



Robert C. May
Telephone: (510) 987-0711
Email: robert.may@ucop.edu

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

December 21, 2018

**SUSAN CARLSON, VICE PROVOST
ACADEMIC PERSONNEL**

Re: Proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment (SVSH)

Dear Susan,

As you requested, I distributed for systemwide Senate review proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment (SVSH). All ten Academic Senate divisions and five systemwide committees (BOARS, UCAADE, UCORP, UCFW, and UCPT) submitted comments. These comments were discussed at Academic Council's December 12, 2018 meeting and are attached for your reference.

We understand that the SVSH policy has been revised in response to two mandates – the first issued by the Department of Education Office of Civil Rights (OCR) in a “Resolution Agreement” following its investigation into UC Berkeley’s handling of SVSH cases and the second by the California State Auditor (CSA) in a June 2018 report on UC’s responses to SVSH complaints. The OCR Agreement asked UC to clarify systemwide policy language around the Alternative (informal) Resolution process, acts committed by and against third parties, and prompt resolution timelines. The CSA asked UC to clarify several similar issues related to the faculty discipline process, informal resolutions, and the timeliness of investigations. In addition, UCOP invited campuses to submit general feedback about the existing policy, and incorporated those inputs into these revisions.

In a related effort, the Academic Senate also is working to address CSA recommendations that Senate bylaws specify timeframes for scheduling a hearing before the Senate Privilege and Tenure Committee (not more than 60 days after charges are filed), and for issuing a P&T recommendation to the Chancellor (not more than 30 days after a hearing concludes). The proposed revisions to Senate Bylaw 336 are now out for systemwide Senate review.

We understand that the most significant revisions to the systemwide SVSH policy include clarifications to definitions of prohibited conduct as well as investigation and adjudication procedures, the addition of a 30- to 60-day timeframe for Alternative Resolutions, the extension of the timeframe for formal investigations from 60 days to 90 days, and a new provision permitting Title IX to initiate an investigation despite the absence of an identifiable individual respondent or the lack of a specific complainant.

We appreciate the Administration's efforts to revise and clarify the policy in response to these mandates and inputs. Senate reviewers expressed support for revisions to the extent they provide clearer definitions and guidance about prohibited conduct, and improved processes for the investigation and adjudication of cases. However, many faculty reviewers continue to find the policy overly complex and difficult to understand. Reviewers raise a number of specific questions and concerns about expanded discretion and authority given to Title IX officers, privacy and confidentiality provisions, mandatory reporting responsibilities for faculty and graduate students, and the policy's relationship to Senate P&T processes, including proposed revisions to Bylaw 336. Reviewers also offer several suggestions to improve clarity of definitions and processes outlined in the policy. A number of these comments are summarized below, but all are detailed more fully in the attached PDF packet.

Scope of Title IX Authority

Several reviewers are concerned that the policy inappropriately expands the discretion and authority of Title IX officers to initiate a formal investigation in the absence of a specific complainant or respondent; to explore the personal lives of employees outside of the workplace; to pursue resolutions; and to extend an investigation timeline for "good cause." In addition, the policy extends the timeline for completing a formal Title IX investigation from 60 days to 60-90 days, and for alternative resolutions from 40 days to 30-60 days. There is concern that this creates an imbalance with the Senate P&T process, given that timelines for P&T processes are proposed to shrink under the revision to SB 336. There is an additional imbalance between the "preponderance of evidence" standard required in the UC policy and the "clear and convincing" standard in the P&T hearing. The administration should provide clearer rationales for increasing the timeline and for giving Title IX the power to extend an investigation for "good cause," and should include additional guidance in the policy about what may constitute "good cause."

Privacy and Confidentiality

UCPT and other reviewers are concerned that the policy does not sufficiently emphasize the need to protect the privacy of complainant and respondent as well as the confidentiality of the Title IX and P&T proceedings. Reviewers are especially strong on the point that complainants should not be entitled to P&T's confidential report to the chancellor detailing information about the disciplinary hearing and the rationale for a decision; the policy as written seems to suggest otherwise. The policy should include a specific prohibition on sharing this information, if no adequate protection for confidentiality is provided through another mechanism. Reviewers also note that the revision removes specific references to "confidentiality," and may inappropriately promote alternative resolution pathways, particularly "mediation." While these resolution pathways are valuable, it is also important that complainants not feel pressure to participate in mediation or any alternative resolution process, or be otherwise discouraged from coming forward.

Mandatory Reporting

Reviewers have several concerns about the role of faculty as "Responsible Employees" obligated to report conversations with a student who reveals that he or she has been a victim of SVSH. These concerns include the broad scope of faculty and graduate students included in the category of "responsible employee" and uncertainty about the extent to which graduate students (particularly TAs) must act as mandatory reporters in their capacity as employees. Faculty remain concerned that victims who are still considering their options not be deterred from confiding in faculty or otherwise coming forward. The Senate would support a further evaluation

of the impact and unintended consequences of faculty as mandatory reporters. The Berkeley division encourages consideration of an [alternative approach](#) for reporting used at the University of Oregon. In addition, reviewers note that the reporting requirements are inconsistent and unclear about some circumstances that might compel a report – for example, some forms of public speech or creative expression in classroom assignments.

Unclear Definitions and Terms

Also, you will see circumstances where vagueness of language creates concerns, and other circumstances where there is greater specificity than necessary. Both carry the potential for misinterpretation of policy or an overly broad application of policy provisions.

Discipline

The policy raises questions about discipline, both specific and broad. Reviewers recommend a stronger statement concerning inappropriate behavior, as well as clearer statements about expected disciplinary action against individuals found guilty and how discipline is to proceed against student employees. In addition, some campuses continue to struggle with how to interpret certain provisions in the policy and how to handle disciplinary cases with multiple dimensions that include, but are not limited to, SVSH. Different interpretations can result in inconsistent implementation of investigation outcomes and discipline. We recommend that UCOP consider mechanisms to ensure fair, transparent, and consistent consequences for policy violations across all campuses, and clear guidelines for disciplinary action to ensure systemwide consistency in application of policies and discipline. We also know that it is important to seek the right balance between minimum systemwide standards of discipline and local discretion. There is also concern about administrative transparency around campus SVSH investigations and outcomes. We recommend that data on investigations be made available to campuses regularly and that the Systemwide Title IX office publish an annual, anonymized summary of cases involving faculty, including informal resolutions.

Thank you for the opportunity to opine on this important policy. As we seek to eliminate sexual misconduct on UC campuses, ensure the safety and rights of all members of the University community, and respond to various governmental policy mandates, we must also maintain our respect for the privacy and confidentiality rights of complainants and respondents. Certainly, the University should seek to finalize all discipline decisions in a prompt manner regardless of their severity and complexity, but in a way that ensures the integrity of the process.

Please do not hesitate to contact me if you have additional questions.

Sincerely,



Robert C. May, Chair
Academic Council

Encl.

Cc: Title IX Coordinator Taylor
Title IX Program Coordinator Cheng
Academic Council
Senate Directors



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

December 5, 2018

ROBERT MAY
Chair, Academic Council

Subject: Revised Presidential Policy on Sexual Violence and Sexual Harassment

Dear Robert,

On November 19, 2018, the Divisional Council (DIVCO) of the Berkeley Division discussed the proposal cited in the subject line, informed by the commentary of our divisional committees on Diversity, Equity, and Campus Climate (DECC); Faculty Welfare (FWEL); Privilege and Tenure (P&T); Graduate Council (GC); and Undergraduate Council (UGC). Given their extensive commentary and suggested textual revisions, both the P&T and UGC reports are appended in their entirety.

The discussion in DIVCO highlighted a number of concerns.

DIVCO discussed the proposed policy's provisions concerning public speech. Both the P&T and UGC reports highlight inconsistencies and lack of clarity that should be addressed. P&T finds the policy to be "ambiguous and at times overly broad, if not inconsistent, in its treatment of public speech and pronouncements and the discretion it accords to the Title IX office vis-à-vis such statements." We also share UGC's concern about "reporting protocols for responding to class assignments that suggest a violation has taken place" and the potential effect of these provisions on students' self-expression. DIVCO recommends that these provisions be reconsidered to ensure clarity and to minimize unintended effects on students and faculty.

DIVCO is concerned about the degree of discretion and authority vested in the Title IX office under the proposed policy vis-à-vis P&T. The P&T report notes that the proposed revision affords Title IX offices considerable leeway and opportunities to extend timelines. While this may be appropriate and necessary in some situations, we note that the systemwide Senate has been instructed to codify restrictive timelines for the execution of P&T's responsibilities with respect to faculty respondents. This disparity is especially noteworthy given that the Title IX office is expected to make its determination by the "preponderance of the evidence" while P&T's determination is made based the higher evidentiary standard of "clear and convincing evidence."

DIVCO also discussed different models of reporting responsibilities for employees, specifically an alternative approach used at the University of Oregon as cited by FWEL. We understand that the definition of a responsible employee is a settled matter for the University of California, but we also note that the mandatory reporting requirement can create a difficult trade-off for faculty when responding to student concerns and disclosures.

Finally, DIVCO seconded the serious concerns about privacy and confidentiality described in the P&T report. We strongly support strengthening the language as recommended by P&T: "the Complaining Witness "should" and not simply "can" be advised as to the confidential and sensitive matter of personnel disciplinary actions."

Sincerely,



Barbara Spackman
Chair, Berkeley Division of the Academic Senate
Cecchetti Professor of Italian Studies and Professor of Comparative Literature

Encls. (2)

Cc: David Ahn, Chair, Committee on Diversity, Equity, and Campus Climate
Terrence Hendershott and Sheldon Zedeck, Co-chairs, Committee on Faculty Welfare
Marianne Constable, Chair, Committee on Privilege and Tenure
John Battles, Chair, Graduate Council
Jonah Levy, Chair, Undergraduate Council
Andrea Green Rush, Executive Director staffing Committee on Privilege and Tenure
Sumei Quiggle, Associate Director staffing Graduate Council and Undergraduate Council
Linda Corley, Senate Analyst, Committee on Diversity, Equity, and Campus Climate
Sumali Tuchrello, Senate Analyst, Committee on Faculty Welfare



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

October 27, 2018

BARBARA SPACKMAN
Chair, Berkeley Division of the Academic Senate

Subject: Revised Presidential Policy on Sexual Violence and Sexual Harassment

Dear Barbara,

The Committee on Privilege and Tenure discussed the proposed revised Presidential Policy on Sexual Violence and Sexual Harassment. We understand the seriousness of the issue and the need to respond to it at the same time as we want to ensure due process. Within that context, we offer four general comments about the proposed policy, followed by specific points that are keyed to particular passages in the draft (marked in bold).

General comments about policy:

First, the proposed policy clearly privileges the proceedings of the Title IX Office and in effect enhances the authority of the former compared to that of the Senate Committee on Privilege and Tenure (P&T). We note, for instance, that in the proposed Presidential policy here under review, the Title IX Office is granted leeway to pursue various alternative resolution processes. The Title IX Office is given "typically within 60 to 90 business days" from the date of its notification of charges (to the Complainant and Respondent) to prepare a formal investigative report and determination as to how to proceed (which is based on a "preponderance of evidence" (more likely than not) standard). Its time limits, which are acknowledged to depend on "specific circumstances, including the complexity of the matter and the severity and extent of the alleged conduct" may also be extended "for good cause" (which is not defined in this document). The Sept 17, 2018, cover letter draws attention to the "addition of a 30 to 60 day timeframe for Alternative Resolution, and extension of the timeframe for the Formal Investigation process from 60 days to 90 days." By contrast (in proposed Senate Bylaw 336 revisions which have been prepared in response to SVSH concerns but will

apply to all disciplinary actions coming before P&T), P&T's timeframe gets shrunk: it is granted only 30 (calendar) days to prepare its report and recommendation (following a hearing that must be scheduled within 60 (calendar) days of when charges are sent) despite the fact that its recommendation of a sanction is based on a stricter "clear and convincing" standard.

Second, the proposed policy is ambiguous and at times overly broad, if not inconsistent, in its treatment of public speech and pronouncements and the discretion it accords to the Title IX office vis-à-vis such statements. The cover letter draws attention to "Provision for the Title IX officer to initiate investigations despite the absence of an identifiable, individual respondent or, alternatively, the lack of a specific complainant." The proposed policy states that the Title IX officer "may choose to initiate and conduct a Formal Investigation despite the lack of a Complainant where there is, for example... allegations [sic] of Prohibited Conduct covered by the Policy in the public realm (such as reports in the news or social media)." (**V. A. 5. b. v - page 17, clean copy**). Response to **FAQ # 9** meanwhile states that "statements made about incidents during such [public awareness] events [such as "Take Back the Night"], will not require an investigation unless the survivor initiates a complaint." (**p. 25, clean copy**). While we can see that "choosing" and "not requiring" are not necessarily incompatible, we are concerned about the status of statements made in the course of news reports about public events. Is the point that Title IX officers have discretion to initiate investigation in such cases despite lack of a complainant *or* that those who participate in public events can be assured that their statements will not be investigated without their consent? At minimum, the **bullet point on p. 17** needs to be restricted to sufficiently compelling circumstances and the policy regarding statements made during events such as Take Back the Night clarified.

Third, P&T remains deeply concerned about the privacy of all parties and the integrity and confidentiality of Title IX and P&T proceedings. Despite the provisions of the policy and whatever the policy regarding confidentiality of the Title IX report, we believe that *only* the recommendation that results from a P&T disciplinary hearing, and *not* the report articulating the justifications for that recommendation that are based on the confidential P&T hearing, should be released to a Complaining Witness, who is after all not formally a party in a disciplinary action. (See our questions and comments concerning **Discipline, p. 19**, below.) Even if our view is not adopted however, the response to **FAQ # 6** is misleading. It states, "The Complainant *can* be advised of the confidential and sensitive nature of personnel and student disciplinary matters that arise under this Policy but should not be restricted from further disclosing the information" (emphasis added). In a disciplinary hearing against a faculty member brought by the Administration before P&T (and perhaps also in disciplinary actions brought against students?), the policy's "Complainant" is more properly referred to as a "Complaining Witness." (This might be noted in **Definitions on p. 6**.) Second and more importantly, the Complaining Witness "should" and not simply "can" be advised as to

the confidential and sensitive matter of personnel disciplinary actions. (Please see below regarding "**Disclosure of Information**," **pp. 16 and 17**, for additional comments along these lines.)

Finally, we note that the use of a modifier, such as "typically within 60 to 90 business days," following the word "promptly" in directives about timing (**pp. 16, 18**, etc) renders the word "promptly" unnecessary.

