed concern about equating a violation of the policy with a violation of the Faculty Code of Conduct. The Board feels that the underlying concern is that the policy does not eliminate the “significant faculty involvement” in disciplinary processes as outlined in the Faculty Code of Conduct. When the respondent is a Senate member, the Academic Senate committee(s) involved with faculty discipline should be included in any disciplinary referrals (informal or not) and should receive the written investigation report in order to consider possible disciplinary sanctions (in addition to whatever remedies the Title IX Office may have imposed).

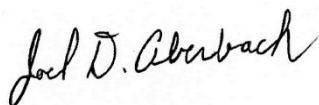
Appeals

The policy does indicate that both parties to a complaint have the right to appeal. Students appeal findings through the Office of Student Affairs. What is the appeals process for faculty? And, as above, is appealing a Title IX finding of policy violation possible, or is it only possible to appeal “the outcome of any University disciplinary proceeding?” Committees are concerned that Senate members be apprised of their right to appeal to Senate committees for a hearing at all phases of the process.

Again, we urge you to review the responses we received because of the many questions they raised.

Please feel free to contact me if you should have any questions.

Sincerely,



Joel D. Aberbach
Chair, Academic Senate

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

UNIVERSITY OF CALIFORNIA, MERCED

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SANTA BARBARA • SANTA CRUZ

OFFICE OF THE ACADEMIC SENATE
JIAN-QIAO SUN, CHAIR
senatechair@ucmerced.edu

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

April 20, 2015

To: Mary Gilly, Academic Council

From: Jian-Qiao Sun, Chair, Division Council

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

Dear Mary,

The Merced Division Academic Senate has no comments to offer on the systemwide review of the revised Presidential Policy on Sexual Harassment and Sexual Violence. We fully support the Policy.

Thank you for the opportunity to opine.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Sun", is written over a light blue rectangular background.

Jian-Qiao Sun, Chair
Division Council

CC: Division Council
Senate Office



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

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

April 22, 2015

Mary Gilly, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

RE: Presidential Policy on Sexual Harassment and Sexual Violence

Dear Mary,

Executive Council discussed the revised version of the Presidential Policy on Sexual Harassment and Sexual Violence. Council supports the policy and had no further comments.

The UCR Division appreciates the opportunity to comment.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J Wudka", is written over a light blue rectangular background.

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

CC: Hilary Baxter, Executive Director of the Academic Senate
Cynthia Palmer, Director of UCR Academic Senate office



ACADEMIC SENATE

Santa Barbara Division
1233 Girvetz Hall
Santa Barbara, CA 93106-3050

(805) 893-2885
<http://www.senate.ucsb.edu>

Kum-Kum Bhavnani, Chair
Deborah Karoff, Executive Director

April 22, 2015

Mary Gilly, Chair
Academic Senate

RE: Proposed Revisions-Sexual Harassment and Sexual Violence Policy

Dear Mary,

The following groups opined on the Proposed Policy on Sexual Harassment and Sexual Violence: Graduate Council (GC), Council on Faculty Issues and Awards (CFIA), Council on Research and Instructional Resources (CRIR), Committee on Equity and Diversity (CDE), Committee on International Education (CIE) and the Faculty Executive Committee of the Graduate School of Education (GGSE FEC). In general, most groups find this latest version of the policy to be improved overall, and many groups commented that the policy was clearer and easier to understand. Specific comments and suggestions are outlined below.

