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Office of the Academic Senate
SANTA CRUZ DIVISION
125 CLARK KERR HALL
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November 15, 2021

ROBERT HORWITZ, Chair
Academic Council

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

Dear Robert,

The Santa Cruz Division has completed its review of the proposed revisions to the Presidential Policy on Sexual Harassment and Sexual Violence (SVSH) with the Graduate Council (GC), and the Committees on Affirmative Action and Diversity (CAAD), Academic Freedom (CAF), Privilege and Tenure (P&T), and Rules, Jurisdiction, and Elections (RJ&E), responding. Generally, the committees recognized the need for the conforming changes required by the changes in state law resulting from the passage of Senate Bill 493 and the need to address sexual violence and sexual harassment in clinical settings. The reviewing committees also found a lack of clarity and consistency in areas of the policy.

RJ&E identified a conflict within Section B(e)(i)(b) and (d), the section addressing Sexual Exploitation. Here, they note that both “intent and effect” must occur before a violation occurs, and that this would not cover the case in which a person provides alcohol or drugs with the intent of engaging in prohibited conduct, but the prohibited conduct did not occur. RJ&E suggested amending the language to state “Providing alcohol or drugs to the Complainant with the specific intent or effect of facilitating Prohibited Conduct” would help to address what is also undesirable behavior, even if the *intended* outcome is not achieved. Relatedly, CAAD suggested clarification of the definitions of drunkenness, intoxication, and incapacitation. This is due to the fact that “drunkenness” and “intoxication” are only defined as less than “incapacitation,” which makes it unclear what the consequences are if a Complainant is deemed drunk or intoxicated in the context of SVSH.

CAAD appreciated the inclusion of “sexual exploitation” as a form of prohibited conduct but suggested that the revisions could be expanded to include exploitation that does not involve the use of photographs, video, or audio. They suggest acts such as “doxing”¹ be included.

¹ Interstate Doxxing Prevention Act (HR 6478), is “to knowingly publish (or attempt or conspire to publish) personally identifiable information of another person with the intent to threaten, intimidate, harass, or stalk, and as a result, place that person in reasonable fear of death or serious bodily injury to that person, or to that person’s family member or intimate partner.”

CAF raised concerns about how the description of prohibited conduct could gather into it behavior that is in fact consensual. Specifically, they worry that statements such as “physical violence is physical conduct that intentionally or recklessly threatens the health and safety of the recipient of the behavior” could unintentionally place those who engage in Bondage & Discipline, Dominance & Submission, Sadochism & Masochism (BDSM) in jeopardy of being subject to administrative scrutiny for engaging in consensual acts that by definition, violate the SVSH policy. This is because “There are many consensual activities involved in BDSM that can include an intentional threat to the safety or health of the recipient of the behavior.” CAF goes on to identify three additional places where prohibited conduct could capture acts that are in fact consensual (see attached). The Committee’s focus is “to clarify the centrality of consent for distinguishing prohibited from permitted conduct.”

P&T noted a lack of clarity within Section II(2)(C)(e) that pertains to “Confidential Sources” and the status of members of the clergy which are identified as such in this section. The confusion stems from the language found at the end of this subsection which provides:

“Designation as a “Confidential Resource” under this Policy only exempts a person from reporting to the Title IX Officer. It does not affect other mandatory reporting obligations under UC CANRA (Child Abuse and Neglect Reporting Act) Policy, the Clery Act as a Campus Security Authority (CSA), and other policies or laws that require reporting to campus or local law enforcement, or Child Protective Services.”

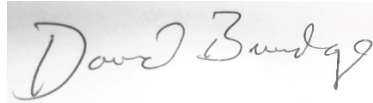
The problem is, under the Clery Act, clergy, there identified as Pastoral Counselors, do not have responsibilities as a CSA, and under the UC CANRA clergy are specifically identified as mandated reporters. Members suggested more clarity should be provided regarding the clergy’s duty to report. This is especially true in the event that a faculty member is an ordained member of the clergy, which is another layer of complexity to this reporting requirement. P&T, as well, raised a concern about “no contact” options, which appear not to restrict a complainant from contacting a respondent. Given that a respondent is prohibited from contacting a complainant, it makes sense to extend this “no contact” order in both directions. The Graduate Council joined P&T in expressing both of these concerns.

CAAD observed that the usage of the terms “clinical setting,” “clinical encounter,” and “patient care” are ill-defined and sometimes used interchangeably, with only “clinical encounter” defined. These are used in various places in the policy which makes it unclear who can be defined as a patient and thus a Complainant.