Specific concerns as to the draft (page numbers refer to clean copy):

p. 9. III.E.2 Retaliation says "(See Section II.C)" but no reference to "retaliation" appears in II.C. Based on current placement of "Retaliation" under "Other Prohibited Conduct," it appears that the reference should be to Section II.B.e

p. 11 reference to "employment" in final sentence is difficult to follow: "Non-compliance with this Policy, other than violations of Prohibited Conduct, may result in *educational efforts or employment or educational consequences* up to and including informal counseling, adverse performance evaluations, corrective actions, and termination" (emphasis added). Change wording or word order or insert "consequences" after "employment" to clarify: "educational efforts, employment consequences, or educational consequences"

p. 13, 2d paragraph of item 3: "Student Affairs Offices" - at UCB, this would refer to the Student Conduct Office; this office should not be confused with the departmental Student Affairs Officers who advise students as to majors and so forth

p. 13, item 3 - for clarity and to indicate urgency of provision in 3d paragraph, reverse the order of **paragraphs 2 and 3**

p. 16 "If the Title IX Officer decides not to proceed with a Formal Investigation, the Title IX Officer shall inform the Complainant that the ability to provide remedies may be limited, but the Title IX Officer shall nonetheless afford such remedies as are consistent with maintaining privacy and the absence of an administrative finding" does not make clear what "**the absence of an administrative finding**" refers to. "If the Title IX Officer decides not to proceed with a Formal Investigation," then a formal disciplinary action in which charges are brought by the administration against a Respondent (such as a P&T hearing regarding a faculty member or presumably the equivalent in situations in which a student is accused) will not occur. Need to clarify whether "the absence of an administrative finding" refers to the lack of such a disciplinary action and its findings or whether the phrase refers (redundantly) to the lack of a Title IX Formal Investigation's findings.

pp. 16-17, Formal investigation. b ii “Disclosure of Information” – change “may” to “should” in “Participants in an investigation *may* be counseled about the importance of keeping information learned through the investigation private” (emphasis added).

p. 17 “Disclosure” continued: “Witnesses will be notified that the information they provide and their identities are typically disclosed to the Complainant and the Respondent.” Does this refer to all information provided or only to information that makes it into the Title IX report of the Formal Investigation?

p. 17 “allegations of Prohibited Conduct covered by this Policy in the public realm (such as reports in the news or social media)” Please see third general comment above.

p. 17 “Grievance/Complaint Procedures for Employees” – this section requires that grievances or complaints concerning SVSH that are filed elsewhere (with a union or P&T?) be forwarded to the Title IX officer for processing, after which the grievance may be reactivated. Does this mean that a grievant or complainant loses control of the grievance or complaint to Title IX unless they first begin outside Title IX? What if the time limits for filing are different under Title IX and for the other entity?

p. 19, “8.c. Discipline” states that if the matter results in a disciplinary proceeding, “at the conclusion of that proceeding, the Complainant and the Respondent will be contemporaneously informed in writing of the outcome of the disciplinary proceeding, including the final determination with respect to the alleged offense, any discipline that is imposed, and the rationale for the results.” We again note that in a disciplinary proceeding before P&T, the Complainant in the Title IX action becomes the Complaining Witness, while the Administration and the faculty member are considered parties. P&T sends the parties copies of its hearing report, which contains its reasoning for advisory recommendations that are addressed to the Chancellor. What exactly is the “outcome,” the “final determination,” and the “rationale for the results” that the Complaining Witness, as distinct from the Administration, is to be informed about? What does/should the Complaining Witness receive? What or when exactly is “the conclusion of that [disciplinary] proceeding”? Is Complaining Witness entitled to the P&T hearing panel’s recommendation to the Chancellor? To its report as to such recommendation? To something other than the Chancellor’s “final determination” as to sanctions? **FAQ # 2** defines a “result” or “outcome” as including “a written description of any initial, temporary, and final decision made by any authorized person, which aims to resolve a disciplinary matter. The result must disclose any discipline imposed and the rationale for the result and the discipline.” Does a P&T hearing panel’s advisory recommendation and the reasoning behind such recommendation articulated in its heretofore confidential report to the Chancellor constitute an “outcome” to which a complaining witness is entitled and, if so, when? (We have indicated what we think in our third general comment above; here we limit ourselves to pointing out textual ambiguities.)

p. 21. Note states that “The requirements of #3, 4, and 5 above are for locations with students only. However, ANR, UCOP, and LBNL should coordinate delivery of these services with associated campuses or affiliated organizations.” Do requirements of **#3, 4, and 5** (for CARE, Respondent Services Coordinator, CMT and CCRT) apply only to students then or only to locations with students?

p. 22. #11 – there is no reference here or elsewhere in the document to informing respondents of any of their rights or of available services, including access to the respondent services coordinator that is provided for on **p. 21 #4**.

I hope this is helpful. If you have questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Constable", written in a cursive style.

Marianne Constable
Chair, Committee on Privilege and Tenure
Professor of Rhetoric



November 8, 2018

PROFESSOR BARBARA SPACKMAN
Chair, Berkeley Division of the Academic Senate

*Re: UGC Comments on the Proposed Revised Presidential Policy
on Sexual Violence and Sexual Harassment*

Dear Chair Spackman,

The Undergraduate Council praised the revisions as a whole, but had a few questions that we hope Divisional Council considers addressing.

The first concerns the circumstances under which some forms of speech might be excluded from the requirement to report. The current document cites two specific exceptions: public awareness events such as Take Back the Night, and information disclosed by an individual participating in IRB approved research. We suggest that rather than simply mentioning Take Back the Night the committee alter the language to include “public performances, protests, or public awareness events such as poetry readings, Take Back the Night protests, Vagina Monologue performances, and other forms of creative public expression.”

This led to our second concern regarding reporting protocols for responding to class assignments that suggest a violation has taken place. Such disclosures could emerge within the context of an analytical paper in which the student describes their experience in an anecdote or through an appeal to experiential evidence, or as part of a creative writing assignment such as a poem, journal entry, play, film, etc. The relevant issues here include respecting the creative expression of students, including recognizing student work as privately held intellectual property; not wanting to limit or hinder forms of self-expression; avoiding blanket statements as part of class orientation that would proactively warn students to not disclose reportable offenses in writing or in class discussions. The Committee feels that forms of creative or analytical expression should be protected from disclosure protocols, but would appreciate guidance for faculty in distinguishing the difference between potentially exempted statements that surface through class assignments and how discussion of these assignments might lead to disclosures that would need to be reported.

The third issue that the Committee felt merited greater elaboration was a discussion of potential consequences associated with faculty’s failure to report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jonah Levy".

Jonah Levy
Chair, Undergraduate Council

A handwritten signature in cursive script, appearing to read "Juana María Rodríguez".

Juana María Rodríguez
Vice Chair, Undergraduate Council



DAVIS DIVISION OF THE ACADEMIC SENATE
ONE SHIELDS AVENUE
DAVIS, CALIFORNIA 95616-8502
(530) 752-2220
academicsenate.ucdavis.edu

December 6, 2018

Robert May
Chair, Academic Council

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

Dear Robert:

The proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment were forwarded to all standing committees of the Davis Division of the Academic Senate. Eight committees responded: Academic Personnel Oversight (CAP), Faculty Welfare, Privilege and Tenure (P&T) Hearings, Privilege and Tenure Investigative, and the Faculty Executive Committees (FEC) of the College of Agricultural and Environmental Sciences (CAES), the College of Biological Sciences (CBS), the College of Engineering (COE), and the College of Letters and Science (L&S).

Committee comments are organized below by policy section (in numerical order), with the committee's name listed in parentheses after each comment. Although some comments have been condensed for brevity, the exact language was largely preserved when encapsulating committee perspectives.

SECTION II. DEFINITIONS

- **Section II.B.3.b, Other Prohibited Behavior**

Clarify so that this section includes other sexual activities beyond "sexual intercourse" in the list of prohibited behaviors with covered individuals under the age of 18. As written, this only applies to "sexual intercourse." (*Faculty Welfare*)

- **Section II.C.7, Responsible Employee**

The final paragraph outlines instances in which mandatory reporters are not required to report. In effect, it attempts to carve out an exception to mandatory reporting. The text is incomprehensible in its current form. The FAQ referenced in the policy clarifies to some degree what circumstances are being imagined, such as "Take Back the Night" events, when victims tell their stories and "mandatory reporters" are in the audience. Policy should not rely on FAQs for comprehensibility. Exceptions to the mandatory reporting function must be sharply and clearly drawn in the policy text. (*P&T Investigative*)

SECTION III. POLICY TEXT

- **Section III.B.3, Application of this Policy**

The boundaries of this section are so vague as to leave the University with unlimited ability to prosecute behavior it deems objectionable; such is not sound policy. Are there issues of free speech

and academic freedom that are potentially in conflict with this application of the policy? Could this application of policy be used to censor faculty members in their private time? How does the policy propose to balance protecting free speech and policing the off-campus behavior of faculty, staff, and students? (*P&T Investigative*)

- **Section III.E.1, Amnesty**

The proposed policy change states: “To encourage reporting, neither a Complainant nor witness in an investigation of Prohibited Conduct will be subject to discipline for a violation of the relevant University conduct policy at or near the time of the incident, unless the University determines the violation was egregious, including, for example, violations that placed the health or safety of another at risk, or involved plagiarism, cheating, or academic dishonesty.” This section of the policy could motivate someone caught in a violation of University policy to file a false report. (*P&T Hearings*)

- **Section III.E.2, Retaliation**

If there is retaliation after the investigation has started, the Respondent has violated another policy, not just the one against making an unwanted sexual advance. Evidence that the Respondent retaliated does not suffice to prove that III.E.2 was violated. There must be further evidence that the Respondent knew of the investigation. (The evidence of retaliation that came previous to the investigation does, however, likely strengthen the case that there was a violation of policy). To clarify that retaliation under III.E.2 is a second offense, the committee suggests some language about timing and what the respondent knew about the investigation. (*P&T Hearings*)

- **Section III.E.3, Privacy**

- While the original text emphasized protecting the privacy of individuals involved in reporting misconduct in the course of investigation, the revised text emphasizes balancing the need to protect privacy against the exigencies of investigation. In effect, the policy now subordinates protection of privacy to the needs of investigation. We are particularly concerned with this sentence: “Within this context, the University will *make reasonable efforts* [emphasis added] to protect individuals’ privacy to the extent permitted by law and by University policies and procedures.” We suggest that “make reasonable efforts to” be deleted because it dilutes the force of law, policy, and procedure. (*P&T Investigative*)
- This section should list all applicable laws and policies and include links. In the case of intentional or malicious false accusation, privacy may be different, since slander or libel is a violation of laws and the Respondent may have a right and even obligation post-investigation to tell colleagues and others about the slander or malicious intent. (*L&S FEC*)

- **Section III.F, Free Speech and Academic Freedom**

The conclusion of this section states: “However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or State anti-discrimination laws.” We would like to see a definition of slander/libel included here. (*L&S FEC*)

SECTION V. PROCEDURES

- **Section V.A, Procedures for Reporting and Responding to Reports of Prohibited Conduct**

The Title IX officer should be careful in their response and determination of next steps for a Complainant. The Complainant could be put in a situation that makes the issue more challenging; thus, the Complainant could be further harmed by the very procedures that are being implemented to protect them. (*P&T Hearings*)

- **Section V.A.3, Initial Assessment of a Report/Immediate Health and Safety**

This specifically identifies concern for the health and safety of the Complainant, rather than using the neutral word “individual” or both “Complainant and Respondent.” If the Respondent is the one

being threatened and harassed by slander/libel, the Respondent's health and safety may be at risk. (*L&S FEC*)

- **Section V.A.4., Closure Following Initial Assessment**

All of the language refers to the Complainant, whereas both Complainant and Respondent should be mentioned, or the neutral word "individual" or "party" used. (*L&S FEC*)

- **Section V.A.5.a, Alternative Resolution**

The inclusion of time ranges and the use of "typically" make the policy appear unnecessarily vague. For example, the informal resolution states, "typically within 30 to 60 days," whereas the formal investigation states, "typically within 60 to 90 days." Uses of "typically" already suggest that there are exceptions, and "within x to y" is essentially within y. This information is presented in a confusing manner. (*P&T Hearings*)

- **Section V.A.5.b.v., Initiation of Investigation by the University**

This section is vague and should be clarified. There should be procedures for determining when a threshold has been crossed (e.g., two negative comments about someone in one month? Or in two years?). Furthermore, students consider their social media entries private, even if they are quasi-public. The reputation of the University will not be enhanced if students realize that their Facebook accounts are being scrutinized. The policy as revised also imagines that all that is written on social media is true, and that all complaints are valid to some degree. The policy needs some section explaining the procedures for the Title IX Officer to forward to Student Judicial Affairs, say, a case in which the investigation revealed that the Complainant had lied. Similarly, the policy needs to have some procedures for circumstances in which someone threatened to file a complaint. (*P&T Hearings*)

- **Section V.A.8.c, Discipline**

We recommend the following statement be removed: "depending on the severity and extent of the Prohibited Conduct and the complexity of the matter." The University should seek to finalize discipline decisions in a prompt manner regardless of the severity and complexity of the matter. (*CAP Oversight*)

- **Additional Input for Section V**

Clarify when Title IX officers should refer a complaint to the police. (*Faculty Welfare*)

SECTION VII. FREQUENTLY ASKED QUESTIONS

- FAQ #6: The answer should say "Complainant and Respondent" in all areas where it only says "Complainant." (*L&S FEC*)

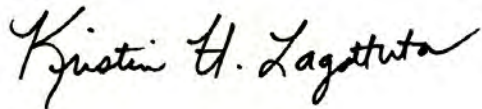
ADDITIONAL INPUT

- We recommend creating a mechanism to track application of the revised Presidential Policy on SVSH on different campuses. The University Committee on Faculty Welfare previously requested the annual publication by the systemwide Title IX coordinator of a summary of cases involving faculty, including "informal resolutions." Ideally, these anonymized summaries should have information about the nature of the policy violation, the penalty proposed by the faculty committee advising the VP of Academic Personnel or P&T, and the final sanction decided by the Chancellor. (*Faculty Welfare*)
- We recommend publishing guidelines for potential sanctions for different violations that Chancellors may consult, as a way to minimize arbitrary or unfair differences in application on different campuses. (*Faculty Welfare*)

- Now the Title IX Officer is empowered to explore deep into the personal, private lives of employees, going far outside of University workplaces and University activities to assess the veracity of non-physical allegations, not just physical ones. That is a tremendous scope of power. It is easy to imagine incredibly complicated situations in which the applications of new powers could be mistaken or fraught with all kinds of risk of bias by the investigator. Specifically, having the authority to look deep into private lives to look for any possible sign of non-physical conduct that might be part of a pattern of harmful behavior in the eyes of “reasonable person in the Complainant’s position in fear” means that the Title IX Officer will have to go far beyond known scholarship to evaluate whether something is part of sexual violence and sexual harassment or not. It may very well be that the UC community wants this level of power imbued into a single person at each University, but it does give pause to consider the degree of entering people’s private lives that the policy enables. It is truly unprecedented outside of the legal system for an employer, especially a public one, to be able to investigate non-physical conduct deep into a person’s private life outside of their work activity and workplace. In light of this scope of immense power being granted, one would expect to have a commensurate, powerful regulatory and oversight framework to check the power of the Title IX Officer. (*CAES FEC*)
- We have concerns about the development of parallel tracks of policy on issues related to faculty misconduct, specifically this policy that overlaps substantially with APM 015 and APM 016. In effect, this Presidential Policy on SVSH only addresses certain violations of the code of faculty conduct under APM 015. How do we make this policy consistent with other forms of misconduct under APM 015, such as violence or harassment that is racially discriminatory and not sexual? We are concerned that separate policies and processes for disciplinary actions create the appearance of a hierarchy of forms of harassment and violence. (*P&T Investigative*)

The Davis Division appreciates the opportunity to comment.

Sincerely,



Kristin H. Lagattuta, Ph.D.
 Chair, Davis Division of the Academic Senate
 Professor, Department of Psychology and Center for Mind and Brain

c: Edwin M. Arevalo, Executive Director, Davis Division of the Academic Senate
 Hilary Baxter, Executive Director, Systemwide Academic Senate
 Michael LaBriola, Principal Policy Analyst, Systemwide Academic Senate

November 8, 2018

Robert May, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

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

Dear Chair May,

On our campus, the Committee on Privilege and Tenure (CPT), Council on Faculty Welfare, Diversity, and Academic Freedom (CFW), and Council on Teaching, Learning, and Student Experience (CTLSE) reviewed the proposed Presidential Policy on Sexual Violence and Sexual Harassment, with CPT serving as the lead reviewing body. The Cabinet discussed the Councils' comments on the proposed policy at our November 6, 2018 meeting and unanimously endorsed forwarding Council comments to Academic Council.

Attached please find the Councils' individual responses. A summary of the concerns discussed at Cabinet is also provided below:

- CTLSE and CPT both suggest removing reference to specific areas of the body to avoid too narrowly and explicitly defining the particular acts and body parts that constitute violations of the SVSH policy. CPT also recommends removing reference to aggravated assault.
- CFW recommends a number of line edits, including making it clear that there is no time limit for reporting and more clearly explaining what "less serious allegations" are.
- CFW asked for clarification of how location responsibilities will be funded and staffed, and what mechanisms can be put in place to enforce participation in mandatory training.
- CPT recommends editing the policy summary to reference related policies on bullying and intimidation or to remove the statement of foundational principles.
- CPT suggests that authority to extend an investigatory timeline should be vested in a third party, rather than the Title IX Officer running an investigation. CPT also recommends that good cause be clearly and explicitly defined, that requests for extensions and decisions be required to be written and cite the specific terms of the good cause definition that apply, and that these materials be made part of the formal investigative record.
- CPT inquired about what, if any, reporting requirement will be attached to matters that are closed without a formal investigation, but are still sufficient to warrant that steps be taken to address the behavior reported. A reporting requirement may assist campuses in identifying patterns of unacceptable behavior.



