

MEMBERS OF THE ACADEMIC COUNCIL AND NON-COUNCIL COMMITTEE CHAIRS

Dear Committee and Divisional Chairs:

At the October Council meeting, you asked that Provost Grey's letter to Chair Croughan on sanctions for failing to comply with sexual harassment prevention training be forwarded to you together with the applicable state law. Attached as two PDF files are Provost Grey's letter, which was also included in the October agenda packet, and the relevant section of California's Government Code. I apologize for a software glitch that has made it temporarily impossible for me to combine documents into a single file. Please submit your comments by December 11 in time for discussion at the December 17 Council meeting. Thank you.

Sincerely,
Martha

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OFFICE OF THE PROVOST AND EXECUTIVE VICE PRESIDENT --
ACADEMIC AFFAIRS

OFFICE OF THE PRESIDENT
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

October 20, 2008

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ACADEMIC COUNCIL

PROFESSOR MARY CROUGHAN
Chair, Academic Council

Dear Professor Croughan:

Re: Required Sexual Harassment Training for Faculty

As you know, state law requires the University to provide two hours of sexual harassment training to all supervisors and managers, every two years, starting in 2005. There have been problems with the first two cycles of training, both in terms of the quality of the content of the on-line training program, and technological problems, in some cases affecting the ability of supervisors to access the training. Considerable time and effort has been devoted to correcting those problems, and a new cycle of training should begin later this year.

The President's Office and the Academic Senate have previously agreed that all faculty, with minor exceptions, should be considered supervisors, given their role in supervising Teaching Assistants, Research Assistants and Postdocs. Records indicate that numbers of staff and faculty have not taken the training as required, in one or both cycles. With the understanding that the technological and content problems will be addressed in the new cycle of training, I am writing to seek your assistance in obtaining Senate input on possible administrative actions that might be taken to assure full compliance by faculty in the new cycle of sexual harassment training. The Academic Personnel Manual recognizes administrative actions as an alternative to discipline, in connection with enforcing the rules and regulations of the University. (APM-016, Section I).

After consulting with the General Counsel's Office, I have identified a number of administrative actions to consider; specifically:

- Removal of supervisory responsibilities over TAs, RAs and Postdocs (already in place at the Irvine campus).
- Delaying implementation of merit increases or promotions, without changing the effective date (i.e., once training is received the merit increase or promotion would be retroactive).
- Reporting the names of non-compliant faculty to Chancellors, EVCs, Deans and Regents.
- Freezing budgets of departments with non-compliant faculty.
- Denying internet access.

PROFESSOR MARY CROUGHAN

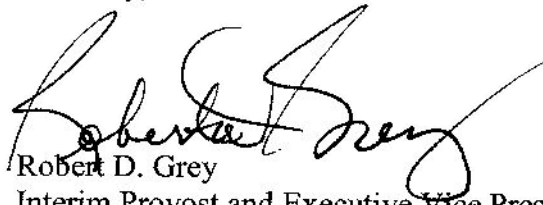
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Each of these options has certain pros and cons, and may vary in terms of effectiveness. There may be a variety of other administrative options, of course, and I welcome further suggestions. Of course, before any administrative action were taken, it would be important to advise a faculty member of the fact that records indicate that s/he has not taken the required training, and give the faculty member an opportunity to respond.

While these options are administrative in nature, and there is no requirement that they be "approved" by the Senate, I believe that consultation is valuable, given the impact that one or more of these options would have on individual Senate members. I appreciate your assistance in bringing this matter forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Grey". The signature is fluid and cursive, with a large initial "R" and "D".

Robert D. Grey
Interim Provost and Executive Vice President
Academic Affairs

cc: President Yudof
General Counsel Robinson
Senior Vice President Vacca

CALIFORNIA GOVERNMENT CODE

12950.1. (a) By January 1, 2006, an employer having 50 or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees in California who are employed as of July 1, 2005, and to all new supervisory employees within six months of their assumption of a supervisory position. Any employer who has provided this training and education to a supervisory employee after January 1, 2003, is not required to provide training and education by the January 1, 2006, deadline. After January 1, 2006, each employer covered by this section shall provide sexual harassment training and education to each supervisory employee in California once every two years. The training and education required by this section shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

(b) The state shall incorporate the training required by subdivision (a) into the 80 hours of training provided to all new supervisory employees pursuant to subdivision (b) of Section 19995.4, using existing resources.

(c) For purposes of this section only, "employer" means any person regularly employing 50 or more persons or regularly receiving the services of 50 or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

(d) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the training and education required by this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(e) If an employer violates this section, the commission shall issue an order requiring the employer to comply with these requirements.

(f) The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination.