In Strict Confidence

TO: Maureen Stanton, Vice Provost of Academic Affairs

Wendi Delmendo, Chief Compliance Officer

FROM: Professor Nicole Baumgarth, School of Veterinary Medicine

Wendy Lilliedoll, University Investigator

DATE: July 5, 2016

RE: Report of APM 015 Review, Department of

I. INTRODUCTION

On April 11, 2016, you appointed us to investigate allegations that Respondent, a professor in the Department of period and period in behavior that could violate University policy, including the University's Policy on Sexual Violence and Sexual Harassment and the Faculty Code of Conduct.

Specifically, it is alleged that Respondent engaged in unwelcome touching of a graduate student, gave the student a gift, and made unwanted comments about the student's physical appearance. In addition, it is alleged that when Complainant objected to Respondent's conduct by returning the gift and expressing that she felt it was inappropriate, Respondent retaliated. These allegations, if true, could constitute violations of one or more University policies, including the Faculty Code of Conduct. This report summarizes the scope and results of our inquiry.

II. SUMMARY OF FINDINGS

Clear and convincing evidence substantiates that Respondent violated the Faculty Code of Conduct and University sexual harassment policy. The substantial weight of the evidence supports that Respondent hugged Complainant, kissed her cheek, gave her a gift, showed her messages saying she was cute, touched her, and stood uncomfortably close to her when they were working alone together in the lab. The evidence supports that those actions were unwelcome and created an intimidating, hostile work environment for Complainant.

In addition, the evidence supports that when Complainant objected to Respondent's conduct, Respondent privately and publicly criticized her, made statements toward her that Complainant and a witness viewed as threatening, reassigned her projects to another individual, and limited his communication with her. The timing, nature, and context of these behaviors toward Complainant suggests that they were motivated by Complainant's objections to his conduct and thus violate University policy.

III. METHODOLOGY

A. Standard of Proof

"Preponderance of the evidence" means that a proposition is more likely to be true than not true. "Clear and convincing evidence" means that a proposition is substantially more likely to be true than not true. Each of the factual findings and policy conclusions reflected in this report is made on a clear and convincing evidence basis. Because the clear and convincing evidence standard is a higher burden than the preponderance of the evidence standard, the evidence also satisfies the preponderance of the evidence standard.

B. Relevant Policy Provisions

APM 015: The Faculty Code of Conduct

Complainant is a graduate student. The policy governing professional responsibilities, ethical principles and unacceptable faculty conduct defines "unacceptable conduct" toward students to include:

"Discrimination, including harassment, against a student...for reasons of ...sex,... gender...or for other arbitrary or personal reasons." (APM 015-II-A-2).

In addition to faculty members' responsibilities toward students, the Faculty Code of Conduct also clarifies obligations toward the University, prohibiting:

"Serious violation of University policies governing the professional conduct of faculty, including but not limited to policies applying to research, outside professional activities, conflicts of commitment, clinical practices, violence in the workplace, and whistleblower protections." (APM 015-II-C-7).

2. University Sexual Harassment Policy

The system-wide Sexual Violence and Sexual Harassment policy, effective January 1, 2016, defines and prohibits sexual harassment. It provides:

Sexual Harassment is unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal or physical conduct of a sexual nature when:... such conduct is sufficiently severe or pervasive that it unreasonably denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment or other programs and services of the University and creates an environment that a reasonable person would find to be intimidating or offensive."

Section II-C of the sexual harassment policy also prohibits retaliation, which "includes threats, intimidation, reprisals, and/or adverse employment or educational actions against a person based on their report of Prohibited Conduct...."

A "serious violation" of the Sexual Harassment and Sexual Violence policy also implicates Faculty Code of Conduct section II-C-7, which prohibits serious violations of other University policies.