- CPT expressed concern about the breadth of authorization of the Title IX Officer to conduct a formal investigation under certain circumstances when a Complainant is lacking, and inquired about how the Respondent's due process right to challenge reports of prohibited behavior would be protected. However, the Cabinet recognized the need to investigate behavior that may come to light without a Complainant.
- CPT noted that investigative reports generated in the Irvine Division have used the term "Complaining Witness," which does not appear in the proposed policy, and suggested that either a definition be provided or that the term not be used in future.
- CPT recommended that FAQ # 6 be expanded to note that in addition to the Complainant, a Respondent can be advised about the confidential nature of matters arising under the policy, but should not be restricted from disclosing information.

The Irvine Division appreciates the opportunity to comment.

Sincerely,

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

Linda Cohen, Chair
Academic Senate, Irvine Division

Enclosures: CPT response dated 10/26/18
CFW response dated 10/25/18
CTLSE response dated 10/25/18

C: James Steintrager, Chair Elect, Academic Senate, Irvine Division
Hilary Baxter, Executive Director, Academic Senate
Kate Brigman, Executive Director, Academic Senate, Irvine Division
Laura Gnesda, Analyst, Academic Senate, Irvine Division

October 26, 2018

**LINDA COHEN, CHAIR
ACADEMIC SENATE, IRVINE DIVISION**

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

After review, the Committee on Privilege and Tenure submits the following comments and suggested revisions to the Proposed Presidential Policy on Sexual Violence and Sexual Harassment:

1. Policy Summary: The first paragraph starts with a statement of foundational principles to which the University is committed and then pivots without qualification to state the University's prohibition of sexual violence, sexual harassment, retaliation and other prohibited behavior as detailed in the policy that follows. Skipping past the tautology in the document's statement that the University prohibits prohibited behavior, this paragraph lacks the explanation necessary to understand the relationship between the foundational principles and specific prohibitions. Presumably the University's commitment to these principles is not limited to just the specific prohibitions outlined in this SVSH policy, despite what might be inferred from this paragraph, but also extends to non-sexual forms of harassment such as bullying and intimidation that are addressed in other policy statements. It might be appropriate to reference these other policies, or at least acknowledge other forms of harassment that also violate the foundational principles. Alternatively, and perhaps preferably since these foundational principles are articulated in other more broadly applicable policies, this summary could skip the motivational justification and stick to the specific issue of sexually-based behavior.
2. p. 3. Sexual Assault – Contact is defined as the touching of specifically identified intimate body parts, thus implying that touching elsewhere is not sexual assault. Is it necessary to be explicit in identifying intimate body parts? Do we really want a definition that excludes, for example, caressing of the neck, shoulders, abdomen or thighs from sexual assault? A more inclusive definition prohibiting uninvited physical contact may be more appropriate.

Assault is defined as aggravated when force, violence, menace or duress is used to overcome the will of the Complainant. But each of these is a component of what is commonly considered simple assault in criminal law, whereas aggravated assault usually refers to the use of a weapon or resulting serious bodily injury. Of course, either of these would elevate the behavior from a violation of the SVSH policy to a criminal act. Is aggravated necessary here? It seems to be used just as a pejorative.

Similarly, it is assault to deliberately take advantage of a Complainant's incapacitation (or perhaps a third party in the case of a Complainant who has witnessed but not experienced the assault on an incapacitated party?). How is it possible to take such advantage in a non-deliberate manner?

3. In consideration of the right of the Complainant(s) and Respondent to a speedy resolution and to comply with a recent order of the Regents, the Senate has mounted a major effort to modify its bylaws to mandate an expedited timeline for hearing SVSH disciplinary cases. In this context it is discouraging to see the administration lengthen the timeline for investigation (from 60 to now 60-90 days on p. 16) and for alternative resolution (30-60 days (on p. 15) vs. 40 days now). Further, either or both timelines may be extended by authority of the



Title IX Officer for “good cause.” First, since the Title IX Officer is running the investigation, this provides no independent check on the length of the process. Authority to extend should be vested in a third party. Second, good cause must be clearly and precisely defined. Third, both the request for extension and its granting should be required to be written and must cite the specific terms of the good cause definition that apply. The written documentation should be made part of the formal investigative record, provided to the Complainant and/or Respondent as dictated elsewhere in the policy, and be subject to public records requests.

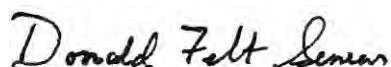
4. Under section V.A.4, a reported matter may be closed after initial assessment but will still, when appropriate, trigger steps to stop or otherwise address the behavior reported. Section V.A.6 requires a written report in the event that a formal investigation is conducted. What, if any, reporting requirement attaches to matters that are closed without a formal investigation, but are still sufficient to warrant that steps be taken to address the behavior reported? The need to track such behavior to discern repeated patterns even when no single incident warrants a formal investigation seems self-evident.
5. Section V.A.5.b.v authorizes the Title IX Officer to conduct a formal investigation under certain circumstances even when a Complainant is lacking. Included in this are patterns of conduct toward multiple people. How would such patterns become known to the University without being reported? Another circumstance involves reports in the public realm, e.g., social media. This authorization seems overly broad, potentially giving the University license to investigate rumor, innuendo and urban myth. In such circumstances, in which individual or entity would the normal rights of the Complainant be invested, e.g., right to consent to informal resolution, right to receive and comment on the formal investigation report, etc.? How would the Respondent's due process right to challenge reports of prohibited behavior be protected?

Related to this, investigative reports generated in the Irvine Division have used the term Complaining Witness. From the context, these seem to refer to individuals who have not made reports of prohibited behavior to the Title IX Officer, but have reported such while being interviewed as witnesses in formal investigations. Presumably individuals so designated have chosen not to become Complainants themselves. This term appears nowhere in the policy, existing or with modifications proposed, though it might constitute a useful concept. Perhaps it should be included in the policy with specific rights and obligations outlined. Barring its inclusion, the term should not be used in formal investigative reports.

6. FAQ 6 clarifies that the Complainant can be advised of the confidential nature of matters arising under the policy but should not be restricted from disclosing information. The same is true of the Respondent as should also be noted in this, or a follow up question.

Thank you for the opportunity to comment.

Sincerely,



Don Senean, Chair
Committee on Privilege and Tenure

C: Kate Brigman, Executive Director, Academic Senate
Julie Kennedy, CPT Analyst
Laura Gnesda, Senate Analyst

October 25, 2018

**LINDA COHEN, CHAIR
ACADEMIC SENATE – IRVINE DIVISION**

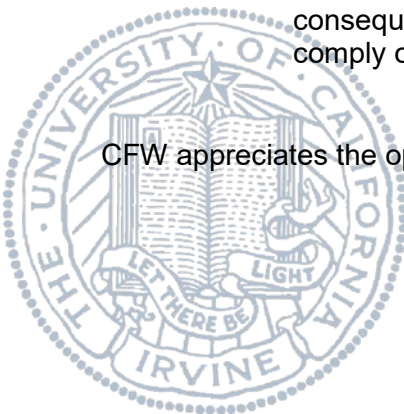
**Re: Systemwide Senate Review of Proposed Presidential Policy on Sexual
Violence and Sexual Harassment**

Academic Council requested a review of the proposed Presidential Policy on Sexual Violence and Sexual Harassment after significant feedback from campus constituents.

The Council on Faculty Welfare, Diversity, and Academic Freedom (CFW) reviewed these revisions, and had the following concerns and recommendations:

1. Procedures: V.A.2.
The current statement is contradictory and judges the reporting timeline. The following revision is proposed: "There is no timeline limit for reporting."
2. Procedures V.A.5.a.
Can the policy specify what "less serious allegations" mean?
3. Procedures: B.1.e & 7 & 9 Location Responsibilities
How will the University of California fund the education, training, and campaign responsibilities of the Title IX Officer? How will the University of California enable locations to "provide training for University employees who are responsible for reporting or responding?"
4. Procedures: B.2 Location Responsibilities
How will the University of California fund the staffing that will enable locations to "designate persons who can offer confidential consultations?"
5. Procedures: B.3 Location Responsibilities
How will the University of California fund "an independent, confidential Advocacy Office?"
6. Procedures: B.4 Location Responsibilities
How will the University of California fund "Respondent Services Coordinator?"
7. Procedures: B.6 Location Responsibilities
What are the mechanisms to enforce participation in the "mandatory annual training?" How can the University of California ensure that the learning outcomes of the "mandatory annual training" are realized? What are the consequences if students, faculty, other academic appointees, and staff do not comply or pass the required training?

CFW appreciates the opportunity to comment.



Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Tucker". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Stephen Tucker, Chair
Council on Faculty Welfare, Diversity, and Academic Freedom

C: Kate Brigman, Executive Director
Academic Senate

October 25, 2018

**LINDA COHEN, CHAIR
ACADEMIC SENATE – IRVINE DIVISION**

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

Academic Council requested a review of the proposed Presidential Policy on Sexual Violence and Sexual Harassment after significant feedback from campus constituents.

The Council on Teaching, Learning, and Student Experience (CTLSE) reviewed these revisions, and had the following concerns:

One aspect of the revised policy caught my attention in how it defined what acts would be considered actionable. Throughout the policy the notion of “intimate areas” of the body was central to the forms of sexual violence, however, the definition of which parts of the body that entails seems particular to one type of cultural expression of how the body may be violated or sensitized. In different cultures and diverse communities and contexts all manner of bodily contact may be sexualized and unwanted. There is a potential danger in too narrowly and explicitly defining the particular acts and body parts that constitute violations of the SVSH policy.

Sincerely,



Ian Straughn, Chair
Council on Teaching, Learning, and Student Experience

C: Kate Brigman, Executive Director
Academic Senate



December 6, 2018

Robert May
Chair, Academic Council

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

Dear Robert,

The Executive Board of the UCLA Academic Senate discussed the Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment at its meeting on December 5, 2018. The Executive Board solicited comments from standing committees of the Senate, as well as the Faculty Executive Committees, to maximize faculty feedback; the individual responses from our various committees are attached.

Executive Board members acknowledge the importance of this policy and the proposed revisions. However, faculty on the various committees and those on the Executive Board identified critical issues and concerns as follows:

1. The Committee on Privilege and Tenure (P&T) recommends adding the following language under Section II. Definitions. B. Prohibited Conduct. B. Sexual Assault - Contact:

PROPOSED ADDITION:

The types of contact listed above meet the standard of sexual assault by contact and serve as examples of such contact. Other types of contact, not specifically enumerated above, may nonetheless be considered sexual assault contact if they meet the same standard.

Several faculty questioned what constitutes “the sexual.” There was much debate around the objections to hugging that have appeared in recent high profile cases with UC. Some colleagues concluded that the list of body parts deemed “sexual” is too limited. P&T expressed that “contact with the mouth, even if it does not involve contact with another intimate body part listed, should be included as sexual contact.”

2. Faculty expressed concern with the Timelines for Making Reports. Providing no time limit for reporting allows a case to be extended almost indefinitely, allowing cases to drag on. Several faculty agreed that this should neither be desired nor permitted. Moreover, the timeframe should reflect instructional days rather than business days. Faculty and students are on an instructional calendar.
3. Under Section III. F. Free Speech and Academic Freedom. The last paragraph in this section cites “However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or State antidiscrimination laws.” Faculty recommend deleting this sentence altogether.

4. *Section V. Procedures*, b. Formal Investigation, iv. Academic Freedom/Merit states "...the Title IX Officer shall consult with the appropriate academic officer for relevant academic judgment." Who is the "appropriate academic officer"? Faculty argued that the relevant officer for Senate faculty should be the Academic Senate instead of someone from the administration. Faculty recommend revising to "consult with academic officer or unit for relevant academic judgement." (e.g. Academic Senate) Similar specificity should be added for non-Senate faculty, students and staff.
5. Conducting the hearing on the campus may be difficult if the case involves faculty who are out in the field.

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

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

Sincerely,


A handwritten signature in black ink, appearing to read 'JB', with a stylized flourish at the end.

Joseph Bristow
Chair, UCLA Academic Senate

cc: Hilary Baxter, Executive Director, Systemwide Academic Senate
Sandra Graham, Immediate Past Chair, UCLA Academic Senate
Michael Meranze, Vice Chair/Chair-Elect, UCLA Academic Senate
Michael LaBriola, Principal Policy Analyst, Systemwide Academic Senate
Linda Mohr, Chief Administrative Officer, UCLA Academic Senate

December 5, 2018

To: Joe Bristow, Academic Senate Chair

From: Jody Kreiman 
Chair, Charges Committee

Re: Proposed Revisions to Presidential Policy “Sexual Violence and Sexual Harassment”

Dear Chair Bristow:

This summer UCOP asked for a first round of comments on the proposed revisions to the “SVSH” Presidential Policy.

Charges Committee members participated with Privilege & Tenure Committee members to provide the attached August 2, 2018 letter. The Committee remains concerned that the wording in the Framework on probably cause remains incorrect (see attached letter) and inconsistent with the agreed-on wording in the SVSH policy itself that a finding may establish a violation of the Faculty Code of Conduct.

For the remaining comments, please refer to the attached letter. The Charges Committee has no further comments at this time.

On behalf of the members of the Charges Committee: Troy Carter, Sherry Ortner, Scott Cummings, Guillaume Chanfreau, Jeff Bronstein, Subramanian Iyer, Jo-Ann Eastwood

Evelyn Cheng
UCOP Title IX Coordinator
By email: Evelyn.Cheng@ucop.edu

August 2, 2018

Re: Proposed revisions to the Sexual Violence and Sexual Harassment (SVSH) Policies

The UCLA Privilege & Tenure Committee has compiled the following feedback on the proposed revisions to the UC SVSH policies. Given that the comments were solicited on July 23, 2018 it was not possible to get comments from all members.

First, while the expansions of the definitions of prohibited contact (such as sections II.B; VI, question 4), are helpful, providing specific detail might be interpreted to mean that if an action (such as forcible kissing of any kind) is not mentioned it does not qualify.

Secondly, committee members note that the “framework” needs to align with approved SVSH policy regarding faculty discipline. The framework states (emphasis added) that “a finding that the respondent violated the SVSH Policy will establish probable cause as defined in the Code of Conduct” (B.4) while the SVSH Policy, as agreed following extensive review by campuses leaves that determination to individual Senate processes. The agreed-on wording in the SVSH states (emphasis added) “Because the forms of unacceptable behavior listed in The Faculty Code of Conduct also apply to sexual violence or sexual harassment, a violation of the University’s Policy on Sexual Harassment and Sexual Violence may constitute a violation of the Faculty Code of Conduct.” (Appendix II.A). After Senate review and comment, the 2015 interim policy was revised as follows:

Because the forms of unacceptable behavior listed in *The Faculty Code of Conduct* ~~are~~ *interpreted to also* apply to sexual ~~harassment~~ *violence*, or sexual ~~violence~~ *harassment*, a violation of the University’s *Policy on Sexual Harassment and Sexual Violence* ~~constitutes~~ *may constitute* 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.

As distributed for comment, October 1, 2015

This distinction is important as it allows each campus, as long as they align with systemwide policy, to implement their own procedures for faculty discipline. The Faculty Code of Conduct is clear throughout of the important role of Senate input into all procedures dealing with both the investigation of allegations of faculty misconduct as well as the conduct of disciplinary proceedings. Few cases reach the formal hearing phase. That makes “faculty advice in the beginning stages of what may become formal disciplinary proceedings” the principal way by which faculty can “meaningfully participate in its own self-discipline.” (APM-015§II.B.2) Several members urged that the “framework” make clear that some campuses have charges processes either by separate committees or by a subcommittee of Privilege & Tenure. The Chancellor or Chancellor’s designee needs to factor the time needed for those committees to function into their 40 business days after receipt of the notice of investigation.

