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Office of the Academic Senate
SANTA CRUZ DIVISION
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May 17, 2023

Susan D. Cochran, Chair
Academic Council

RE: Systemwide Review of Proposed Presidential Policy – Clery Act Policy

Dear Susan,

The Santa Cruz division of the Academic Senate has completed its review of the of the proposed Presidential Policy – Clery Act Policy with the Committees on Academic Freedom (CAF), Privilege and Tenure (CPT), and Rules, Jurisdiction and Elections (CRJE) providing comment.

The issue on which all the committees agreed concerned the definition of Campus Security Authority (CSA). Specifically, CPT observed that the definition provided was uninterpretable as it does not make clear which UC employees will have the obligation to report Clery Act Violations. CPT pointed to clauses two and three in II – Definitions – C. Campus Security Authority (CSA) on page two of the proposed policy:

- “2. Are specified in the campus Annual Security Report (ASR) as an individual to whom employees should report criminal offenses; or
3. Have significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline and campus judicial proceedings.”

CPT noted that UC Santa Cruz’s Annual Campus Security and Fire Safety Report (ASR) provides that the ‘specification’ “includes officials of the University who have been designated by UC Santa Cruz to whom students and employees should report criminal offenses.” The committee observed as well that the ASR does not provide a list of designated officials. It does go on to specify that “CSAs include individuals from the following departments and units..”, but “include individuals.” CPT gleaned from this language that being in those departments or units is neither necessary nor sufficient to be a CSA. In an attempt to ascertain the intent of the policy, CPT referenced the Federal Code of

Regulations (CFR) pertaining to the Clery Act itself at 34 CFR 668.46.¹ which provides that “a list of titles of each person or organization to whom students and employees should report the criminal offenses described in paragraph c.” CPT understood this to mean that a list is required, not a reference to some other designation.

With regard to the language of clause three in the CSA definition, CPT observed that it is a restatement of 34 CFR 668.46. clause iv in the definitions for CSA.² CPT was curious to know on whom “significant responsibility for student and campus activities” rests, and who will make this determination. CPT wondered if this would include all faculty since instruction of students is surely a “significant student and campus activity.”

To address these ambiguities in policy, CPT suggested that clause two of the proposed policy be deleted and clause three be modified to direct that all future campus ASRs include a list of titles of individuals to whom offenses can be reported. CRJE concurred with this recommendation commenting, “As indicated in the letter from CPT, the current wording is ambiguous as to whether such a list is designed to be functional or to refer to job titles. The proposed policy asks for an emphasis on function (“Using the functional duties of a position, rather than the job title, UC campuses must identify and inform students...” p. 6). The Committee believes a list based on job function risks being exceedingly vague. We recommend a list based on job titles.”

CAF commented, “As written, it is not clear if faculty, by virtue of having “significant responsibility for student and campus activities” are CSAs. We ask for a clearer statement of who will occupy this role on campus. Relatedly, are all faculty members required to report? As it is not clear if all faculty are CSAs, it is similarly impossible to understand their reporting obligations from the current text of the policy.” CAF was also troubled by the lack of clarity regarding the geographic conditions under which the policy applies. Specifically, they noted that the language “any campus building frequently used by students” could include off campus establishments frequented by students and Education Abroad Program (EAP) centers where UC faculty often supervise students.

On behalf of the Santa Cruz division I thank you for the opportunity to opine on this important and evolving policy.

Sincerely,



Patty Gallagher, Chair
Academic Senate, Santa Cruz Division

encl: Senate Committee Responses (Bundled)

¹ 34 Code of Federal Regulations 668.46.b.2.iii at <https://www.ecfr.gov/current/title-34/subtitle-B/chapter-VI/part-668/subpart-D/section-668.46>

² iv: *An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. If such an official is a pastoral or professional counselor as defined below, the official is not considered a campus security authority when acting as a pastoral or professional counselor.*

cc: Roger Schoenman, Chair, Committee on Academic Freedom (CAF)
Onuttom Narayan, Chair, Committee on Privilege and Tenure (CPT)
Eleonora Pasotti, Chair, Committee on Rules, Jurisdiction, and Elections (CRJE)
Matthew Mednick, Director, Academic Senate

May 10, 2023

PATTY GALLAGHER, Chair
Academic Senate, Santa Cruz Division

Re: Systemwide Review of Proposed Presidential Policy – Clery Act Policy

Dear Patty,

The Committee on Academic Freedom (CAF) met to review the proposed Presidential Clery Act Policy and has the following suggestions. First, committee members felt that the definition of who is a Campus Security Authority (CSA) is ambiguous in the policy. As written, it is not clear if faculty, by virtue of having “significant responsibility for student and campus activities” are CSAs. We ask for a clearer statement of who will occupy this role on campus. Relatedly, are all faculty members required to report? As it is not clear if all faculty are CSAs, it is similarly impossible to understand their reporting obligations from the current text of the policy. The committee requests a clearer statement of faculty obligations.