There are other vagaries identified by the reviewing committees, such as the use of the word “periodically” as applied to when the Title IX office might update parties of any updates to investigations. On this, CAAD commented that the Complainants deserve a clear notification period, and suggested 30 days.

In closing, I would like to clarify that not all of the very pointed and detailed comments have been accounted for here and that the full responses have been included as enclosures. As well I thank you, on behalf of the Division, for the opportunity to comment on this significant policy.

Sincerely,

A handwritten signature in black ink that reads "David Brundage". The signature is written in a cursive style and is centered within a light gray rectangular box.

David Brundage, Chair
Santa Cruz Division of the Academic Senate

Enc: Santa Cruz Divisional Response Bundle

cc: Kirsten Silva Guesz, Chair, Committee on Affirmative Action and Diversity
Minghui Hu, Chair, Committee on Academic Freedom
Nico Orlandi, Chair, Committee on Faculty Welfare
Julie Guthman, Chair, Committee on Privilege and Tenure
Melissa Caldwell, Chair, Graduate Council
Kenneth Pedrotti, Chair, Committee on Rules, Jurisdiction, and Elections

November 4, 2021

David Brundage, Chair
Academic Senate, Santa Cruz Division

**Re: Systemwide Presidential Policy on Sexual Violence and Sexual Harassment
Proposed Revisions**

Dear David,

The Committee on Affirmative Action and Diversity (CAAD) appreciates the opportunity to respond to the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment (SVSH). This letter focuses on the document's revisions in response to SB 493 and SVSH in clinical settings, rather than the document as a whole.

CAAD appreciates the addition of "sexual exploitation" as a form of Prohibited Conduct. In defining "sexual exploitation," the revisions mention "[t]hreatening to post or share photographs, video, or audio recordings depicting the Complainant's nudity or sexual acts..." (Section II B.1.e.i.c, p. 5; this language repeats twice more in Appendix V). The committee suggests that the proposed revisions be expanded to include exploitation that does not include photographs, video, or audio. The committee particularly requests attention to other non-multimedia sexual exploitation, including but not limited to doxxing, which, as defined by the Interstate Doxxing Prevention Act (HR 6478), is "to knowingly publish (or attempt or conspire to publish) personally identifiable information of another person with the intent to threaten, intimidate, harass, or stalk, and as a result, place that person in reasonable fear of death or serious bodily injury to that person, or to that person's family member or intimate partner."

In revisions to the "Overview of Resolutions Processes," this sentence has been added: "Resolution Processes are non-adversarial proceedings in which all participants are expected to behave respectfully" (Section V A.5, p. 17). The committee finds this sentence confusing and problematic, as the meaning of "non-adversarial" and "behave respectfully" are unclear. The committee fears that this terminology potentially discourages legal representation by the Complainant, and the meaning of "behave respectfully" carries gendered and racial undertones. CAAD would like to see this sentence removed or significantly revised.

The committee also suggests clarification of the definitions of drunkenness, intoxication, and incapacitation. Currently, "drunkenness" and "intoxication" are only defined as less than "incapacitation" (Section II A.1, p. 3), making it unclear what the consequences are if a Complainant is deemed drunk or intoxicated in the context of SVSH.

CAAD is heartened to see SVSH that occurs in clinical encounters directly addressed in these revisions. The committee suggests, though, that usage of the terms "clinical setting," "clinical encounter," and "patient care" are ill-defined and sometimes used interchangeably, with only "clinical encounter" defined. This makes it unclear who can be defined as a patient and thus a Complainant. The term "patient care" is used in Note Two (p. 7), the definition of a "Responsible Employee" (Section II C.3.b.7, p. 9), and the title of Appendix V. The phrase "clinical setting" is also used (Section VIII, p. 30). These terms overlap with "clinical encounter," which is used four times (Section II B.1, p. 4; Section V A.3, p. 16; Section V A.4,

p. 16; Appendix V A.a) and defined in Appendix V (B.2, p. 44). The committee requests clearer terminology.

The committee is pleased to see that “the discloser’s right to report directly to the Title IX Officer” has been clarified (Section III G, p. 12). CAAD would also like to see rights to legal representation clarified in the document (see previous comment regarding Section V A.5, p. 17), and for timeframes for Title IX investigations more clearly defined. A revision notes that the Title IX Officer will “update parties periodically on the status of the investigation and notify them in writing of the reason for any extension and the projected new timeline” (Section V A.5.b, p. 19). While this revision attempts to clarify the original text, the committee finds the term “periodically” to be vague. We believe that Complaints deserve a clear notification timeline (30 days from making the complaint, etc.).