Lastly, while campuses are now expected to be responsive to disciplinary matters year-round, no provisions have been made to support the judicial committees so that they can be available during the summer periods.

Sincerely,



E. Richard Stiehm, Chair

On behalf of the members of the UCLA Privilege & Tenure Committee

cc: Nancy Lane, UCPT Chair: nelane@ucdavis.edu
Jocelyn Banaria, UCPT Analyst: Jocelyn.Banaria@ucop.edu

/mmo

November 30, 2018

To: Joseph Bristow
Chair, UCLA Academic Senate

From: Robert Gould
Chair, Undergraduate Council

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

Thank you for inviting the Undergraduate Council to opine on the Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment. At its November 9th, 2018 meeting, the Council had a lengthy and in-depth conversation of the proposal, which is summarized below.

1. Throughout the document, the term complainant is used. A complainant is defined as “a person, alleged, in a report to the Title IX Officer, to have experienced prohibited conduct.”¹ The policy then goes on to list violations in terms of conduct experienced by the complainant (e.g. “deliberately causing the Complainant to be incapacitated (for example, through drugs or alcohol”).²

While understanding that the use of the term complainant is likely an attempt to avoid use of the term victim, which has negative connotations, the policy, as written, says that conduct is **only** prohibited against complainants (a status which is created only after a report has been created). Surely the policy is meant to protect all individuals who have been subject to sexual violence and/or sexual harassment, and not only those mentioned in reports to the Title IX Officer.

2. While understanding the desire to resolve investigations quickly, the revised policy states that

The Alternative Resolution process will be completed promptly, typically within 30 to 60 business days of the date the Title IX Officer sends the written notice of initiation of the process. However, the Title IX Officer may extend the process beyond the 60th day for good cause.³

¹ Page 6, Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment.

² Page 4, Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment.

³ Page 19, Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment.

This timeline may be problematic for a few reasons. First, faculty and students are on an instructional calendar, and are obligated to be present at the university for all business days. For instance, investigations beginning in late spring will likely extend into summer when faculty and students are not present (and cannot be compelled) on campus and are unavailable to participate in investigations. Second, these investigations are serious and should not be rushed. It is, perhaps, better to change business days to instructional days, and to state something to the effect of “Ideally, cases should be resolved within 60-90 instructional days.”

3. A note added to the policy states that “Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.”⁴ This note seems to allow for a defense of “the complainant was drunk, but not incapacitated.” This seems to be a backward step in protecting individuals who might have been sexually assaulted or harassed while intoxicated. Furthermore, how is drunkenness defined?
4. The U.S. Secretary of Education, Besty Devos, has released new proposed federal title IX guidance. The proposed guidance moves from the current “preponderance of evidence” model to a “clear and convincing evidence” standard. The new federal policy, as proposed, would have major implications for campuses. How might this policy be altered/invalidated by a revised federal policy? Would it be better to wait on determining the future of this policy until after the future of the federal policy is clear?

Thank you again for the opportunity to comment on this important policy proposal. If you have any additional questions or concerns, please do not hesitate to contact me or Eric Wells, the Undergraduate Council Analyst.

⁴ Page 3, Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment.

November 26, 2018

Professor Joseph Bristow
Chair, UCLA Academic Senate

Re: System-wide Policy on Sexual Violence and Sexual Harassment (SVSH)

Dear Chair Bristow,

The Committee appreciates the opportunity to review and discuss the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment (SVSH). We reviewed the revisions at the November 8th meeting. We support the revisions but we share concerns about timing raised by the P&T committee and request that those be addressed.

Thank you for the opportunity to review and comment. If you have any questions, you are welcome to contact me at jbower@ucla.edu or the Faculty Welfare Committee analyst, Annie Speights at aspeights@senate.ucla.edu or ext. 53853.

Sincerely,



Julie Bower
Chair, Committee on Faculty Welfare

cc: Members of the Committee on Faculty Welfare
Linda Mohr, CAO, Academic Senate
Valeria Dimas, Executive Assistant
Annie Speights, Committee Analyst, Committee on Faculty Welfare

November 26, 2018

Professor Joseph Bristow
Chair, UCLA Academic Senate

Re: System-wide Policy on Sexual Violence and Sexual Harassment (SVSH)

The Committee on Diversity, Equity, and Inclusion reviewed Presidential Policy on Sexual Violence and Sexual Harassment (SVSH) at its November 19th meeting. We found the proposed revisions to be straightforward and had no additional comments.

Thank you for the opportunity to review and comment. If you have any questions, you are welcome to contact me at agomes@mednet.ucla.edu or the Committee on Diversity, Equity, and Inclusion analyst, Annie Speights at aspeights@senate.ucla.edu or ext. 53853.

Sincerely,

A handwritten signature in black ink that reads "Antoinette Gomes MD". The signature is fluid and cursive, with the "MD" at the end being more distinct.

Antoinette Gomes,
Chair, Committee on Diversity, Equity and Inclusion

cc: Members of the Committee on Diversity, Equity, and Inclusion
Linda Mohr, CAO, Academic Senate
Valeria Dimas, Executive Assistant
Annie Speights, Committee Analyst, Committee on Diversity, Equity and Inclusion

November 19, 2018

To: Joseph Bristow, Chair
Academic Senate

From: Andrea Kasko, Vice Chair
Graduate Council

Re: Proposed Presidential Policy on Sexual Violence and Sexual Harassment

At its meeting on November 16, 2018, the Graduate Council reviewed and discussed the Proposed Presidential Policy on Sexual Violence and Sexual Harassment.

Members offered the following observations for Executive Board's consideration:

Regarding **"b. Formal Investigation**. If the Complainant requests that no Formal Investigation occur, the Title IX Officer will seriously consider the Complainant's request, but must determine whether the allegations nonetheless require an investigation to mitigate a risk to the campus community" (pg. 18):

- Members had questions regarding the criteria used to determine whether the allegations require an investigation. Members thought it would be important to revise the policy to reference such guidelines or criteria. Members found the proposed policy to be unclear on what the decision would be based.

Regarding *"Administrative Closure*. The Title IX Officer may administratively close a Formal Investigation before its completion if the Title IX Officer determines that, due to a significant change in circumstances, its ability to investigate is so substantially impaired that it is unable to gather sufficient evidence to reach a reasonably reliable conclusion about whether Prohibited Conduct occurred" (pg. 20):

- Members found that *substantially impaired* is not clearly defined in the proposed policy, nor are possible examples of substantial impairment articulated.
- Members found that there were no options, remedies, or resolutions for the complainant detailed in the policy document. There should be some language included that protects the interests and rights of both the complainant and respondent.
- Members also wondered what the baseline would be for a change in circumstances. Members agreed that there should be mechanisms in place to ensure investigations continue.

Regarding Alternative Resolution and Formal Investigation. "However, the Title IX Officer may extend the process beyond the 60th day for good cause" (pg. 18) and "However, the Title IX Officer may extend the process beyond the 90th day for good cause."

- Members requested a definition and examples of good cause.

Thank you for the opportunity to review and comment.

November 27, 2018

To: Joe Bristow, Academic Senate Chair

From: Sheryl Kataoka 
Privilege & Tenure Chair

Re: Proposed Revisions to Presidential Policy “Sexual Violence and Sexual Harassment”

Dear Chair Bristow,

The Privilege & Tenure Committee thanks you for the opportunity to comment on the proposed revisions to the “Sexual Violence and Sexual Harassment” Presidential Policy. After a period of review and extensive discussion, P&T offers the following comments on the proposed revisions:

Timeframe

The Committee notes that the OCR resolution agreement called for completing the various phases of addressing a Title IX allegation in reasonably prompt manner. Because what the SVSH policy defines as “reasonably prompt” should be comparable to what is defined as “reasonably prompt” for any charges that reach the Senate for a formal disciplinary hearing, **the Committee feels that it is important to point out that the proposed revisions, including the Chancellor/Chancellor’s designee “decision” time in the current framework, allow for 130-190 business days for the administrative handling of Title IX complaints** – before a matter is ever referred to the Senate for disciplinary hearings.

Phases

1. Report of prohibited conduct; preliminary assessment
2. Formal Investigation (and Notice of Outcome)
3. Decision regarding sanctions

1. Preliminary Assessment

The proposed revisions add a timeframe for an “Alternative Resolution” process of **30 to 60 business days** (from the date the Title IX Officer sends the written notice of initiation of the process). The previous version has no specified time period.

2. Formal Investigation

The proposed revisions add 30 business days to the guidelines for a prompt investigation: The investigation shall be completed promptly, typically within 60 **to 90** business days of the date the Title IX Officer notifies . . . (investigation).

3. Decision regarding sanctions

The policy, as before, refers to the “Investigation and Adjudication Framework for Senate and Non-Senate Faculty” (the “Framework”). The Framework divides the time period for “decision regarding sanctions” into two further phases:

- a. Chancellor/Chancellor’s designee’s decision (complainant/respondent opportunity to respond to the investigation report; Peer Review Committee; early resolution). The timeframe for this is currently **40 business days**.
- b. Filing a Senate charge.

II. DEFINITIONS; B. Prohibited Conduct; 1. Sexual Violence

b. Sexual Assault – Contact: The policy defines behaviors qualifying as sexual contact, including intentional touching of the genitals, groin, breast, or buttocks (including with the mouth). The revised policy adds, *inter alia*, making the complainant touch their own (or a third party’s) intimate body part and (ii) respondent touching complainant with his/her intimate body part (including complainant’s mouth).

The Committee broadly agreed that the body parts listed in the document seem to be under-inclusive. For example, the revisions specify contact with the mouth only in the context of mouth-to-intimate part contact. Many believed this to be too narrow of a definition because a situation involving, for example, a respondent touching a complainant’s lips with a non-intimate body part (e.g., the respondent’s finger) or even forced mouth to mouth kissing would not, by this definition, be considered sexual assault contact. This struck us as odd because the mouth is generally considered to be just as intimate as several (most?) of the other body parts that were expressly listed. There was widespread agreement that contact with the mouth, even if it does not involve contact with another intimate body part listed, should be included as a sexual contact.

More broadly, members feared that this finite list would mean that a respondent could defend similar contact as not being assault by virtue of not being listed. Possible solutions include a “catch-all” that defines sexual contact as contact that a *reasonable* person, under the totality of circumstances, would view as sexual contact. This standard, of course, poses the risk of being over-inclusive. Therefore, the Committee recommends adding language similar to that used in the Faculty Code of Conduct regarding types of unacceptable conduct.

PROPOSED ADDITION:

The types of contact listed above meet the standard of sexual assault by contact and serve as examples of such contact. Other types of contact, not specifically enumerated above, may nonetheless be considered sexual assault contact if they meet the same standard.

Aggravated. Duress

1. The revisions propose that the phrase “power imbalance” be added to the definition of duress. Committee believes that “a power imbalance” should be a stand-alone category distinct from duress:
 - Overcoming the will of Complainant by:
 - *a power imbalance*
2. The policy states that sexual penetration is “aggravated” when it includes, *inter alia*, duress. In a legal context, to prove duress, the complainant must prove that: (i) the fear of the threat was genuine; (ii) the threat was imminent (i.e., would happen almost immediately upon a failure to comply); and (iii) the complainant not did have a reasonable opportunity to escape the threat. None of these requirements are spelled-out in the policy. The policy does mention that the claim of duress would be viewed in light of the totality of circumstances, including age and relationship. Understanding that this is an administrative rather than legal policy, the existing standard nonetheless may be too vague, particularly in light of the fact that the policy states the threat may be either direct or *implied*. Permitting liability for an implied threat without requiring proof of genuineness, imminence, and lack of an opportunity to escape may potentially extend the scope of the rule beyond acceptable (and reasonable) boundaries.

Additional Comments

The Committee also offered comments on the following issues, which are not themselves under review, but the feedback has implications for the items that are under review:

Standard of Proof in Situations Involving a Past/Existing Consensual Dating/Sexual Relationship:

The current Department of Education guidelines allow schools to choose between the preponderance of evidence and clear and convincing standards when determining responsibility for establishing responsibility for violation of Title IX policy; UC uses preponderance of the evidence.

The Committee is concerned that Title IX investigators be aware that determining ongoing affirmative consent and/or the revocation of consent (in contrast to situations in which consent was never granted) is particularly difficult in these cases. The policy states, “It is the responsibility of each person to ensure they have the affirmative consent of the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence, do not, alone, constitute consent. Affirmative consent must be ongoing and can be revoked at any time during sexual activity. The existence of a dating relationship or past sexual relations between the persons involved should never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of consent to prior conduct).”¹

¹ University of California – Policy, Sexual Violence and Sexual Harassment, Definitions: Consent. Section II.A.

The Committee agrees that while a past or current dating and/or sexual relationship does not, by itself constitute consent, the policy and/or practice of Title IX investigators should acknowledge that a past or current dating and/or sexual relationship might contribute to a reasonable belief in ongoing consent barring other evidence that the respondent engaged in a disregard of the facts and circumstances.

Timeliness for Making Reports: Previous revisions removed the time limit for reporting, although the policy encourages prompt reporting of prohibited conduct. It seems reasonable that a removal of the statute of limitations needs to be accompanied by additional considerations that relate to the increased probability of impediments to the fair administration of justice caused by the passage of time. A reasonable criterion, for example, is to ascertain that the delay in bringing an incident to light does not unduly impinge on the respondent's ability to defend against the charges. Second, the committee is concerned that all cases, but especially those from long ago, be treated equitably and not overly focus on the reputation of the respondent or complainant.

Both of the above suggestions might impinge upon Section V.A.3, which mentions the information provided the complainant.

On behalf of Committee members:

Avanidhar Subrahmanyam; Norweeta Milburn; Vilma Ortiz; Patricia Johnson; Barry O'Neill; Sherod Thaxton

/mmo

October 26, 2018

To: Joseph Bristow, Chair
Academic Senate

From: Lothar von Falkenhausen, Chair
Committee on International Education

RE: **Systemwide Senate Review-Proposed Revised Presidential Policy Sexual Violence and Sexual Harassment**

The Committee on International Education received the request for comment on the Proposed Revised Presidential Policy Sexual Violence and Sexual Harassment. Following the review of the proposed revisions, CIE does not feel the review of the policy is in its purview and does not wish to comment.

We thank you for the opportunity to opine.

cc: Joseph Bristow, Chair, Academic Senate
Sandra Graham, Immediate Past Chair, Academic Senate
Michael Meranze, Vice Chair/Chair Elect, Academic Senate
Linda Mohr, Chief Academic Officer
Members of the Committee on International Education

November 19, 2018

To: Joseph Bristow, Chair
Academic Senate

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

Dear Dr. Bristow,

As you requested, the Academic Senate Committee on Teaching discussed the Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment during our November 19, 2018 meeting. We appreciated the work of everyone on the committee who revised the policy as such an endeavor requires much effort and time. The proposed policy led to significant discussion in our meeting. The Committee on Teaching had no edits to make to the policy and felt that it was a step in the right direction. However, the Committee on Teaching believed that more could be done toward educating everyone in the University about the long-standing, serious crisis of sexual harassment and sexual violence on our campus. The committee advises that an explicit goal should be a pedagogical effort to change the culture on campus. Along the lines of item 6 on page 21 of 32 of the clean copy ("Provide mandatory annual training and education, ..."), the Committee on Teaching specifically advocated for in-person workshops versus online courses as such formats would naturally allow questions from the attendees. Another suggestion was to focus in different years on particular topics (e.g., how these types of traumas affect people), and vary the topics to reduce redundancy between training sessions. The Committee on Teaching is also aware that supervisors must currently be trained on these issues, but was not sure if those in non-supervisory roles must also be trained at present. If not, teaching and educating these individuals, and therefore, everyone on campus, including students, is critical.

Thank you for the opportunity to comment on the policy. If you have any questions, please do not hesitate to contact me at kamei@seas.ucla.edu or the Committee's analyst, Renee Rouzan-Kay, at rrouzankay@senate.ucla.edu or x62070.

