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

Dear Dan,

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

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

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

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

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

c. It is presumed that “other academic appointees”, section V.A.2b, is intended to include faculty, but this should be clarified.

d. The list of possible consequences for noncompliance with the policy is broad, ranging from “informal counseling” to “termination.” The unclear language in this subsection could be a source of confusion when questions arise concerning an individual’s failure to report. What criteria is used to determine consequence? Staff, faculty, and students are being required to act on hearsay evidence or face disciplinary action. Potentially, rumors and innuendo might be reported and action pursued. Only first person accounts from the complainant themselves should be mandatory to pass up the chain.

e. What constitutes a report and how does one report? There was some confusion expressed about what constitutes a report and whether informal exchanges between a graduate student and an undergraduate student would constitute something official, versus something more casual. Are graduate students legally obligated to report such allegations if the relationship is informal but, at one time, may have been formal?

3. Victim Categories

a. The current document appears to focus primarily on students, whereas a more comprehensive document should also specifically mention staff, postdoctoral researchers, medical residents, GSRs who oversee labs, and faculty.

b. The policy focuses on women as victims while all, regardless of gender, can be victims.

c. There is insufficient clarification of the graduate student as a victim. Also, there are several different types of students at the university, some of whom may not be matriculated UCLA students (i.e., visiting graduate researchers, volunteers, visiting students, summer students) or official employees (fellows and trainees), to whom this policy does not explicitly apply. The policy should also mention these students and trainees.

4. Investigation findings and Confidentiality

a. The issue of confidentiality in Section III.C.3 provides that efforts will be made to redact written reports and to protect the privacy of individuals. The policy should obligate the University to keep a report confidential as permitted by law. Faculty would like to see language that will add more protection to the disclosure of information following an investigation. Policy states “University policy may also require the disclosure of certain information…” It is not clear under which circumstances the University may be required to disclose information.

b. Section V.A.4.b. notes that, “the Title IX Officer shall attempt to maintain the identity of the Complainant confidential from the Respondent or inform the Complainant that such confidentiality cannot be maintained.” What are the circumstances under which confidentiality cannot be maintained and the Complainant is identified? Those circumstances should be articulated in this policy.

c. The rights of the Respondent to contest any findings of “Alternative Resolution” or “Formal Investigation” are not clear. With anonymous third party reporting being encouraged, this becomes particularly important. Does the anonymous third party have the same rights to contest findings?

d. The last paragraph of Section V.A.5. is unclear and confusing. It states “Any conclusion in a Report finding sexual violence, sexual harassment, or retaliation that involves an assessment of academic merit (either individual or programmatic) or academic freedom may only be made following a referral of that assessment to and an opportunity within 10 working days for a response from the Chief Academic Officer or delegee.” This language is confusing; it is unclear where the referral of the assessment needs to be made.
e. It is not clear how third party reports will be handled. Specifically, will the reporting third party be informed of the summary of any findings?

5. Other
a. Training. The present document is unclear about training requirements. How will the new policy be incorporated into the existing training modules? It was noted that training should be a central component of implementing any new policy; the faculty emphasized the importance of training on the topics of Sexual Violence and Harassment for both the students and faculty.

b. Off campus. It is not clear whether the policy transcends the University of California and applies to students participating in study abroad programs. The policy should state explicitly that it applies to any circumstance that could be reasonably construed to be University business, even if off campus, and should specifically reference field work/study.

c. Timeline. The timeline for reporting should be clearer. Section V.A.1. Note states that reports should be brought forward as soon as possible. Is there a statute of limitations?

d. Consent. The definition fails to include academic situations in which no consent is possible (prohibited relationships such as professor and supervised student). The policy should reference the Academic Personnel manual on consensual relationships.

e. Relationship Violence. The word “harm” is omitted in the policy. Page 4, “… placing the Complainant in reasonable fear of serious bodily.” The sentence should read “… fear of serious bodily harm.”

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

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

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

Please feel free to contact me should have any questions.

Cordially,

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