Lastly, CAAD is unclear how/if students have been offered opportunities to provide feedback on these revisions. Thus, as in CAAD’s response to previous SVSH policy (see letter dated 11/19/18), the committee asks that students be provided formal opportunities to respond.

Sincerely,



Kirsten Silva Gruesz, Chair
Committee on Affirmative Action and Diversity

Encl. CAAD to ASC Lau re Proposed Revised Presidential Policy on SVSH, 11-19-2018

cc: Minghui Hu, Chair, Committee on Academic Freedom
Nico Orlandi, Chair, Committee on Faculty Welfare
Julie Guthman, Chair, Committee on Privilege and Tenure
Kenneth Pedrotti, Chair, Committee on Rules, Jurisdiction, and Election
Melissa Caldwell, Chair, Graduate Council

November 19, 2018

Kimberly Lau, Chair
Academic Senate

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

Dear Kim,

During its meeting of October 15, 2018, the Committee on Affirmative Action and Diversity (CAAD) reviewed the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment. CAAD wishes to comment on one issue.

On p. 8, regarding the definition for "Location": This definition restricts "location" to properties owned or managed by UC. However, at III.B and III.B.3 and the sentence just after III.B.3, the document indicates that, at times, the SVSH policy "covers acts of Prohibited Conduct" even when "the conduct occurs off University property." Events that occur on properties not owned by UC may nevertheless be considered under the UC SVSH policy.

For example, the most recent draft of the Self-Supporting Graduate Degree Program Guidelines, shared with CAAD on October 18, 2018, discusses the utilization of off-campus locations for self-supporting graduate degree programs, referred to in the System-wide/Regental Policies and Overarching Principles section point 1d. as an "alternative location (e.g. off-campus centers)" and point 4 as "appropriate off-campus locations."

CAAD proposes that the original definition of "location" on p. 8 ought to be glossed to account for these exceptions.

Finally, CAAD is concerned with the prevailing discourse about the lack of opportunity for significant discussion and change during this review period. As there does not appear to be an effective way for student voices to be heard in this review, we are thus forwarding the concerns of the UCSC Title IX Student Advisory Board¹ along with our response.

Sincerely,

/s/

Elizabeth Abrams, Chair
Committee on Affirmative Action and
Diversity

¹ UCSC Title IX Student Advisory Board to Academic Senate, 11/14/18, Re: UC Sexual Violence and Sexual Harassment (SVSH) Policy Revisions Comments for Academic Senate Review

Cc: Grant McGuire, Chair, Committee on Faculty Welfare
Jorge Hankamer, Chair, Committee on Privilege & Tenure
Jason Nielsen, Chair, Committee on Rules, Jurisdiction, and Elections
Gina Dent, Chair, Graduate Council
Senate Director Mednick

November 9, 2021

DAVID BRUNDAGE, Chair
Academic Senate, Santa Cruz Division

Re: Proposed Changes to the Systemwide Policy on Sexual Violence/Sexual Harassment

Dear David,

On October 20, 2021 the Committee on Academic Freedom (CAF) discussed the proposed changes to the systemwide policy on Sexual Violence/Sexual Harassment. CAF appreciates the proposed system-wide revision to the Sexual Violence and Sexual Harassment Policy. The proposed changes align with state law by adding two areas on the prohibition of sexual exploitation (sexually taking advantage of others, such as using sexual photos of them to gain their compliance) and stealthing (non-consensual condom removal).

Despite the welcome changes made to the policy, other aspects of the policy still included from previous versions include language to which the CAF recommends making changes. Four clauses in particular from Section B (Prohibited Conduct) are recommended for revision to clarify the centrality of consent for distinguishing prohibited from permitted conduct. All four recommendations aim to broaden the scope of, instead of tightening, the range of prohibitions.