Sincerely,



Daniel Kamei, Chair
Committee on Teaching

Cc: Michael Meranze, Chair- Elect/Vice- Chair Academic Senate
Sandra Graham, Immediate Past Chair, Academic Senate
Linda Mohr, Chief Operating Officer, Academic Senate

To: Joseph Bristow, Chair
Academic Senate

From: Derjung “Mimi” Tarn, Chair
Committee on Library and Scholarly Communication

Date: October 30, 2018

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

Dear Dr. Bristow,

The Committee on Library and Scholarly Communication reviewed the Proposed Revisions to the Presidential Policy on Sexual Violence and Sexual Harassment during our meeting on October 15, 2018. Overall the committee feels the revised policy is thorough, however much too long and should be abbreviated.

The following questions were raised regarding the definition and meanings of the following words;

1. The definition of “conduct” described in the section on Sexual Harassment and under *Quid Pro Quo* and *Hostile Environment* (p. 5 of 36), provides specific examples of things that could constitute “conduct”, however in providing such examples, other instances are omitted; like touching that may just be ‘unwanted’ or ‘unwelcome.’ These include things that may not fall under “physical conduct of a sexual nature” – such as hugging or perhaps even unwanted stroking of the arm. We suggest adding broader language to incorporate such activities to the policy.
2. There were concerns that the word “consent” was not adequately defined. The document describes quite clearly what may NOT be construed as consent (silence, lack of resistance, etc.), but not what actually constitutes consent. If *verbal* consent is required, that should be made clear. And if non-verbal consent is permitted, clearer guidelines on what constitutes non-verbal consent should be outlined.
3. With regards to “Relationship Violence” (p. 4 of 36) would the use of Domestic Violence and the terms assault and battery be appropriate for consistency with legal definitions (i.e., verbal assault and physical battery)?
The question was raised about whether the terminology restrained from acting with their “free will” or on their own behalf would help simplify any of the language.

Questioned is the role of the Academic Senate and governance regarding forms of harassment and sexual harassment. If both parties are amenable, could the conflict be handled informally, by department chairs? The other question, concerns policy related to faculty violations of the faculty code of conduct, shouldn’t the formal adjudication of such violations go through the Academic Senate?

The Presidential Policy on Sexual Violence and Sexual Harassment needs to be viewed as a significant carve-out of Senate policy, especially as it relates to faculty members. Should administration need to become involved, the violation would be transferred to the administration? The revised policy gives great power to the Title IX officer, and not much to others (i.e., Deans and Department Chairs) to address more common, and less serious allegations. For serious situations, consulting with the Title IX office is a good idea, however starting in a place that lists all the formal processes, and gives only slight articulation of support for informal processes could be looked upon negatively.

Thank you for the opportunity to review. If you have any questions for us, please do not hesitate to contact me at dtarn@mednet.ucla.edu or via the Committee on Library and Scholarly Communication analyst, Renee Rouzan-Kay at rrouzankay@senate.ucla.edu or ext. 62070.

cc:

Sandra Graham, Immediate Past Chair, Academic Senate
Michael Meranze, Vice-Chair/ Chair-Elect, Academic Senate
Linda Mohr, Chief Administrative Officer, Academic Senate
Renee Rouzan-Kay, Committee Analyst, Committee on Library and Scholarly Communication
Members of the Committee on Library and Scholarly Communication

UCLA MEMORANDUM

FACULTY EXECUTIVE COMMITTEE
College of Letters and Science

A265 Murphy Hall
Box 951571
Los Angeles, California 90095

To: Joseph Bristow, Chair, Academic Senate

Fr: Aaron Tornell, Chair, College Faculty Executive Committee

Date: November 20, 2018

Re: **College FEC response to Systemwide Review of Revised Presidential Policy on Sexual Violence and Sexual Harassment**

The College FEC appreciates the opportunity to comment on the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment. We reviewed the draft of the policy at our meeting on November 2, 2018. We were joined by Marian Olivas to highlight the key revisions to the document.

Members raised the following concerns about the document:

- The revised policy does not clearly define a timeline for the informal assessment.
- Although the note in II.B.1 (Definition of Prohibited Conduct) states that “this definition encompasses a broad spectrum of conduct, not all of which constitutes sexual violence,” the definitions within sexual assault – contact seemed too prescriptive. If the goal is to enumerate all possible behaviors, then the list should be more extensive than as currently drafted.
- The revisions recommend that the Alternative Resolution process be completed promptly “typically within 30 to 60 business days.” How are “business days” defined? While some units operate year-round, many do not. For the College, in particular, the summer is a period during which there is a recess and many faculty members and students are away.

As always, our membership appreciates the consultative process and welcomes the opportunity to participate in the discussion of important matters like this. You are welcome to contact me at tornell@econ.ucla.edu with questions. Mitsue Yokota, Academic Administrator, is also available to assist you and she can be reached at (310) 794-5665 or myokota@college.ucla.edu.

cc: Lucy Blackmar, Assistant Vice Provost, Undergraduate Education Initiatives
Valeria Dimas, Executive Assistant, Academic Senate
Linda Mohr, Chief Administrative Officer, Academic Senate
Marian Olivas, Senior Committee Analyst, Academic Senate



OFFICE OF THE ACADEMIC SENATE
KURT SCHNIER, CHAIR
senatechair@ucmerced.edu

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

DECEMBER 5, 2018

ROBERT MAY, CHAIR, ACADEMIC COUNCIL

RE: PROPOSED REVISED PRESIDENTIAL POLICY ON SEXUAL VIOLENCE AND SEXUAL HARASSMENT

Dear Robert:

The proposed revised *Presidential Policy on Sexual Violence and Sexual Harassment* was distributed for comment to standing committees and school executive committees of the Merced Division of the Academic Senate. The Committee on Faculty Welfare and Academic Freedom and Graduate Council endorsed the revisions. The Committees on Research, Rules and Elections, Diversity and Equity, Faculty Welfare and Academic Freedom, and Privilege and Tenure, as well as the School of Engineering Executive Committee offered comment. Their thoughts are enclosed. All other committees declined to comment.

In discussing committee comments, Divisional Council emphasized the significance of this policy and the importance of getting it right, including with respect to the details. Comments from the Committee on Rules and Elections get at some of that, identifying areas where clarification is needed, including with respect to the duty to report, and the impact on the duty to report of the venue in which prohibited conduct is reported. Likewise, the Committee on Research encourages clarification on the use of no-contact orders. Specifically, the circumstances under which they would apply (e.g. severity of charge, during investigation or at other times, etc.), and whether a no contact order would require either the complainant or the respondent faculty member to be absent from campus or in shared research spaces such as laboratories for the duration of the order.

The Committee for Diversity and Equity suggests making more specific the retaliation section and more clearly outlining, in the Discipline section of the policy, disciplinary action against individuals found guilty of sexual harassment and/or sexual violence. A related recommendation is to make automatic termination a standard disciplinary procedure. Finally, D&E felt that once a formal investigation finds a party responsible, the university consider this transgression to be academic misconduct. This final recommendation was endorsed by several members of Divisional Council.

The Committee for Privilege and Tenure encourages further dialogue and evaluation of the impact of faculty as mandatory reporters. On the one hand, P&T wants to ensure that serial harassers are not protected, a situation which mandatory reporting is intended to help address. On the other hand, the faculty's status as mandatory reporters can be disruptive to relationships with students, and may unintentionally have the effect of taking away from students control of the decision to report, including when. This is especially important for victims of assault, where placing them in control is an important part of recovery.

The School of Engineering Executive Committee suggested that future iterations of the policy consider the situations of specific populations who are at particular risk of harassment or violence (or of being accused of such), and whose personal situations may actually be made worse by the implementation of this policy without additional consideration of personal circumstances. Such populations include foreign nationals, undocumented students, student athletes, and work study students.

More generally, Divisional Council noted that the policy should protect any member of the campus community but it reads as being very student centric.

Divisional Council recognizes the considerable time and effort that has gone into strengthening the policy thus far. It hopes these comments are helpful, and thanks you for the opportunity to opine.

Sincerely,



Kurt Schnier, Chair
Divisional Council

CC: Divisional Council
Hilary Baxter, Executive Director, Systemwide Academic Senate
Laura Martin, Executive Director, Merced Senate Office

Encl (9)

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ACADEMIC SENATE, MERCED DIVISION
COMMITTEE ON RESEARCH
MICHAEL SCHEIBNER, CHAIR
mscheibner@ucmerced.edu

UNIVERSITY OF CALIFORNIA, MERCED
5200 NORTH LAKE ROAD
MERCED, CA 95343
(209) 228-4369

November 20, 2018

To: Kurt Schnier, Chair, Division Council

From: Michael Scheibner, Chair, Committee on Research (CoR)

A handwritten signature in blue ink, reading "Michael Scheibner", is placed to the right of the "From:" line.

Re: Revised Presidential Policy on Sexual Violence and Sexual Harassment

At its October 24, 2018 meeting, CoR reviewed the revised presidential policy on sexual violence and sexual harassment. We view the policy favorably overall. However, we believe the policy, or (given that the policy itself seems intended to be general) the related documents specifically dealing with faculty disciplinary procedures, would benefit from clarification regarding the use of no contact orders. Specifically, under what circumstances would these apply (eg. severity of charge, during investigation or at other times, etc.), and would a no contact order require either the complainant or the respondent faculty member not to be present on campus or in shared research spaces such as laboratories for the duration of the order?

We appreciate the opportunity to provide comments.

cc: Senate Office

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ACADEMIC SENATE, MERCED DIVISION
COMMITTEE ON RULES AND ELECTIONS (CRE)
MERCED, CA 95343

UNIVERSITY OF CALIFORNIA, MERCED
5200 NORTH LAKE ROAD
(209) 228-7930

October 16, 2018

To: Senate Chair Schnier

From: CRE Chair Viney

Re: [Proposed revised Presidential Policy on Sexual Violence and Sexual Harassment](#) (“SVSH Policy”)

At its October 8, 2018 meeting, the Committee on Rules and Elections discussed the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment (“SVSH Policy”). The committee offers the following comments and recommendations for consideration.

Policy	CRE Comment/Recommendation
<p><i>Page 8</i></p> <p>7. “Responsible Employee: Any University employee who is not a Confidential Resource and who receives, in the course of employment, information that a student (undergraduate, graduate, or professional) has suffered sexual violence, sexual harassment or other prohibited behavior <u>may have experienced Prohibited Conduct</u> shall promptly notify the Title IX Officer or designee. This includes Resident Assistants, Graduate Teaching Assistants <u>resident assistants, graduate teaching assistants</u>, and all other student employees, when disclosures are made to any of them in their capacities as employees.”</p> <p><u>The above notwithstanding, Responsible Employees are not required to report to the Title IX Officer possible Prohibited Conduct they become aware of while attending a public awareness event, such as “Take Back the Night” (see FAQ #9) or disclosed by an individual when participating in human subjects research that has either been approved by an Institutional Review Board (IRB) or</u></p>	<p>If a faculty member finds out that a staff member or another faculty member is/was a victim of sexual harassment; does this not require notification? Does this apply only to students? Additional clarification should be made in the policy.</p> <p>If the employees become aware of possible prohibited conduct through discussion with a friend, or while in an off-campus social setting (e.g. coffee shop, bar); would said conduct be exempt from notification because it was not “in the course of employment”?</p>

<p><u>certified as exempt from IRB review under one or more of the categories in 45 CFR 46.101(b) (see FAQ #10).”</u></p>	
<p><i>Page 10</i> Protection of Complainants, Respondents, and Witnesses 1. Immunity Amnesty: [...] UC encourages the reporting of Prohibited Conduct and therefore generally does will not hold Complainants and/or witnesses accountable for alcohol or drug-related student violations that may have occurred at <u>or near</u> the time of the Prohibited Conduct, <u>unless – as stated above – the University determines the violation was egregious.</u></p>	<p>It is not clear what is meant by “will not hold Complainants and/or witnesses <i>accountable</i> for alcohol or drug-related <i>student</i> violations”. Does this mean that the violation will not be reported to law enforcement and why does it apply only to student violations? The notion of accountability is vaguely presented here.</p> <p>We recommend clarifying the language related to accountability and a) including a description of potential interfaces with any other body of law enforcement and b) revising “student violations” to “violations” to be broader.</p>
<p><i>Page 29</i> 8.7. Does the University need to conduct a Title IX investigation if a criminal investigation is taking place? [...] The University has a duty under Title IX to resolve complaints promptly and equitably and to provide a safe and nondiscriminatory environment for all students, free from sexual harassment and, sexual violence <u>and other prohibited behavior.</u></p>	<p>Does the Title IX duty apply to all university employees or just students?</p>

Members of CRE thank you and appreciate the opportunity to opine.

Copy: CRE Members
Senate Office

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ACADEMIC SENATE, MERCED DIVISION
COMMITTEE FOR DIVERSITY AND EQUITY
CLARISSA NOBILE, CHAIR
CNOBILE@UCMERCED.EDU

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

November 16, 2018

To: Kurt Schnier, Chair, Division Council

From: Clarissa Nobile, Chair, Committee for Diversity and Equity (D&E)

Re: [Revised Presidential Policy on Sexual Violence and Sexual Harassment](#)

At its November 8 meeting, D&E reviewed the revised presidential policy on sexual violence and sexual harassment. We appreciate the newly revised policy and agree that the revisions are necessary and important.

We offer the following additional points for consideration:

- a) Various factors contribute to, and perpetuate sexual harassment, including toxic campus climates and prevailing sexism. Retaliation can be extremely damaging in academic settings, and we suggest expanding the retaliation section of the policy.
- b) We believe that disciplinary action against individuals found guilty of sexual harassment and/or sexual violence should be outlined more transparently in the "Discipline" section of the policies. In terms of individuals who engage in a constant pattern of such behavior, we suggest that automatic termination be a standard disciplinary procedure.
- c) In regard to Section V.A.8. (Discipline) of the Sexual Harassment policy, we recommend that once a formal investigation finds a party responsible, the university consider this transgression to be academic misconduct. Such a provision is critical to ensure that these types of acts do not keep occurring – especially in situations involving repeat offenders).

We appreciate the opportunity to review this revised policy.

cc: D&E Members
Senate Office

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ACADEMIC SENATE, MERCED DIVISION
COMMITTEE ON FACULTY WELFARE AND ACADEMIC FREEDOM
LAURA HAMILTON, CHAIR
lhamilton2@ucmerced.edu

UNIVERSITY OF CALIFORNIA, MERCED
5200 NORTH LAKE ROAD
MERCED, CA 95343
(209) 228-4369

November 15, 2018

To: Kurt Schnier, Chair, Division Council

From: Laura Hamilton, Chair, Committee on Faculty Welfare and Academic Freedom (FWAF)

Re: Revised Presidential Policy on Sexual Violence and Sexual Harassment

FWAF discussed, via email, the Revised Presidential Policy on Sexual Violence and Sexual Harassment. We endorse the revised policy and appreciate the opportunity to opine.

cc: Senate office

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OFFICE OF THE ACADEMIC SENATE
ROBERT HILLMAN, CHAIR, PRIVILEGE & TENURE
rwhillman@ucdavis.edu

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

NOVEMBER 20, 2018

TO: KURT SCHNIER, CHAIR, ACADEMIC SENATE

FROM: ROBERT HILLMAN, CHAIR, PRIVILEGE AND TENURE COMMITTEE

RE: PROPOSED REVISED PRESIDENTIAL SVSH POLICY

The Privilege and Tenure Committee discussed by email the proposed revisions to the *Presidential Policy on Sexual Harassment and Sexual Violence*. In general, members concluded that the revisions are reasonable, noting that they reflect over 500 comments from faculty, staff, and students from across the system and iterative consultation with Title IX officers and other relevant entities.

Members do, however, wish to raise for further discussion the issue of faculty as mandatory reporters. On the one hand, P&T wants to ensure that serial harassers are not protected, a situation which mandatory reporting is intended to help address. On the other hand, the faculty's status as mandatory reporters can be disruptive to relationships with students, and may unintentionally have the effect of taking away from students control of the decision to report, including when. This is especially important for victims of assault, where placing them in control is an important part of recovery.

In sum, P&T supports the proposed revisions to current policy, but encourages further dialogue and evaluation of the impact of faculty as mandatory reporters.