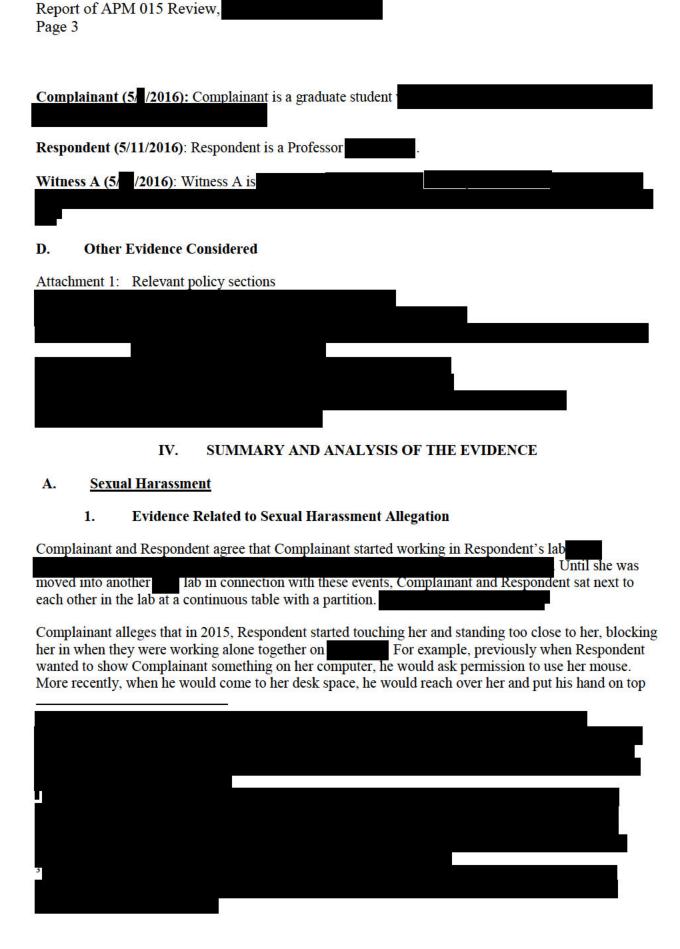
Because this event spanned a period before and after January 1, 2016, we also considered UC Davis PPM 400-20, which was in effect from June 19, 2014 through December 31, 2015 provides:

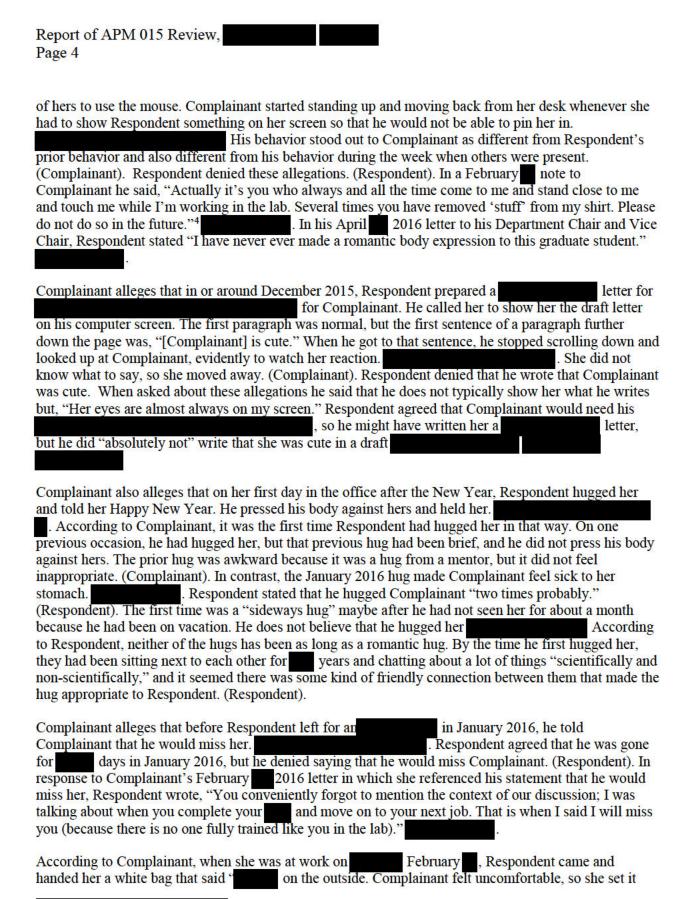
Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct affects a person's employment or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment.