- **Clause One:** "physical violence is physical conduct that intentionally or recklessly threatens the health and safety of the recipient of the behavior."
Problem: There are many consensual activities involved in BDSM that can include an intentional threat to the safety or health of the recipient of the behavior.
Recommendation: "physical violence is physical conduct that 1) intentionally or recklessly threatens the health and safety of the recipient of the behavior and 2) is done without the consent of the recipient or is done without the recipient's full knowledge of the potential risks of the activity.
- **Clause Two:** "patterns of abusive behavior may consist of or include non-physical tactics (e.g., threats, isolation, property destruction, abuse of pets, economic control, displaying weapons, degradation, or exploitation of a power imbalance).
Problem: Some individuals at this campus are involved in Domination/submission relationships, which may involve explicitly negotiated between the participants to structure their preferred sexual act and relationship to involve acts listed but do not constitute abuse.
Recommendation: "patterns of abusive behavior may consist of or include non-physical tactics (e.g., threats, isolation, property destruction, [abuse of pets deleted here, moved to

the end of the clause] economic control, displaying weapons, degradation, or exploitation of a power imbalance) unless the use of those tactics has been explicitly and enthusiastically consented to by the recipient or the tactics involve the abuse of pets."

- **Clause Three:** "Repeated conduct directed at a Complainant (e.g., following, monitoring, observing, surveilling, threatening, communicating or interfering with property), of a sexual or romantic nature or motivation, that would cause a reasonable person to fear for their safety, or the safety of others, or to suffer substantial emotional distress."

Problem: While a submissive in a D/s relationship might experience a lot of comfort, security, peace of mind, joy, sexual arousal, and excitement from having a partner monitoring their location, vital signs, or other personal information electronically via electronic devices it is entirely likely that a university administrator would consider that a "reasonable person" would not find these activities exciting, and would interpret these behaviors as stalking, even when consensually negotiated.

Recommendation: "Repeated conduct directed at a Complainant (e.g., following, monitoring, observing, surveilling, threatening, communicating or interfering with property), of a sexual or romantic nature or motivation, that would cause a reasonable person to fear for their safety, or the safety of others, or to suffer substantial emotional distress unless the use of those tactics has been explicitly and enthusiastically consented to by the recipient."

- **Clause Four:** "Exposing one's genitals in a public place for the purpose of sexual gratification."

Problem: Consensual kink practices (such as nudity at a public sex dungeon or kink-oriented party, in which nudity is a norm for some participants) could fall under the definition, depending upon how a university administrator interprets the phrase "public place." Similarly, we know that hundreds of students on this campus annually engage in the first rain run, which is ceremonial and relatively harmless, and could imply the arbitrary punishment of only students who are sexually aroused by the experience.

Recommendation: "Exposing one's genitals in a public place for sexual gratification, unless that exposure is explicitly consented to by all parties who might view that exposure, or that exposure takes place during an event in which the nudity of participants is very strongly implicitly agreed to by one's participation in the event, such as nude modeling for an art class, being naked on a nude beach, or participation in the First Rain Run."

On behalf of the CAF, I hope these suggestions prove useful, and that they will help to provide more clarity and precision in the next iteration of the SVSH policy.

Sincerely,

/s/

Minghui Hu, Chair

Committee on Academic Freedom

cc: Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
Julie Guthman, Chair, Committee on Privilege and Tenure
Nico Orlandi, Chair, Committee on Faculty Welfare
Kenneth Pedrotti, Chair, Committee on Rules, Jurisdiction, and Elections
Melissa Caldwell, Chair, Graduate Council

November 9, 2021

David Brundage, Chair
Academic Senate

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

Dear David,

At its meeting of November 4, 2021, Graduate Council reviewed the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment (SVSH Policy).

Council understands that these proposed changes are intended to comply with state law SB493 and to better account for Prohibited Conduct in the clinical setting. In this context, Graduate Council had little additional comment. However, GC would like to affirm two important suggestions identified by the Committee on Privilege and Tenure (P&T). First, P&T suggested clarifying language around clergy's duty to report, currently unclear in the proposed revisions, and including in cases where a clergy might also have an appointment as a faculty member. Council agrees this is an area that needs clarification.

Second, Council concurred with P&T's concern that "no contact" options, which appear not to restrict a complainant from contacting a respondent. Given that a respondent is prohibited from contacting a complainant, it makes sense to extend this "no contact" order in both directions.

Graduate Council appreciates the opportunity to comment on the proposed revisions to the SVSH Policy.