CC: Privilege and Tenure Committee
Senate Office

Encl (3)



SCHOOL OF ENGINEERING

University of California, Merced
5200 N. Lake Road | Merced, CA 95343
PHONE: 209-228-4411
FAX: 209-228-4047

To: Kurt Schnier, Chair, UC-Merced Academic Senate

From: Catherine Keske, Chair, School of Engineering (SOE) Executive Committee

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

The School of Engineering Executive Committee and Faculty have reviewed this most recent iteration.

We have no additional comments to add to this version, other than we encourage the University to continue to be proactive with improving its policies against sexual harassment and violence. We note that there are vulnerable populations who are particularly at risk for harassment or violence (or for being accused of such acts), and whose situations may actually be made worse by the implementation of these policies, without additional consideration of personal circumstances:

- Foreign nationals
- Undocumented students
- Student athletes
- Work study students

Hence, we ask that the University consider these specific situations in future iterations of the policy.



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

DYLAN RODRÍGUEZ
PROFESSOR OF MEDIA & CULTURAL STUDIES
RIVERSIDE, CA 92521-0217
TEL: (951) 827-6193
EMAIL: DYLAN.RODRIGUEZ@UCR.EDU

November 28, 2018

Robert May, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

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

Dear Robert,

The Executive Council of the Riverside Division discussed the Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment (SVSH) at its most recent meeting on November 19, 2018. Executive Council engaged in significant discussion regarding the proposed revisions. Main points from the attached response memos were reiterated by the respective standing committee chairs. Some Executive Council members expressed concerns that the specialized language of the policy, as well as its references to myriad other policies increased the complexity and overall difficulty of the review process. Other members commented that the revisions provided additional guidelines for faculty. There was further conversation regarding whether and how campuses are expected to apply this policy to visiting scholars and students.

The attached consultative memos reflect other issues shared by colleagues in Executive Council, including the specific concern that the proposed policy allows the Title IX officer to initiate an investigation in the absence of a specific complainant. Another important area of concern is in regard to the training, principles, and protocols surrounding the proposed policy's provision for "alternative resolution," particularly in relation to the potential for complainants to be subjected to (unintentional) pressure to participate in such a process. A final concern that surfaced repeatedly in the Division's consultation revolved around the matter of administrative transparency on campus SVSH investigations and outcomes; there was broad agreement with the notion that data and other information on such investigations should be made available to the campus communities on a regular (annual) basis.

I have included the full set of committee consultations, and can assure you that our UCR Senate colleagues have paid careful attention to this vital issue.

peace

A handwritten signature in dark ink, appearing to read "Dylan Rodríguez", is written over the printed name.

Dylan Rodríguez
Professor of Media & Cultural Studies and Chair of the Riverside Division

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



COMMITTEE ON ACADEMIC PERSONNEL

October 15, 2018

To: Dylan Rodriguez
Riverside Division Academic Senate

From: Rajiv Gupta, Chair
Committee on Academic Personnel

A handwritten signature in blue ink, appearing to read "Rajiv Gupta", is written over the printed name and title.

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


The Committee on Academic Personnel considered the revised Presidential Policy on Sexual Violence and Sexual Harassment and did not find any issues related to its charge. However, a member wished to voice concern that the revised language allowing a Title IX Officer the discretion to launch an investigation without a specific complainant may give them too much leeway.

5.b.v. Initiation of Investigation by University. The Title IX Officer may choose to initiate and conduct a Formal Investigation despite the lack of a Complainant when there is, for example:.....



November 9, 2018

To: Dylan Rodríguez, Chair
Riverside Division

From: Paul Lyons, Chair 
Committee on Educational Policy

Re: Revised Presidential Policy on Sexual Violence and Sexual Harassment

The Committee on Educational Policy (CEP) reviewed the revised Presidential Policy on Sexual Violence and Sexual Harassment at their November 9, 2018 meeting and did not have any concerns relating to their charge of undergraduate education.

The Committee does recommend that the second paragraph on page 44 of the document be updated so that consistent, inclusive language is used throughout the paragraph. For example, discrimination is listed in the first paragraph as being based on “sex, gender, gender identify, gender expression, sex or gender stereotyping, or sexual orientation” but later on in the paragraph discrimination is mentioned based on “sex” alone.

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

RIVERSIDE, CALIFORNIA 92521-0132

October 19, 2018

TO: Dylan Rodriguez, Chair
Academic Senate

FROM: Lucille Chia, Acting Chair
CHASS Executive Committee

RE: Proposed Revised Policy: Proposed Revised Presidential Policy on Sexual Violence and Sexual Harrassment

The CHASS Executive Committee discussed the Proposed Revised Presidential Policy on Sexual Violence and Sexual Harrassment at the regular meeting on October 17, 2018. Overall, the committee agreed with the revised policy, but noted that there should be more training and it should be varied. For instance, ensure there are different versions of the material and include different formats such as video or in-person training. Otherwise, there were no objections and the committee approved the revised policy.

Lucille Chia, Acting Chair
CHASS Executive Committee



October 30, 2018

To: Dylan Rodriguez, Chair
Riverside Division

From: Nicole zur Nieden, Chair
Committee on International Education


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

The Committee on International Education reviewed the proposed revisions to the policy on sexual violence and sexual harassment. The committee discussed the fact that different cultures may have different norms and thus feels that the policy needs to be implemented in a way that encompasses the language and cultural barrier for international students.

UC RIVERSIDE UNIVERSITY OF CALIFORNIA **Academic Senate**
COMMITTEE ON FACULTY WELFARE

October 22, 2018

To: Dylan Rodriguez
Riverside Division Academic Senate

From: Daniel Jeske, Chair 
Committee on Faculty Welfare

Re: FWC review of Proposed Revision of Policy on SVSH

FWC met on 10/16/2018 to review the "Proposed Revisions to Presidential Policy on Sexual Violence and Sexual Harassment." FWC is mostly supportive of the changes, though would like to make the following comments:

Firstly, there was one point that caused some concern, which is item v on p.17 of the document that is headed as "Initiation of Investigation by University." FWC was paused by the statement, "The Title IX Officer may choose to initiate and conduct a Formal Investigation despite the lack of a Complainant when there is, for example:..." The three bullets that follow give examples of when this might occur, but the text in the document is deficient on detail that explains where the bar is for probable cause to launch such an investigation.

FWC wonders if the intent of the statement is to address cases where there is one or more Complainants, but they wish to remain anonymous? If this is the intent, then perhaps the statement should be reworded as "The Title IX Officer may choose to initiate and conduct a Formal Investigation despite the lack of a Complainant when anonymous tips suggest, for example:...."

Secondly, FWC requests some assurance that Title IX Coordinators, who would be responsible for guiding the alternative resolution process, are well trained in understanding subtle forms of coercion, so that they will be less likely to engage in any or to be a party to any such coercion.

Thirdly, in some cases bulleted items in the document are connected by the word 'or,' and in other cases they are not. A confusing case occurs at the top of p.4 of the document where only a single 'or' is used. We recommend the document be proof read to ensure consistent and intended use of the word 'or' in these lists.

Finally, FWC suggests it might be informative for the campus to be presented with periodic statistical information on the frequency of SVSH investigations, how the investigations were resolved relative to alternative resolution versus formal investigation, and the time taken to achieve the resolution.



GRADUATE COUNCIL

October 23, 2018

TO: Dylan Rodriguez, Chair
Riverside Division

FR: Jason Stajich, Chair
Graduate Council

A handwritten signature in black ink, appearing to read "Jason Stajich".

**RE: [Systemwide Review] Proposed Revised Policy: Proposed Revised
Presidential Policy on Sexual Violence and Sexual Harassment**

The Graduate Council reviewed and discussed the proposed revised Presidential Policy on Sexual Violence and Sexual Harassment at their October 18, 2018 meeting. It was unclear to the Council what reporting responsibilities non-employees have, if any. This should be made clear in the revised policy. Other than this clarification, the Council was supportive of the revisions being proposed.

900 University Ave
Riverside, Ca 92521
Tel 951.827.2710
Fax 951.827.3942
margaret.nash@ucr.edu
Website gsoe.ucr.edu

TO: Dylan Rodriguez, Chair
UCR Academic Senate

FROM: Margaret A. Nash, Chair
GSOE Executive Committee

DATE: October 3, 2018

SUBJ: UC Policy on Sexual Violence and Sexual Harassment

The Executive Committee of the GSOE met yesterday and discussed the UC Policy on Sexual Violence and Sexual Harassment. We appreciate the thought and effort that went into revising the UC's Policy on Sexual Violence and Sexual Harassment. We believe the revisions are excellent.

We do have two areas of concern:

1) The informal Alternative Resolution process – While we agree that it is important to have such a process, we have concern about what safeguards will be put in place to ensure that the Complainant is not in any way coerced to go this route. Given that many incidences of sexual harassment involve relationships where there is a large power differential, the very same forces that might inhibit someone from filing a complaint may also impact a person's agreement to an informal Alternative Resolution.

We encourage UCOP to ensure that Title IX Coordinators, who would be responsible for guiding the Alternative Resolution process, are well trained in understanding subtle forms of coercion, so that they will be less likely to engage in any or to be a party to any such coercion.

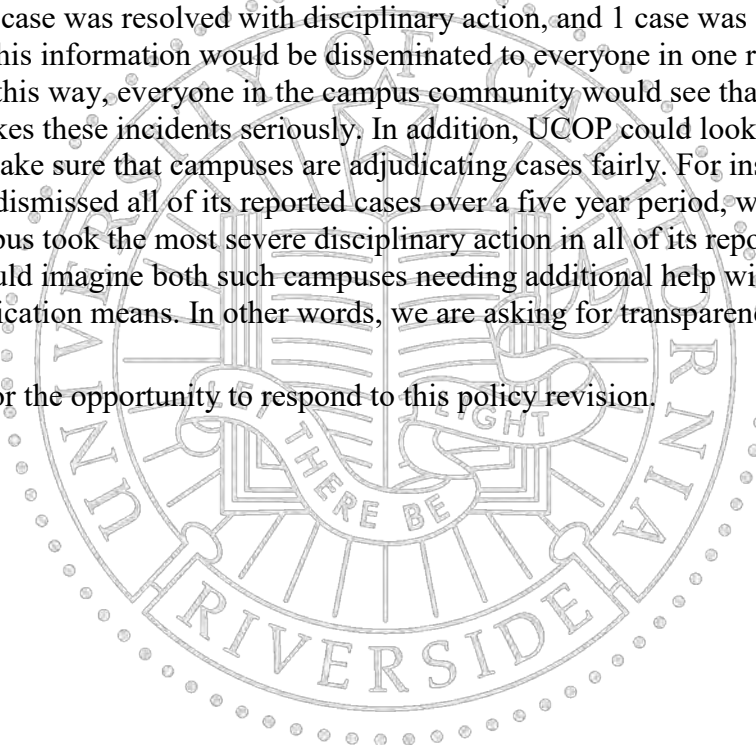
We also would like to see regular and transparent reporting of how many reported cases end up being resolved through the informal alternative process. If a campus resolves virtually all cases this way, or, on the other extreme, if a campus resolves virtually no cases this way, this could indicate a problem. This data needs to be available and to be analyzed by someone apart from any given campus' Title IX office.

2) We understand that it is very difficult for someone who has experienced sexual violence or sexual harassment to come forward. We know that only a small

percentage of incidences of violence or harassment are ever brought to the attention of authorities (police or campus administration). Given that, we would like to see a policy that addresses this issue. One of many reasons that victims don't come forward is because of a belief that nothing will happen. This belief is borne out by statistics as well as by a national culture in which people who engage in these behaviors continue to be in prominent and powerful positions.

Therefore, we urge the UC to add provisions in this policy for a system of reporting outcomes that will make clear that there are consequences for sexual violence and harassment. This should in no way be about naming anyone, either Complainant or Respondent, but should be about reporting the number of annual incidents and their dispositions. For instance, an annual report might say there were 5 cases of sexual harassment reported, of which 3 were resolved in mediation, 1 case was resolved with disciplinary action, and 1 case was dismissed. This information would be disseminated to everyone in one report annually. In this way, everyone in the campus community would see that the university takes these incidents seriously. In addition, UCOP could look for patterns to make sure that campuses are adjudicating cases fairly. For instance, if one campus dismissed all of its reported cases over a five year period, while another campus took the most severe disciplinary action in all of its reported cases, we could imagine both such campuses needing additional help with what proper adjudication means. In other words, we are asking for transparency.

Thank you for the opportunity to respond to this policy revision.

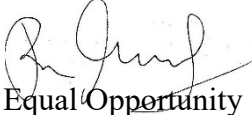




COMMITTEE ON DIVERSITY & EQUAL OPPORTUNITY

November 26, 2018

To: Dylan Rodriguez
Riverside Division Academic Senate

From: Boris Maciejovsky, Chair 
Committee on Diversity & Equal Opportunity

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

Faculty are already mandatory reporters, but the policy broadens the scope of what is to be reported. The policy protects the university, but the process makes it harder for students to get advice regarding minor behavior that should not rise to the level of needing legal involvement to correct. Also, the proposed changes might be counterproductive when helping the community, as the overlegalization discourages students to speak up. Overall, CoDEO is not concerned with the legal aspects that are required by law to be incorporated into the policy, but rather that the burden of action being placed on faculty without the proper knowledge of appropriate campus resources in which to direct students.

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

(805) 893-4511
<http://www.senate.ucsb.edu>
Henning Bohn, Chair

December 5, 2018

To: Robert May, Chair
Academic Council

From: Henning Bohn, Chair
Santa Barbara Division

A handwritten signature in cursive script, reading "Henning Bohn".

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

The Santa Barbara Division distributed the proposed revisions broadly and invited optional comments from almost all local councils and committees. The Committee on Privilege and Tenure and the Charges Advisory Committee were explicitly asked to respond.

The **Committee on Privilege and Tenure (P&T)** had no major concerns and welcomed the revisions, but offered several suggestions, including comments that relate to the proposed revisions and those that concern sections of the SVSH policy for which revisions have not been proposed.

1. Section III.E.3 ("Privacy") and Section V.5.b.ii. ("Disclosure of Information") propose revisions to language relating to the privacy interest of individuals involved in a formal investigation. Concern was raised that the removal of references to "confidentiality" from these sections, which appears to reflect a shift of emphasis from confidentiality to privacy, could potentially discourage witnesses from coming forward or sharing pertinent information.

2. Section II.B.5.b.i. reads:

Timeframe. The investigation shall be completed promptly, typically within 60 to 90 business days of its initiation, unless extended by the date the Title IX Officer for good cause followed by written notice to notify the Complainant and Respondent in writing of the charges to be investigated. However, the Title IX Officer may extend the process beyond the 90th day for good cause... The Title IX Officer will consider, approve, and communicate extensions in accordance with written guidelines from the Systemwide Title IX Office...

Concern was raised that the policy itself includes no information about what constitutes "good cause." The Committee notes that the CA Auditors' Report (p. 4) includes the following recommendation:

To ensure timely completion of investigations, the Office of the President should modify university policy to take effect July 2019 to make clear what good cause for a time extension would be, set a standard extension period, and require that a campus request and receive a time extension before the initial 60 business-day period expires.

“University policy” here refers to UC’s SVSH policy (see p.1 of the CA Auditor’s report). As such, the recommendation appears to be that the policy itself should make clear what constitutes good cause.

3. Section II.B.7 includes the following qualification regarding mandated reporting by Responsible Employees:

The above notwithstanding, Responsible Employees are not required to report to the Title IX Officer possible Prohibited Conduct they become aware of while attending a public awareness event, such as “Take Back the Night” (see FAQ #9) or disclosed by an individual when participating in human subjects research that has either been approved by an Institutional Review Board (IRB) or certified as exempt from IRB review under one or more of the categories in 45 CFR 46.101(b) (see FAQ #10).

While P&T endorses the addition of these exceptions, concern was raised that the policy does not address whether instructors (faculty or graduate students) have an obligation to report possible Prohibited Conduct indicated via creative writing assignments, e.g., in a piece submitted for a creative writing assignment in which a student is asked to write about an experience central to his/her personal development.

