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DAVID PIERPONT GARDNER
President

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OFFICE OF THE PRESIDENT
BERKELEY, CALIFORNIA 94720

SENIOR VICE PRESIDENT-
ADMINISTRATION

March 10, 1986

- CHANCELLORS
LABORATORY DIRECTORS
• SENIOR VICE PRESIDENT--ADMINISTRATION
VICE PRESIDENT--AGRICULTURE AND NATURAL RESOURCES

Dear Colleagues:

Attached is the University of California Policy on Sexual Harassment and Complaint Resolution Procedures.

In 1981, former President Saxon issued a policy statement affirming the commitment of the University to creating and maintaining a community in which students, faculty, and administrative and academic staff can work together in an atmosphere free from all forms of harassment, exploitation, or intimidation. The policy went on to state that the University is strongly opposed to sexual harassment and that such behavior is prohibited both by law and by University policy. I am pleased to issue the attached policy and procedures, which together restate the August 11, 1981 policy and replace interim guidelines which have been in effect since that date. This document is the result of a consultive process that has involved students, faculty, and staff throughout the University. The proposed revision of the Faculty Code of Conduct that is in process is separate from and does not affect this policy.

Issuance of the final version of the Policy on Sexual Harassment and Complaint Resolution Procedures provides this opportunity to reaffirm the University's strong opposition to sexual harassment. Effective avenues of complaint resolution are in place at every campus and Laboratory, and action has been and will be taken to prevent, correct, and if necessary, to discipline behavior that is in violation of this policy.

Sincerely,

David Pierpont Gardner

Attachment

cc: Members, President's Cabinet
Principal Officers of The Regents
Director Rogin



DAVID PIERPONT GARDNER
President

OFFICE OF THE PRESIDENT
BERKELEY, CALIFORNIA 94720

RONALD W. BRADY
Senior Vice President—
Administration

Employee and Labor Relations

March 17, 1986

EEO/AFFIRMATIVE ACTION ADMINISTRATORS
PERSONNEL MANAGERS

Policy on Sexual Harassment and Complaint Resolution Procedures

Dear Colleagues:

I am pleased to let you know that President Gardner has issued the Sexual Harassment Policy and Complaint Resolution Procedures. Attached is a copy of his letter and the related documents.

The development of this policy and of implementing procedures at the campuses and Laboratories to deal with sexual harassment complaints represents a significant achievement. I would like to thank all of you in particular for participating in this effort.

Most campuses and Laboratories have already provided, for review by my office and General Counsel, the implementing procedures developed for their location. If you have not already done so, please send me the sexual harassment complaint resolution procedure currently in use at your location. If your procedure has been modified since the original review, I would appreciate receiving a copy of the current version.

Again, thank you for your patience and support in this process.

Sincerely,

Lubbe Levin
Assistant Vice President--
Employee Relations

Attachment

cc: Acting General Counsel Holst
Associate Vice President Moore
University Dean Brugger
Director Phillips
Director Rogin
Personnel Director Fiorito, Hastings College of Law

bcc: Harry McGuire ✓
Margaret Rader

March 10, 1986

University of California

POLICY ON SEXUAL HARASSMENT

and

COMPLAINT RESOLUTION PROCEDURES

I. POLICY

The University of California is committed to creating and maintaining a community in which students, faculty, and administrative and academic staff can work together in an atmosphere free of all forms of harassment, exploitation, or intimidation, including sexual. Specifically, every member of the University community should be aware that the University is strongly opposed to sexual harassment and that such behavior is prohibited both by law and by University policy. It is the intention of the University to take whatever action may be needed to prevent, correct, and, if necessary, discipline behavior which violates this policy.

Campuses, Laboratories, the Office of the President, and Agriculture and Natural Resources shall develop sexual harassment complaint resolution procedures in accordance with the following principles.

II. DEFINITION

Campus, Laboratory, the Office of the President, and Agriculture and Natural Resources procedures shall include the following definition of sexual harassment:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of instruction, employment, or participation in other University activity;
2. submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting an individual; or
3. such conduct has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile, or offensive University environment.

In determining whether the alleged conduct constitutes sexual harassment, consideration shall be given to the record of the incident as a whole and to the totality of the circumstances, including the context in which the alleged incidents occurred.

III. STANDARDS OF CONDUCT

Campus, Laboratory, the Office of the President, and Agriculture and Natural Resources procedures on sexual harassment complaint resolution shall refer to the applicability of the following policies:

- A. The Faculty Code of Conduct, as adopted through resolution of the Academic Senate, outlines ethical and professional standards which University faculty are expected to observe. It also identifies various forms of unacceptable behavior which are applicable in cases of sexual harassment and outlines sanctions and disciplinary procedures. Because the forms of unacceptable behavior listed in the Faculty Code of Conduct are interpreted to apply to sexual harassment, a violation of the University policy on sexual harassment constitutes a violation of the Faculty Code of Conduct.
- B. Policies Applying to Other Academic Appointees. Existing provisions of academic personnel policy or memoranda of understanding prohibit conduct which violates law and University policy with respect to sexual harassment.
- C. Policies Applying to Campus Activities, Organizations, and Students, Part A, sets forth in Section 50.00 the types of student misconduct that are subject to discipline and the types of disciplinary actions

that may be imposed for violation of University policies or campus regulations.