Sincerely,



Melissa L. Caldwell, Chair
Graduate Council

cc: CAAD Chair Gruesz
CAF Chair Hu
CFW Chair Orlandi
RJ&E Chair Pedrotti
P&T Chair Guthman

October 26, 2021

DAVID BRUNDAGE, Chair
Academic Senate, Santa Cruz Division

Re: Proposed Changes to the Systemwide Policy on Sexual Violence/Sexual Harassment

Dear David,

On October 20, 2021 the Committee on Privilege and Tenure (P&T) discussed the proposed changes to the systemwide policy on Sexual Violence/Sexual Harassment and identified two areas of potential confusion.

The first involves the creation of a new category of confidential resources with the inclusion of “members of the clergy” (II (2)(C)(e)). Language at the end of this subsection states:

Designation as a “Confidential Resource” under this Policy only exempts a person from reporting to the Title IX Officer. It does not affect other mandatory reporting obligations under UC CANRA (Child Abuse and Neglect Reporting Act) Policy, the Clery Act as a Campus Security Authority (CSA), and other policies or laws that require reporting to campus or local law enforcement, or Child Protective Services.

One specific concern is that existing policy is already confusing regarding obligations of clergy to report. The Clery Act states that members of the clergy, in that policy referred to as “Pastoral Counselors,” do not have responsibilities as a CSA; however, in Appendix A of the UC CANRA, clergy are specifically listed as “mandated reporters.” P&T worries that without additional clarifying language, the proposed SVSH exemption could generate additional confusion about clergy’s duty to report. A second concern derives from a scenario contemplated by the committee in which a member of the clergy could also have an appointment as a faculty member. Were that the case, it is not clear which role would take precedence in determining the obligation to report and obligation to inform the person providing confidential information.

The second area of confusion involves “no contact options.” The second bullet point of Appendix III, section ix lists several steps that the Title IX Officer “will” take. The committee imagines that not all of these options must be undertaken and the language should therefore read that these are options the Office “can” take. Further below a bullet point lists a number of parameters for no-contact orders between parties. While it seemed to make sense at first glance, the committee was troubled by the idea that the university would not restrict the Complainant from contacting the Respondent, since presumably such contact would be inviting a response from the Respondent.

Since such a response would necessarily be strictly prohibited, it is not clear why a complainant should be allowed to initiate contact. If this unilateral exemption is required by law it might be useful to cite the law; otherwise it might be more prudent to make all no-contact orders bilateral.

We hope that the final version of the revised policy addresses all four issues of confusion identified here.

Sincerely,

/s/

Julie Guthman, Chair

Committee on Privilege and Tenure

cc: Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
Minghui Hu, Chair, Committee on Academic Freedom
Nico Orlandi, Chair, Committee on Faculty Welfare
Kenneth Pedrotti, Chair, Committee on Rules, Jurisdiction, and Elections
Melissa Caldwell, Chair, Graduate Council

November 9, 2021

DAVID BRUNDAGE, Chair
Academic Senate, Santa Cruz Division

Re: Proposed Changes to the Systemwide Policy on Sexual Violence/Sexual Harassment

Dear David,

On October 20, 2021 the Committee on Rules, Jurisdiction & Elections (RJ&E) discussed the proposed changes to the systemwide policy on Sexual Violence/Sexual Harassment. One issue concerned Section B Prohibited Conduct, which provides as follows:

e. Sexual Exploitation:

i. Sexual Exploitation is taking sexual advantage of another, where the conduct is not otherwise addressed in this Policy. Specifically:

(b) Knowingly making a material false representation about sexually transmitted infection, birth control, or prophylactic status with the specific intent and effect of inducing the Complainant to participate in a specific sexual act or encounter

(d) Providing alcohol or drugs to the Complainant with the specific intent and effect of facilitating Prohibited Conduct; or

This says that both “intent and effect” must occur before a violation occurs. Intent is often difficult to ascertain. It might appear that just listing “effect” would be sufficient. This wording however would not cover the case in which a person provides alcohol or drugs with the intent of engaging in prohibited conduct, but the prohibited conduct did not occur. This behavior strikes us as undesirable as well. A change of the wording to: *Providing alcohol or drugs to the Complainant with the specific intent or effect of facilitating Prohibited Conduct*, would cover this case as well.

Sincerely,

/s/

Kenneth Pedrotti, Chair
Committee on Rules, Jurisdiction, & Elections

cc: Kirsten Silva Guesz, Chair, Committee on Affirmative Action and Diversity
Minghui Hu, Chair, Committee on Academic Freedom
Nico Orlandi, Chair, Committee on Faculty Welfare
Julie Guthman, Chair, Committee on Privilege and Tenure
Melissa Caldwell, Chair, Graduate Council