4. Section II.B.3.a.i. and ii refers to “a reasonable expectation of privacy” in describing prohibited behavior under “Invasions of Sexual Policy”. The suggestion was offered that it might be useful to include examples of public places where persons have a reasonable expectation of privacy, in particular bathrooms and changing rooms.

5. Section 2.B.2.a.i. describes prohibited behavior under “Sexual Harassment” involving “Quid Pro Quo”. Concern was raised that so specified the category as specified may be too narrow since it does not clearly cover potential quid pro quo situations involving employment references, e.g. when a person’s submission to sexual advance is the explicit or implicit basis for providing a professional reference. To address this concern, it was suggested that the phrase “academic evaluation” could be expanded to read “academic or professional evaluation.” P&T was also unclear about the intended scope of the phrase “affecting participation in University program, activity or service,” i.e., is that phrase intended to modify only the final clause (“other decisions”) or prior clauses as well (“employment decisions, academic evaluation, grades or advancement, or other decisions...”)?

The **Council on Planning and Budget (CPB)** found the proposed revisions appropriate. CPB had no objections to the policy revisions, although it noted the following points.

CPB continued to express some concerns that the policy appears to prioritize mediation as the first recommended course of action (aside from cases of sexual violence) under the section on Alternative Resolution (section V.A.5.a.). In most cases involving any sort of power differential, the idea of “mediation” puts a significant pressure and stress on the party at lower professional status, which may result in a retraction of the complaint because the reporting party may feel intimidated or does not want to face possible professional repercussions. As written, the policy implies that a party can in principle refuse

“mediation” and request an alternative solution, but this is not explicit when “mediation” is recommended as part of an alternate resolution following a preliminary review. Especially if mediation is first on the list of possible types of alternate resolution that can be initiated by the Title IX Officer, it may be expected that this option would be used more frequently to facilitate a speedy resolution. Therefore, CPB suggested that mediation be moved further down the list of options:

- separating the parties;
- providing for safety;
- referring the parties to counseling;
- mediation (except in cases of sexual violence);
- referral for disciplinary action;
- a settlement agreement;
- conducting targeted preventive educational and training programs; and
- conducting a follow-up review to ensure that the resolution has been implemented effectively

In the next paragraph of this section, CPB suggested adding the following sentence: “If mediation is chosen, the Title IX Officer should pay particular attention to power dynamics between parties.”

CPB also suggested the following edits for the next paragraph: “Participation in Alternative Resolution is voluntary and will occur only if both the Complainant and the Respondent agree to participate. If any of the Alternative Resolution options are selected, the Title IX Officer will inform both parties in writing that: the Title IX Officer has initiated the process, the process is voluntary and will terminate upon either party’s request, termination may result in Formal Investigation (see Section V.A.4.b), both the Complainant and Respondent may be accompanied by an advisor throughout the process, and the Title IX Officer will notify both parties regarding the outcome of the process, at its conclusion.”

CPB also questioned what is meant by a “reasonable person” as used throughout the document, notably if this is a legal definition. CPB recommended that the document offer a definition or at least a reference as to how this term is defined.

The **College of Engineering Faculty Executive Committee (CoE FEC)** similarly recommended clarification regarding the definition of “reasonable person” as used in the policy. While it appreciated the effort to revise the policy, the CoE FEC felt there needed to be more clarity regarding students who are also employed by the University. Some students have expressed concern regarding their responsibility as a mandatory reporter and their concurrent role as student or friend.

The **Committee on Diversity & Equity (CDE)** applauded the proposed changes, which offer greater clarity and increased inclusivity. Specifically, CDE highlighted the following:

- CDE supported the increased authority and role of the Title IX Officer, which we believe will enhance the campus’ compliance efforts in relation to Title IX;
- CDE suggested implementing a 90-day timeframe to minimize confusion and appropriately manage expectations of all involved investigative parties;
- CDE also suggested that the UC Non-Discrimination Policy be revised accordingly to incorporate the level of specificity found in the UC SVSH Policy for all other protected categories.

Graduate Council (GC) found four areas of concern. First, it is not clear in what capacity graduate students must act as mandated reporters. There are concerns from graduate students that mandated reporting is not good for survivors and will lead to under-reporting if students do not feel safe speaking confidentially to graduate students. At a minimum, the language in II-7: Responsible Employee should be much more

specific regarding when graduate students are “acting in their capacities as employees.” Secondly, GC expressed concern that the Title IX Officer can proceed with an investigation even if a complainant requests that no Formal Investigation take place. Third, GC recommended that complainants receive full and complete disclosure of final resolution outcomes. Finally, some members of Graduate Council raised the concern that there is a lack of specificity regarding when one must notify Title IX as a Responsible Employee, and if information received second or third hand must be reported.

The **Bren School Faculty Executive Committee** expressed concern about how “location” is defined in the policy. The policy refers to locations where the policy applies as “any University of California campus, the Lawrence Berkeley National Laboratory, Medical Centers, the Office of the President, and Agriculture and Natural Resources.” In addition to these locations, the UC has field stations like the Moorea Coral Reef LTER that do not fit under any of these categories. Also, many UC Natural Reserves, e.g., Santa Cruz Island, have a facility on property owned by another entity. We recommend consideration of expanding location to encompass properties where UC research occurs such as LTER sites and UC Natural Reserves. The policy on sexual violence and sexual harassment does include “and to all University programs and activities,” which may be sufficiently broad to encompass LTER sites and UC Natural Reserves.

Members of the **College of Creative Studies Faculty Executive Committee** were broadly supportive of the proposed policy revisions but found the policy overall to be difficult to read and interpret. It was suggested that, perhaps in the FAQ, some simpler versions could be presented. For example, a very short statement suitable for inclusion in class syllabi would be useful. It was noted that the reporting requirements for approved human subjects research would become very complex and that this might require some further guidelines.

The **Undergraduate Council (UgC)** unanimously supported the proposed policy revisions and offered the following minor comments: A word seems to be missing in the top line of p. 9: “as those terms are by this policy.” The language on p. 27 states that ““Nudity” means the absence of an opaque covering which covers...any portion of the breasts at or below the areola [thereof of any female person].” We understand the intent behind striking out the gender-specific limitation, but it does seem to be potentially problematic to define actionable nudity such that it includes the male torso.

The **Committee on Courses and General Education (CCGE)** voiced no objections to the policy. The Committee suggested that the University provide advice to faculty about how to address the policy as an issue of discussion in class. Further, CCGE suggested the development of a brief readable statement for faculty to place on their course websites, and to read aloud at the first class session, if so desired.

The **Committee on Rules, Jurisdiction and Elections** questioned whether the “body part” referenced on p. 3, II.b.1.b. must always be an “intimate” one. The Committee also opined that the text on p. 17, V.A.5.b.iv. seems rather vague. Members asked what constitutes an issue “of academic merit or academic freedom,” and what might be an “appropriate academic officer.” The Committee also noted that the following link is inoperable: <http://complianceresponse.berkeley.edu/ocrreport.shtml>.

The **Charges Advisory Committee** and the **Committee on Admissions, Enrollment, and Relations with Schools** endorsed the proposed revisions and offered no further comments.

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1156 HIGH STREET
SANTA CRUZ, CALIFORNIA 95064

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

November 30, 2018

Robert May, Chair
Academic Council

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

Dear Chair May,

The Santa Cruz division of the Academic Senate has completed its review of the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment (SVSH) requested by Suzanne Taylor, Interim Systemwide Title IX Coordinator, on September 17, 2018. The Committees on Affirmative Action and Diversity (CAAD), Academic Freedom (CAF), Faculty Welfare (CFW), Privilege and Tenure (P&T), Rules, Jurisdiction, and Elections (RJ&E), and the Graduate Council (GC) have responded. The comments ranged from the thematic to the specific and were focused primarily on Sections II – Definitions, III – Policy Text, and V – Procedures. I highlight here the issues that garnered responses from multiple committees and some of the more general comments that were broad in scope.

Section II – Definitions

Section II – Definitions was one of the sections of the proposed policy addressed by multiple committees. In subsection §(B)(1)(b), P&T found the language was too specific in its listing of objectionable contact and, as a result, non-specific as to what one may find objectionable or what may be considered objectively objectionable. If the policy is committed to offering definitions, P&T suggests, “the mouth” of an individual might also be listed as an “intimate body part,” which would provide a more inclusive definition of prohibited contact such that prohibited contact would be any unconsented-to contact involving any intimate body parts. With regard to §(B)(1)(c)(i) Relationship Violence, RJ&E wondered if the absence of “a pattern of abusive behavior,” as listed in both bulleted points of that subsection, would remove otherwise violent conduct from the category of relationship violence. Also in this subsection, GC commented that the definition of “retaliation” provided in §(B)(3)(e) lacks precision, noting that “it is not clear whether retaliation is to be interpreted broadly enough to include conduct of individuals other than the Respondent and for adverse action against individuals other than the Complainant.”

Section II, §(C)(7) - Responsible Employee received comments from CAF, GC, P&T, and RJ&E. CAF and RJ&E were concerned with the broad scope of those included in the definition of “responsible employee.” Specifically, they suggest that such broad scope may have a detrimental effect on victims of SVSH by “limiting the ability of those who may be closest to them to maintain confidentiality with the victim” (CAF). Under the policy, only Confidential Resources are not required to report, so speaking to almost

anyone else “could trigger a report they may not be ready to make or sure about making” (CAF). GC was similarly concerned about the implications of categorizing resident and teaching assistants as responsible employees as many graduate students feel that being a Responsible Employee can run contrary to that trust. In addition, the requirement that student employees report “in their capacities as employees” is not backed by any guidance as to the situational context within which this would arise. As P&T writes, “the policy requires student employees to report “in their capacities as employees,” though no criteria are provided for delineating the intended boundary. In fact, the phrase “in the course of employment,” central to the definition of “Responsible Employee,” is similarly inexplicit (P&T). Faculty would tend to interpret that as ‘all the time,’ but that’s not necessarily what it means” (P&T). Relatedly, CAAD urged that there should be better effort to include student voices in policies that impact them.

Section III – Policy Text

Two committees, CAAD and CAF, commented on Section III. CAAD commented on §(B)(3), observing that the discussion of “locations” introduces a number of tensions and seeming contradictions by first referring to “properties owned or managed by UC” and then extending the policy to cover some conduct that “occurs off University property.” CAAD recommends that the original definition of “location” on page 8 account for the exceptions to properties owned/managed by UC.

CAF was particularly pleased to see that the discussion of Free Speech and Academic Freedom in Section III(F) was retained in the current draft.

Section V – Procedures

Section V, describing the procedures for adjudicating SVSH claims, inspired a lot of commentary from the reviewing committees. In particular, the proposed amended timeframe for formal investigations raised a range of concerns. CFW and GC were not convinced of the benefits of increasing the timeframe from 60 to 90 days. CFW pointed out that longer investigations may result in negative impacts to campus safety and public perception, and GC suggested that the better approach might be to require additional steps be taken to ensure completion in 60 days, rather than adding an additional month to the timeline. In addition, GC points out that while §(A)(8)(a) Discipline outlines the disciplinary process for those in the campus community “found to have engaged in Prohibited Conduct,” it is strangely silent on how student employees will be dealt with. GC thus argues that “more clarification is needed on how discipline is to proceed against a student employee as no other reference or guidance is provided in other sections of the policy.” Members noted that an entire clause was removed from the policy, language bearing directly on the issue of student employee accountability:

When a Respondent is both a student and an employee (such as a Teaching Assistant or Graduate Student Researcher), the Respondent may be subject to both the sanctions applicable to students and to employees.

GC found this redaction especially troublesome as there is no other extant reference in the policy relating to the discipline of student employees. Where in many cases the policy has become overly specific, here the policy removes and thus omits an entire sector of the campus community.

The last comment on this section comes from P&T. With regard to § (A)(5)(c), the committee comments that this subsection “imposes a responsibility on P&T to decide whether a grievance that comes before it involves an allegation of a SVSH violation, and a modification of its process in such cases. This would

seem to require another modification to Senate Bylaw 335. In addition, some effort should be made to make it clear to potential grievants that P&T has this reporting responsibility.”

General

Finally, there were comments from several committees that touched upon more general issues. First of these was the definition of Complainant. P&T notes that the use of the term occurs in advance of its definition, and when it is defined, “it is defined in contradiction to its natural meaning.” Members observe that it is defined as “victim” might be, whether the “victim” complains or not. This reveals another instance where clarity is needed: there is no definition for the person who reports the incident, who would naturally be the complainant. In response to this lacuna, P&T suggests that “at least three terms are needed: one for the reporter of the behavior, one for the alleged victim, and one for the respondent (the alleged perpetrator).”

On the subject of clarity, CAF suggested that more information needs to be provided on how the appeals process will work as they noted only passing references in Section VI – Related Information, and Section VIII – Revision History.

Finally, RJ&E proffered that “listing links to un-reviewed web pages, such as the adjudication frameworks listed in Appendix II, is not sufficient when setting policy. Those frameworks should be included as appendices to this policy or assigned official policy numbers for review.”

On behalf of the Santa Cruz Division, I thank you for the opportunity to comment on this significant proposed policy. I would also like to reiterate that the individual committee responses are far too nuanced to be included in their entirety here and are therefore enclosed.

Sincerely,



Kimberly Lau, Chair
Academic Senate, Santa Cruz Division

Cc: CAAD Chair Abrams
CAF Chair Hershatter
CFW Chair McGuire
GC Chair Dent
P&T Chair Hankamer
RJ&E Chair Nielsen



OFFICE OF THE ACADEMIC SENATE
9500 GILMAN DRIVE
LA JOLLA, CALIFORNIA 92093-0002
TELEPHONE: (858) 534-3640
FAX: (858) 534-4528

December 5, 2018

SUZANNE TAYLOR
UC Interim Systemwide Title IX Coordinator

SUBJECT: Proposed Revisions to UC Presidential Policy on Sexual Violence & Sexual Harassment

Dear UC Interim Systemwide Title IX Coordinator Taylor:

The proposed revisions to the Presidential Policy on Sexual Violence & Sexual Harassment were circulated to standing Senate committees for review, and were discussed at the San Diego Divisional Senate Council's meeting on December 3, 2018. The San Diego Divisional Senate Council endorsed the proposed policy revisions with the qualification that mechanisms should be implemented to ensure fair, transparent, and consistent consequences for policy violations across all campuses.

Members expressed concern that different campuses have handled violations of conduct in varying ways and suggested that the Office of the President develop a set of clear guidelines for disciplinary action to ensure systemwide consistency. Furthermore, members suggested the implementation of a system to track the outcomes of disciplinary actions systemwide to account for diversity in sanctions. Members supported the Chancellors' having discretion in determining disciplinary outcomes, but within set parameters. It was pointed out that creating a range of known sanctions would set expectations for complainants, respondents, and the public in addition to maintaining consistency, transparency, and equity.

In addition, the Committee on Privilege and Tenure had some specific suggestions regarding possible clarification to language. The suggestions are copied below:

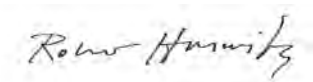
Committee members were concerned about the note at the end of section II.A. Currently the note reads "Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication." Committee members noted that the construction of the first sentence, presenting incapacitation as a state "beyond" drunkenness or intoxication may lead to the incorrect interpretation that drunkenness or intoxication are necessary conditions prior to incapacitation. The Committee noted the second sentence appears to clarify the first, but found the clarification to be insufficient. The Committee suggests that the statement could be worded more clearly as follows: "Incapacitation is a state distinct from, and more severe than, simple drunkenness or intoxication. While drinking, using

drugs, or taking medication can lead to incapacitation, a person is not necessarily incapacitated merely as a result of engaging in these actions.”

*In section II.B(1)(c)(iii) Committee members noted that it could be helpful to clarify that while the listed behaviors can occur outside of a relationship, the behaviors referenced here are being referenced explicitly within the context of relationships. The Committee suggested the statement could be clarified as follows: “Patterns of abusive behavior **within a relationship** may consist of or include...”*

Section II.B (3). Other Prohibited Behavior includes sexual intercourse with a person under the age of 18 as item (b). Committee members noted that it might be helpful to cite the relevant section of the California Penal Code.