The following issues were raised:

1. It was felt there is a need for additional information attached to the policy in the form of a table or a flowchart that describes and compares the various reporting options and available resources. With regard to the latter, it was felt that it would be very helpful to outline the pros and cons of reporting to one group versus another, whether such reporting is confidential or not, whether each provides counseling/emotional support or not, whether there is mandatory reporting to Police/Judicial Affairs, and similar. Additional information would allow potential reporters to better understand and evaluate the various reporting options. Such a table/flowchart of information could also include easy access to contact information (phone number, email address, physical location, etc.).
2. It was also noted that the list of resources could appear overwhelming, particularly to someone who has had a traumatic experience.
3. Some confusion was expressed about the specification of Designated Employees. One group noted that in the definitions it states that all employees are designated for reporting purposes but in references to Section V.F. some employees are "designated personnel" as resources for confidential consultations. If the obligation on employees is to report specific instances of sexual

violence/harassment, then it is suggested the language be more specific about that expectation. In addition, it is unclear who designates such employees, and if one is designated, what exactly one is expected to do.

4. There was some concern that faculty and students are often unaware of the limits of the promise of confidentiality and there was a request that the policy clarify the limits of confidentiality.
5. There was a request for a greater clarity about the distribution of the policy and what training is mandatory for which campus constituency. How will the policy and its expectations be communicated to faculty and staff?
6. A question was raised as to whether there would be different training requirements for undergraduate students as distinct from graduate students, given the different experiences of each group.
7. There was concern that the “geographic reach” of the policy be important for any campus that has a concentrated number of students who live off campus. In the last version of the policy (distributed in Fall, 2013), there was a phrase in the policy about “auxiliary University locations.” That phrase is now absent from the latest version but clarification is needed about the geographic reach of the policy and the degree to which the policy covers off campus activity between and among members of the campus community.
8. There should be stronger language on action once an offense is established and the consequences should be proportionate to the violation.
9. In regards to Retaliation (Section III, F.), the mechanisms and pathways for preventing harm and monitoring compliance should be addressed in the policy. The question was also asked whether the Title IX Office is the appropriate office to deal with retaliatory acts in addition to trying to prevent such acts.
10. One group praised the fact that the policy will be available in Spanish and in Chinese. They also suggested that translators be provided, if needed, which is similar to what the courts do for non-native English speakers.
11. Finally, it was recommended that the required training be mandatory every year for ease of administration and tracking.

Thank you for the opportunity to comment.

Sincerely,



Kum-Kum Bhavnani, Chair
Santa Barbara Division



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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".

Gerry Boss, Chair
Academic Senate, San Diego Division

cc: R. Continetti
R. Rodriguez
H. Baxter

April 20, 2015

Mary Gilly, PhD, Chair
Academic Council
Systemwide Academic Senate
University of California Office of the President
1111 Franklin Street, 12th Floor
Oakland, CA 94607-52000

Re: *University of California Revised Presidential Policy Sexual
Harassment and Sexual Violence*

Dear Chair Gilly:

The San Francisco Division of the University of California Academic
Senate received and reviewed the [Proposed Revised Presidential Policy
- Sexual Harassment and Sexual Violence](#).

On the whole, the San Francisco Division believes the revised
Presidential Policy to be comprehensive, and adequately responds to
recent changes in State legislation in this area. The UCSF Committee on
Equal Opportunity has reviewed this policy and finds the language to be
clearer, improves the accessibility to contact persons, and delivers better
guidance through the FAQs.

Please feel free to contact Executive Senate Director Todd Giedt
(415.476.1307; todd.giedt@ucsf.edu) or myself with any additional
inquiries.

Sincerely,



Farid Chehab, PhD, 2013-15 Chair
UCSF Academic Senate
Professor, Department of Laboratory Medicine

Encl.: 1

COMMUNICATION FROM THE CHAIR OF COMMITTEE ON EQUAL OPPORTUNITY
Janice Tsoh, PhD

April 20, 2015

Farid Chehab, PhD, Chair
UCSF Academic Senate
500 Parnassus Avenue, Box 0764
San Francisco, CA 94143

Re: System-wide Review of Proposed Revised Presidential Policy on Sexual Harassment and Sexual Violence

Dear Chair Chehab:

The Committee on Equal Opportunity (EQOP) has reviewed the [Proposed Revised Presidential Policy on Sexual Harassment and Sexual Violence](#) and has no additions to the revisions. UCSF EQOP understands that these modifications were made to ensure compliance with [Senate Bill 967](#) and finds the policy consonant with those principles. Additionally, EQOP felt that the language is clearer, accessibility to contact persons is improved, and the FAQs provide better guidance. Lastly, EQOP lauds the clarification of 'incapacitation due to alcohol /drugs'.