Finally, committee members had some concerns about the geographic conditions under which the policy applies. Specifically, under what conditions do CSAs have to report? Does the policy apply off campus? The language “any campus building frequently used by students” is unclear. For example, off-campus establishments frequented by students might fit this definition. Overseas Education Abroad Program (EAP) centers, where UC faculty often supervise students, might also apply. The policy should clearly define the geographic limits within which it is in force.

CAF asks that the policy be amended to clarify each of these issues to prevent lapses in reporting, and provide a clear definition of faculty and staff obligations.

Sincerely

/s/

Roger Schoenman, Chair
Committee on Academic Freedom

cc: Alexander Sher, Chair, Committee on Faculty Welfare (CFW)
Onuttom Narayan, Chair, Committee on Privilege and Tenure (CPT)
Eleonora Pasotti, Chair, Committee on Rules, Jurisdiction, and Elections (CRJE)

March 21, 2023

Patty Gallagher, Chair
Santa Cruz Division of the Academic Senate

RE: Proposed Presidential Clery Act Policy

Chair Gallagher,

Thank you for forwarding for review the proposed Presidential Clery Act Policy. P&T finds the policy unobjectionable, though we did note that one critical clarification is needed. In the definitions of Campus Security Authorities (CSAs), the proposed policy provides an uninterpretable definition of which UC employees will have an obligation to report Clery Act violations. The draft policy includes as CSAs persons who:

- Are specified in the campus Annual Security Report (ASR) as an individual to whom employees should report criminal offenses; or
- Have significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline and campus judicial proceedings.

The first clause seems straightforward, until one actually checks UC Santa Cruz's Annual Campus Security and Fire Safety Report¹(ASR) and sees that the 'specification' includes "officials of the University who have been designated by UC Santa Cruz to whom students and employees should report criminal offenses."

Where is this list of designated officials? The ASR fails to say. It does go on to specify that "CSAs include individuals from the following departments and units...", but "include individuals" means that being in those departments or units is neither necessary nor sufficient to be a CSA.

We note that 34 CFR 668.46² paragraph b.2.iii requires that the ASR contain "a list of titles of each person or organization to whom students and employees should report the criminal offenses described in paragraph c.1...". (Emphasis added). A list is required, not a reference to some other designation.

The second clause is even less clear. Do all faculty have "significant responsibility for student and campus activities", since instruction is surely a significant student and campus activity at any university? Although this clause is a copy of clause iv in the definition of CSAs in 34 CFR 668.46 (see footnote 2), that clause is clearly intended to be general guidance to universities, who should then decide which of their employees has "significant responsibility" and list them in their ASR.

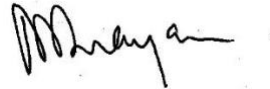
If the second clause is deleted, and UCSC is directed to modify its future ASRs to list the titles of individuals to whom offenses can be reported, this will address both problems.

¹ See: <https://police.ucsc.edu/crime-prevention/ucsc-clery-2022.pdf>

² See: <https://www.ecfr.gov/current/title-34/subtitle-B/chapter-VI/part-668/subpart-D/section-668.46>

Faculty members should not have to guess whether they have a reporting requirement or not, potentially resulting in disciplinary cases if they guess incorrectly. We request that the policy be clarified to clearly state which employees have a reporting requirement.

Sincerely,

A handwritten signature in black ink, appearing to read "Onuttom Narayan".

Onuttom Narayan, Chair
Committee on Privilege and Tenure

cc: Roger Schoenman, Chair, Committee on Academic Freedom
Alexander Sher, Chair, Committee on Faculty Welfare
Eleonora Pasotti, Chair, Rules, Jurisdiction and Elections
Matthew Mednick, Executive Director, Academic Senate

April 17, 2023

PATTY GALLAGHER, Chair
Academic Senate, Santa Cruz Division

Re: Systemwide Review of Proposed Presidential Policy – Clery Act Policy

Dear Patty,

During its meeting of April 10, 2023, the Committee on Rules, Jurisdiction, and Elections (CRJE) reviewed the proposed Presidential Clery Act Policy and found no issues of conformity with existing policy.

CRJE concurs with comments presented by the Committee on Privilege and Tenure (CPT). It concurs also with the proposed solution, i.e. to delete the second clause in the proposed Policy. Further, the Committee adds that clarification is needed with regard to the list of officials designated as reporters. As indicated in the letter from CPT, the current wording is ambiguous as to whether such a list is designed to be functional or to refer to job titles. The proposed policy asks for an emphasis on function (“Using the functional duties of a position, rather than the job title, UC campuses must identify and inform students,...” p. 6). The Committee believes a list based on job function risks being exceedingly vague. We recommend a list based on job titles.

Thank you for the opportunity to comment on this proposed policy.

Sincerely

/s/

Eleonora Pasotti, Chair

Committee on Rules, Jurisdiction, and Elections

cc: Roger Schoenman, Chair, Committee on Academic Freedom (CAF)
Alexander Sher, Chair, Committee on Faculty Welfare (CFW)
Onuttom Narayan, Chair, Committee on Privilege and Tenure (CPT)