Sincerely,

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

Robert Horwitz, Chair
Academic Senate, San Diego Division

cc: H. Baxter M. Corr R. Rodriguez

Office of the Academic Senate

500 Parnassus Ave, MUE 230
San Francisco, CA 94143-0764
Campus Box 0764
tel: 415/514-2696
academic.senate@ucsf.edu
<https://senate.ucsf.edu>

David Teitel, MD, Chair
Sharmila Majumdar, PhD, Vice Chair
Vineeta Singh, MD, Secretary
Jae Woo Lee, MD, Parliamentarian

December 10, 2018

Robert C. May, PhD
Chair, Academic Council
Systemwide Academic Senate
University of California Office of the President
1111 Franklin St., 12th Floor
Oakland, CA 94607-5200

Re: SVSH Proposed Revisions

Dear Robert,

The San Francisco Division of the Academic Senate recently reviewed the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment ("SVSH Policy"). The revised SVSH Policy was created in response to numerous comments that UCOP received from faculty, staff, and students. In addition, the revised policy addresses issues raised by the Department of Education's Office for Civil Rights in its February 2018 resolution agreement with UC Berkeley. Finally, the revised policy also proposes changes recommended by the California State Auditor in its June 2018 report on UC's response to SVSH complaints.

The review asked the Senate Divisions to concentrate on six key revisions. UCSF's Privilege & Tenure (P&T) Committee reviewed all of these revisions. While our P&T broadly agrees with all of them, we note that under the revisions to the definitions of conduct prohibited by the policy, including sexual assault, relationship violence, and retaliation, such definitions include a note specifying that Sexual Assault Contact is aggravated when it includes duress, which may include a power imbalance.

In addition, UCSF's P&T asked for more clarification on #4:

A more detailed description of the informal process, and parties' rights in that process.

Specifically, our P&T Committee understands from the revised SVSH Policy Section V.A.5.a (Alternative Resolution) that Alternative Resolution is a separate and distinct process available in response to reports of Prohibited Conduct. It is also our understanding, as the policy is written, that Alternative Resolution is foreclosed by the initiation of a Formal Investigation. Therefore, the UCSF P&T wishes to know whether an informal process for resolution **distinct** from the Alternative Resolution can be entertained at various stages once the

Formal Investigation has been initiated, or whether an informal resolution is precluded upon the initiation of a Formal Investigation?

Thank you for the opportunity to review the revisions to this important policy. For more detail on our comments, please refer to the enclosed document from UCSF's P&T Committee. If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Teitel", with a stylized flourish at the end.

David Teitel, MD, 2017-19 Chair
UCSF Academic Senate

Encl. (1)

CC: Roland Henry, UCSF P&T Chair

November 28, 2018

David Teitel, MD
Chair
UCSF Academic Senate

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

Dear Chair Teitel,

On September 17, 2018, the University of California Office Interim Systemwide Title IX Coordinator distributed for systemwide review the Revised Presidential Policy on Sexual Violence and Sexual Harassment. The revised policy was created in response to numerous comments UCOP received from faculty, staff, and students. In addition, the revised policy addresses issues raised by the Department of Education's Office for Civil Rights in its February 2018 resolution agreement with UC Berkeley. Finally, the revised policy also proposes changes recommended by the California Statue Auditor in its June 2018 report on UC's response to SVSH complaints.

UCOP asked us to focus our attention on a number of key revisions below. We are grateful for this opportunity to provide comment which we did in the bullets below.

1. *A fuller explanation of what the policy covers, such as acts committed by and against third parties, and how the Title IX offices will evaluate reports to decide whether to initiate a resolution process*
 - We fully support the more thorough explanation of the policy's scope. In particular, we endorse the revisions under the sections 1 (Policy Summary), 2 (Definition), and 3 (Policy Text) as they provide greater clarity.
 - Under Section 3 (Policy Text) we support the expanded application of this policy which includes conduct occurring on University property, in connection with University employment or in the context of University activity, and conduct that has continuing adverse effects on or creates a hostile environment for students, employees, or third parties.
 - Under Section 3 (Policy Text) we support the revised language concerning the University's duty to balance the privacy interest of parties against other duties including to investigate and remedy Prohibited Conduct.
2. *Changes to the definitions of conduct prohibited by the policy, including sexual assault, relationship violence, and retaliation*
 - For example, revisions to the definition for Sexual Assault include a note specifying that Sexual Assault Contact is aggravated when it includes duress, which may include a power imbalance.

- We also support the new term Relationship Violence instead of Dating Violence and the expanded scope under that provision including the addition of patterns of abusive behavior as prohibited conduct.
- We support the revised definition of retaliation.
- We support the inclusion of interim, remedial, and supportive measures to the policy.

3. *Enumeration of the specific procedures UC will use to investigate and adjudicate reports*

- We support the addition of specific procedures. In particular, we support the clarification about which procedures apply to students, faculty, and employees.

4. *A more detailed description of the informal (Alternative Resolution) process, and parties' rights in that process*

- We appreciate the more specific language about the process. We note that "the Title IX Officer will oversee the Alternative Resolution process and, if other campus officials are involved in the process, maintain an appropriate level of involvement."
- We ask for clarification. We understand from the revised SVSH Policy Section V.A.5.a (Alternative Resolution) that Alternative Resolution is a separate and distinct process available in response to reports of Prohibited Conduct. "Reports of Prohibited Conduct that are not closed following the Title IX Officer's initiative assessment may be addressed through Alternative Resolution, Formal Investigation, a separate employee grievance or complaint process, or Other Inquiry." It is our understanding, as the policy is written, that Alternative Resolution is foreclosed by the initiation of a Formal Investigation. Therefore, the UCSF P&T wishes to know whether an informal process for resolution **distinct** from the Alternative Resolution can be entertained at various stages once the Formal Investigation has been initiated or whether an informal.

5. *Addition of a 30 to 60 day timeframe for Alternative Resolution, and extension of the timeframe for the Formal Investigation process from 60 days to 90 days*

- We support this addition.

6. *Provision for the Title IX officer to initiate investigations despite the absence of an identifiable, individual respondent or, alternatively, the lack of a specific complainant*

- We support this provision because it is important for the Title IX Officer to determinate what occurred, and to take prompt steps reasonably calculated to stop any substantiated conduct, prevent its recurrence, and, as appropriate, remedy its effect regardless of whether there is an identifiable respondent under the jurisdiction of this policy.

Sincerely,

A handwritten signature in black ink, appearing to read 'RH' followed by a stylized flourish.

Roland Henry, PhD
Chair, Privilege and Tenure
UCSF Academic Senate
2018-2019



Adebisi Agboola
Chair, University Committee on Privilege and Tenure
Email: agboola@math.ucsb.edu

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

December 5, 2018

**ROBERT MAY, CHAIR
ACADEMIC COUNCIL**

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

Dear Chair May:

UCPT has reviewed and discussed the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment. The committee's considerations were also informed by comments submitted by Divisional Committees on Privilege and Tenure to their respective Divisional Academic Senates which you will presumably also be receiving. We wish to raise the following concerns:

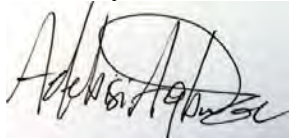
- a) In order to accommodate the rights of Complainants and Respondents to a speedy resolution of SVSH cases (and in response to a request from the Regents), the Systemwide Senate is currently in the process of preparing a major revision to its bylaws (namely SBL 336) governing the manner in which disciplinary cases are handled. The new procedures mandate drastically shortened time-frames: a hearing must be held not more than 60 days after charges are filed, and a final report must be delivered to the Chancellor not more than 30 days after a hearing is concluded. It is therefore both striking and dismaying to see that the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment lengthen the time-lines both for completing a Title IX investigation (from 60 days to 60--90 days), as well as for alternative resolution (from 40 days to 30--60 days). Furthermore, these time-frames may be extended by the Title IX Officer for 'good cause' (which is not defined).
- b) On p. 19, 8.c, it states 'If the matter results in a disciplinary proceeding, at the conclusion of that proceeding the Complainant and the Respondent will be contemporaneously informed in writing of the outcome of the disciplinary proceeding, including the final determination with respect to the alleged offense, any discipline that is imposed, and the rationale for the results'.

UCPT is extremely concerned about this because the language (especially the phrase 'the rationale for the results') suggests, for example, that the Complainant may be entitled to receive a copy of a P&T Hearing Committee's confidential report to the Chancellor,

which is not appropriate because the Complainant is not a party to the disciplinary hearing. (The parties to a disciplinary hearing are the Administration and the accused faculty member.) The language in this section should be clarified in order to remove any ambiguity on this point.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adebisi Agboola', written over a light blue background.

Adebisi Agboola
Chair, UCPT

cc: Kum-Kum Bhavnani, Academic Council Vice Chair
Hilary Baxter, Academic Senate Executive Director
UCPT members



UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
Sean Malloy, Chair
smalloy@ucmerced.edu

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

December 10, 2018

**ROBERT MAY, CHAIR
ACADEMIC COUNCIL**

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

Dear Robert,

The University Committee on Faculty Welfare (UCFW) has discussed the Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment (SVSH), and we have several comments. UCFW has repeatedly asked for guidelines and parameters for penalties to ensure that outcomes are carried out consistently both across a campus and across the system. We renew that call here as consistency in application of this policy is critical to the integrity of the process for all parties. While each case is unique in some respects and we respect the importance of some flexibility and nuance at the local level, it has been the uneven application of SVSH policy, particularly with respect to punishments, that has deservedly brought negative attention to the UC's handling of these matters in recent year. We recognize that aspects of this issue may fall outside the written scope of the policy itself, but we ask that both local and systemwide Title IX officers work closely together as this (and any future) policies are implemented to ensure both transparency and some measure of consistency in their application. Examples of this would include regular reviews by the systemwide Title IX coordinator to ensure that enforcement policies are consistent across campus as well as the publication of systemwide reports summarizing SVSH violations and penalties.

In addition to this overall point, UCFW also has the following comments on the text of the policy itself:

- Clean copy p 6, section 3.b (Other Prohibited Behavior) forbids “sexual intercourse with a person under age 18.” UCFW finds this limitation unusually narrow and asks for clarification. Surely there are acts short of intercourse that are also prohibited with a minor?
- Clean copy p 17, section iv (Academic Freedom/Merit) asks the Title IX officer to consult with “the appropriate academic officer” to determine whether Academic Freedom is impacted. UCFW requests clarification as to how that officer will be identified, whether the consultation will be public, and whether the Respondent can contest the officer or the decision.

- Clean copy p 17, section v (Initiation of Investigation by University) allows for investigation without a complainant at the unilateral discretion of the Title IX officer. While this may be necessary in cases where media attention has brought conduct to light that bears investigation, UCFW feels that greater explication of this practice is required to determine the circumstances under which such investigations may take place.
- Clean copy p 31, section e includes “putting the Respondent on investigatory leave”. We ask for clarification regarding the process for such leave, how is that decision made, and under what deadlines.

Sincerely,

Sean Malloy, UCFW Chair

Copy: UCFW
Hilary Baxter, Executive Director, Academic Senate

UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

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



SANTA BARBARA • SANTA CRUZ

UNIVERSITY COMMITTEE ON AFFIRMATIVE ACTION, DIVERSITY,
AND EQUITY (UCAADE)

Lok Siu, Chair

lok.siu@berkeley.edu

ACADEMIC SENATE

University of California

1111 Franklin Street, 12th Floor

Oakland, California 94607-5200

Dec 5, 2018

ROBERT MAY
ACADEMIC COUNCIL CHAIR

Dear Robert,

Thank you for the opportunity to review the Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment. UCAADE had a few comments on the draft (all page numbers refer to the marked-up draft):

p. 4: In the definition of Sexual Assault, consider making explicit that “sexual assault” includes that which also happens in relationships, since “relationship violence” does not specifically reference sexual assault as prohibited.

p. 7-8: The definitions of “respondent” and “complainant” come late in the definitions section when they are central to many preceding definitions. We wonder if they could be moved up to the beginning of the definitions section, perhaps before describing prohibited behavior.

p. 8: The definition for "Location" restricts it only to properties owned or managed by UC. But in another page or two, at, III.B.3 and the sentence just below that bullet, there's a reference to occasions when locations that are not UC property may be considered applicable locations for activation of the UC SVSH policy. It seems that "location" ought to be glossed to account for the exceptions.

p. 22: Clarify in section V.8., Discipline, that once a formal investigation finds a party responsible, the university considers this transgression to be serious misconduct. A stronger statement would help clarify that inappropriate behavior will not be tolerated, which is especially critical in the case of repeat offenders. If our university system is willing to define mishandling of data and text (data cooking or plagiarism) as academic misconduct, it seems that mistreating people in such a manner in an academic setting would have the same implications.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lok Siu".

Lok Siu

Chair, UCAADE

cc: Kum-Kum Bhavnani, Academic Council Vice Chair
Hilary Baxter, Academic Senate Executive Director
UCAADE Members



BOARD OF ADMISSIONS AND RELATIONS WITH SCHOOLS (BOARS)

Eddie Comeaux, Chair

eddie.comeaux@ucr.edu

Assembly of the Academic Senate

1111 Franklin Street, 12th Floor

Oakland, CA 94607-5200

Phone: (510) 987-9466

Fax: (510) 763-0309

December 7, 2018

**ROBERT MAY, CHAIR
ACADEMIC COUNCIL**

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

Dear Robert,

The Board of Admissions and Relations with Schools (BOARS) has discussed the Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment (SVSH), and we have feedback. From many perspectives, it is unclear why there are different processes for faculty, staff, and students, and as a result, confusion surrounding the policy persists. Different standards of evidence and different adjudicatory bodies add further opacity. We appreciate that the timelines have been largely aligned, but we feel that a more transparent and uniform process would benefit UC and those individuals involved in any such investigation.

We also suggest using a broader definition of “incapacitation” than the included examples of drugs and alcohol (clean copy p4).

Sincerely,

Eddie Comeaux
BOARS Chair

cc: Members of the Board of Admissions and Relations with Schools (BOARS)
Executive Director Baxter



UNIVERSITY COMMITTEE ON RESEARCH POLICY (UCORP)
Andrew Baird, Chair
Email: anbaird@ucsd.edu

University of California
Academic Senate
1111 Franklin Street, 12th Fl.
Oakland, California 94607

December 5, 2018

ROBERT MAY
CHAIR, ACADEMIC COUNCIL

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

Dear Robert,

Thank you for the opportunity to review the Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment. UCORP's comments focus on the revised section on Amnesty; Section III.E.1.

Overall members agreed with the changes but they also felt that the policy should allow for faculty to correct the errors of their employees and provide objective evaluations of the performance of the research assistants, postdocs and GSRs, without fear of a-priori amnestied complaints.

Disagreements between the research supervisors and their employees are a part of any dynamic research laboratory and these differences in opinion can occur when it comes to evaluation of job performance, promotion, termination, letters of recommendation and routine evaluation of research progress and accomplishments, including academic grades to GSRs. We are concerned that amnestied complaints may be motivated as retaliation for negative evaluations of research or job performance and that SVSH complaints could arise out of spite and retaliation. Compounded by the fact that confidentiality and privacy guarantees are limited, the process of investigation regardless of outcome can be damaging to faculty reputation and their ability to do research. Furthermore, we note that complaints can be filed at any time, even years and decades after termination, negative letter of recommendation, bad grades, etc. Finally, even if charges are ultimately found to be baseless, the retaliatory potential of SVSH complaints has significant ability to harm the capacity of faculty to objectively supervise their research teams going forward.

To this end, we propose adding a statement like the one below to the policy:

"If it is demonstrated that complaints originate in retaliation for negative evaluations of research performance and/or professional accomplishments, including lack of promotion, termination, negative letters of recommendation, or related research-related interactions

including entrapment for the purpose of coercing favorable evaluations, the complainant will not receive amnesty and may be subject to disciplinary action."

Thank you for giving us the opportunity to assess this important document.

Sincerely,

A handwritten signature in dark ink, appearing to read 'A. Baird', with a stylized, cursive script.

Andrew Baird
Chair, University Committee on Research Policy

cc: Kum-Kum Bhavnani, Academic Council Vice Chair
Hilary Baxter, Academic Senate Director
UCORP members