A violation of the University policy on sexual harassment is interpreted as a violation of the Policies Applying to Campus Activities, Organizations, and Students.

- D. Existing provisions of Staff Personnel Policy or memoranda of understanding prohibit conduct which violates law and University policy, including the University policy on sexual harassment, and provide for disciplinary action for inappropriate conduct.

IV. PRE-GRIEVANCE COMPLAINT RESOLUTION PROCESS

Campuses, Laboratories, the Office of the President, and Agriculture and Natural Resources shall develop a pre-grievance process to accommodate the special nature of sexual harassment complaints. The pre-grievance complaint resolution process shall be available to students, faculty, and other non-represented academic and staff employees. To the extent provided for in the applicable memorandum of understanding, this process may also be available to employees who are represented by an exclusive bargaining agent. The primary purpose of the pre-grievance process is to attempt resolution of the complaint at the earliest stage possible. Local procedures shall be submitted to the Assistant Vice President--Employee Relations for review prior to issuance. The following guidelines represent appropriate components of local sexual harassment pre-grievance complaint resolution procedures, although specific elements may vary according to each location's organizational needs.

- A. Sexual Harassment Information Centers. Local procedures provide for the designation of information centers which are available to serve as a resource to any individual who has a sexual harassment complaint or inquiry. The number and location of information centers depend on the size and nature of the facility. Such information centers have information about applicable laws, University policies and procedures, options available for resolution of complaints, and confidentiality requirements. The center's functions include the following:
1. Serve as an informational resource to individuals with complaints which may involve sexual harassment.
 2. Inform the complainant regarding applicable University policies and procedures and outline various options, both informal and formal, available for resolving the complaint.
 3. Inform the complainant about whom to contact if she/he wishes to initiate an investigation of the complaint, as described in Section B below.

Information centers do not maintain any written record which would identify the complainant or the person accused in a complaint. However, information on the number and location of complaints received may be logged in for statistical purposes, and if collected, is maintained by the Complaint Resolution Officer (see Section B below).

- B. Complaint Resolution Officers. Local procedures provide for designation of an individual or individuals who are available to investigate sexual harassment complaints and attempt to resolve them at the earliest stage possible. The duties of the Complaint Resolution Officers (CRO) may include the following, as appropriate, according to local procedures.
1. Inform the complainant of available options, including mediation and the investigation.
 2. Attempt to mediate the complaint. Upon request of either party, attempts at mediation may occur without the filing of a written complaint or at any point after a complaint is filed.
 3. If the complainant wishes to initiate the investigation, inform the complainant that a written complaint will be required and that the complaint, including the identity of the complainant, will be disclosed to the person accused.
 4. Inform the complainant of the potential remedies available through the pre-grievance complaint resolution process and the formal grievance (i.e., restoration of pay, benefits, or rights lost) and of the remedies that are not available. For example, complainants may need to be informed that in accordance with University policy, disciplinary action against the alleged harasser may be initiated only at the discretion of the Chancellor, Laboratory Director, Senior Vice President--Administration, or Vice President--Agriculture and Natural Resources or their designees in their respective areas of responsibility.
 5. Upon receipt of a written complaint, conduct a full and impartial investigation or, in accordance with local procedures, appoint an investigator to conduct such an investigation.

In the course of the investigation, the following standards shall be observed:

- a. The person accused shall be provided a copy of the complaint and an opportunity to respond to the allegation. The accused may, upon request, have a representative present when he/she is interviewed. (If the accused is represented by an attorney, the CRO will consult with the

office of the General Counsel, as appropriate, to determine University representation.)

- b. Witnesses and other concerned parties shall be interviewed individually and in conformance with privacy requirements.
 - c. Relevant documents shall be reviewed.
6. Submit a written report to a University official appointed by the Chancellor or by the responsible administrator. The report shall contain at least the following information:
 - a. A statement of the issues under review.
 - b. The positions of the parties.
 - c. A summary of the results of the investigation.
 - d. Conclusion as to whether there is probable cause to believe that sexual harassment, as defined in University policy, has occurred.
 7. Advise the complainant as to available formal grievance procedures if the complaint has not been resolved to the complainant's satisfaction.
 8. Maintain records of complaints, reports, and subsequent management action in conformance with privacy requirements.

C. Participation in Pre-Grievance Process.

1. In general, complaints which involve sexual harassment are filed initially with the CRO. Filing a complaint of sexual harassment with the CRO may constitute the informal or first step of the applicable formal grievance procedure. However, a complainant may file a formal grievance directly if the informal step of the grievance process has been satisfied in accordance with the applicable grievance procedure.
2. Local procedures shall state that no person shall be subject to reprisal for using or participating in the pre-grievance complaint resolution process, or for using or participating in the formal grievance processes.