Thank you for the opportunity to review this important policy. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Janice Tsoh, PhD, Chair
UCSF Committee on Equal Opportunity



UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
Joel Dimsdale, Chair
jdimsdale@ucsd.edu

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

April 20, 2015

**MARY GILLY, CHAIR
ACADEMIC COUNCIL**

RE: Proposed Revised Presidential Policy – Sexual Harassment and Sexual Violence

Dear Mary,

The University Committee on Faculty Welfare (UCFW) has discussed the proposed revised Presidential Policy for Sexual Harassment and Sexual Violence, and we have significant concerns. First, we caution the University not to be hasty in the development of this policy; the need to act quickly should not outweigh the obligation to act wisely. Indeed, the fact that several of our campuses are currently under federal investigation for Title IX violations suggests that additional policy changes will be needed in the future. Of course the University cannot simply await those findings before taking any action, but the proposed policy contains several issues that should be clarified in advance of policy promulgation.

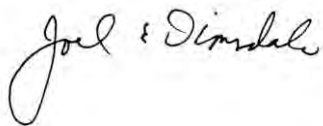
- There is a different definition of harassment for students than for other groups (p. 2). On p. 9 the standard for taking disciplinary action against a non-student is similar to the definition of harassment for a student. It might be useful to state clearly that not all violations of the policy are a basis for disciplinary action.
- On p. 9 remedies short of disciplinary action are described. It would be useful to clarify that these remedies may be ordered by the Title IX officer or other appropriate official upon an Early Resolution or Formal Investigation. These remedies do not require a disciplinary action. They may be subject to a grievance under the relevant rules.
- The obligation of “designated employees” to report is confusing. At p. 21 a failure to report is not listed as a violation of the policy that is a basis for disciplinary action. This clearly is correct as a matter of policy, but it would be helpful to clarify when a failure to report would be a basis for disciplinary action.
- The policy is unclear regarding the obligation of emeriti(ae) to report and be trained.
- The standards for evidence are different in this policy than for Privilege and Tenure cases and for disciplinary actions (where the standard is clear and convincing evidence under Senate Rule 336.D.8.). The policy provides that “the report [from a Formal Investigation] can be used as evidence in other related procedures” including a disciplinary action. It would be useful to clarify that while the report can be used in evidence the findings are not binding in a related procedure, particularly when there is a different standard of proof.
- The policy does not address priority for those who wear multiple hats, such as graduate student researchers, graduate student instructors, or house staff (interns and residents).
- The potential increase in workload for Title IX officers seems overwhelming.

- Many students trust their faculty advisor more than campus police or bureaucrats. Students must know in advance that faculty are mandated reporters, otherwise additional trauma might result from good intentions. Faculty training must emphasize this point, as well as materials presented to students.
- The ability of respondents to access and assess evidence is unclear.
- The policy asserts a requirement to report that conflicts with other confidentiality regulations (doctor-patient, etc.) that govern student health, psychological counseling, and the medical centers. An allegation of harassment is not currently subject to a mandated reporting requirement in those areas, so additional clarification is needed on this point.
- Notification procedures for when a final decision has been made are not outlined.

Taken together, this list indicates that significant emendation of the proposal is required before it can be adopted.

Finally, we encourage subsequent reviewers to ensure that the focus of the policy is on protecting the needs and rights of the complainant and respondent.

Sincerely,



Joel E. Dimsdale, UCFW Chair

Copy: UCFW
Hilary Baxter, Executive Director, Academic Senate