D. Time Limits.

1. Local procedures shall establish time limits for filing a written complaint. These time limits should establish a reasonable time period for filing, beginning either from the time of the last alleged incident of harassment, or from the

time the complainant knew or should have known of an action taken as a result of the alleged sexual harassment.

2. The total time period for the investigation, from the filing of a written complaint to submission of the report to the appointed University official, shall not exceed a reasonable time limit established by local procedures unless an extension has been approved in writing by the Chancellor or responsible administrator.
 3. The response of the appointed University official to the investigator's report shall be provided in writing to the parties within reasonable time limits established by local procedures.
- E. Confidentiality. In the pre-grievance complaint resolution process, and in accordance with existing policies, every reasonable effort shall be made to protect the privacy of all parties.
1. No records kept by information centers shall include the names of parties or other information which would permit identification of the parties.
 2. Files pertaining to investigations conducted by the CRO shall not be made available to the public by the University. Complainants are informed that pursuant to appropriate laws and University regulations, such records may be made available to the parties.

V. FORMAL GRIEVANCE PROCEDURES

University policies prohibit discrimination on the basis of sex. A formal grievance is based on an allegation that discrimination on the basis of sex has occurred in the form of sexual harassment and that the grievant has been adversely affected by the administration's action or non-action in the matter.

- A. Applicability of Existing Grievance Procedures. As a result of the pre-grievance process, the investigator will issue a report which may provide a basis for management action. If the complainant is not satisfied that management action has resolved the complaint, or if there has been no action, the complainant may wish to file a formal grievance. To be accepted into a formal process, such grievance must meet all the conditions for acceptability under the applicable grievance policy or contract article. Which policy or article applies is dependent upon the status of the grievant: Staff Personnel Policy 280/290 for non-represented staff employees; Academic Personnel Manual 140 for non-represented non-Senate Academic appointees; the Title IX Student Grievance procedure for non-academic complaints of discrimination (or other non-academic

student grievance procedure approved by the President)¹; Academic Senate procedures for members of the Academic Senate; or, for exclusively represented employees, the grievance procedure of the Memorandum of Understanding, where applicable.

Under formal procedures, the grievance must allege a violation of the applicable University nondiscrimination policy. The single issue of dissatisfaction with a management action taken in disciplining an alleged harasser, or with the fact that no action has been taken, would not provide access to formal grievance procedures.

- B. Representation. The grievant may be self-represented or may be represented by another person. However, any person who has served in a sexual harassment information center or as a CRO shall not represent the grievant in the formal proceeding.
- C. Extension of Time for Filing. Time limits for filing formal grievances under applicable grievance policies may be extended if the grievant initiated the pre-grievance process within the applicable time limits for filing a formal grievance. The formal grievance must be received by the appropriate office within thirty calendar days² after the date on which the responsible administrator informs the grievant of a management action taken as a result of the investigator's report or that no action will be taken. If the grievant did not initiate pre-grievance procedures within the time limits of the applicable formal grievance procedure, the CRO may, under the appropriate circumstances, recommend to the appropriate administrator an extension of the filing deadline for a formal grievance.
- D. Informal Steps. The investigation and mediation process performed by the CRO, as detailed in Section IV: Pre-grievance Complaint Resolution Process, constitutes the informal or first step of formal grievance procedures.³

¹See University of California Policies Applying to Campus Activities, Organizations, and Students.

²Except as otherwise provided in campus student grievance procedures implementing Section 90.0 in Part A of Policies Applying to Campus Activities, Organizations, and Students.

³Students may also avail themselves of the informal procedures adopted by their respective campuses pursuant to Section 90.0 in Part A of the Policies Applying to Campus Activities, Organizations, and Students.

- E. Remedy. The remedy cannot exceed restoring the pay, benefits, or rights lost by the grievant, less any compensation from any source. Management prerogatives, including but not limited to discipline of an individual, are not remedies available to the grievant.
- F. Confidentiality. Regulations established pursuant to the specific procedure being implemented govern the hearing process and access to documents.

VI. DISCIPLINARY ACTION

Following appropriate procedures as provided by University policies and pursuant to the Chancellor's or responsible administrator's authority over disciplinary action on campus, the Chancellor or responsible administrator may initiate disciplinary action against the alleged harasser or may refer discipline to an appropriate administrative body.

If the alleged harasser is a member of the faculty, the Chancellor or appropriate administrator may initiate disciplinary proceedings in accordance with procedures established by the Academic Senate.

If the alleged harasser is a student, the Chancellor or appropriate administrator may initiate disciplinary proceedings pursuant to Section 52.120 in Part A of the Policies Applying to Campus Activities, Organizations, and Students.

Discipline taken against other University employees is in accordance with the applicable personnel policy or Memorandum of Understanding. If discipline is taken, the person disciplined has the right to file a grievance under the procedure appropriate to his/her status alleging that the discipline was unreasonable under the circumstances or that applicable policies or contractual provisions were violated.