C. Interviews and Reports

During our investigation, we interviewed the following individuals¹:

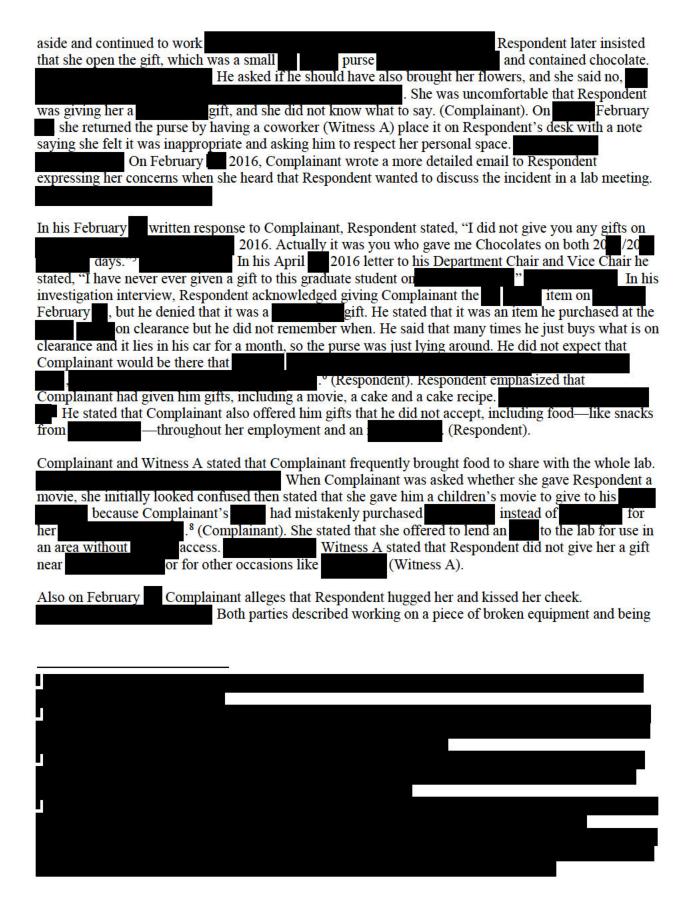
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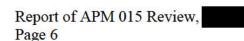




⁴ Complainant responded that she had removed a spider from his shirt but that otherwise she was not sure what he was referring to.

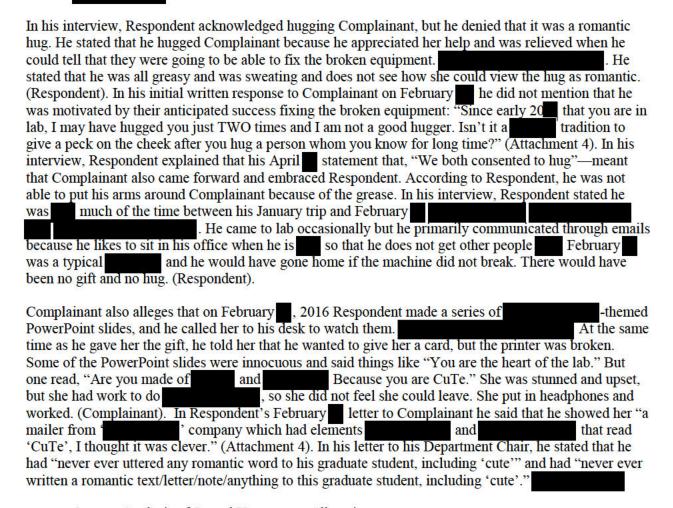






greasy. (Complainant, Respondent). Complainant stated that after Respondent gave her the gift and before she opened it:

He then walked in for a hug. Again I did not know what to do, I did not want to hug him and froze as he hugged me. Again he clamped on, holding me very close. He held on to me, I put my arms down and I tried to get away but he would not let go, as I was trying to get away and pulling back, he pulled in and kissed my cheek. I felt disgusted, uncomfortable and realized that he was definitely not hugging me professionally.



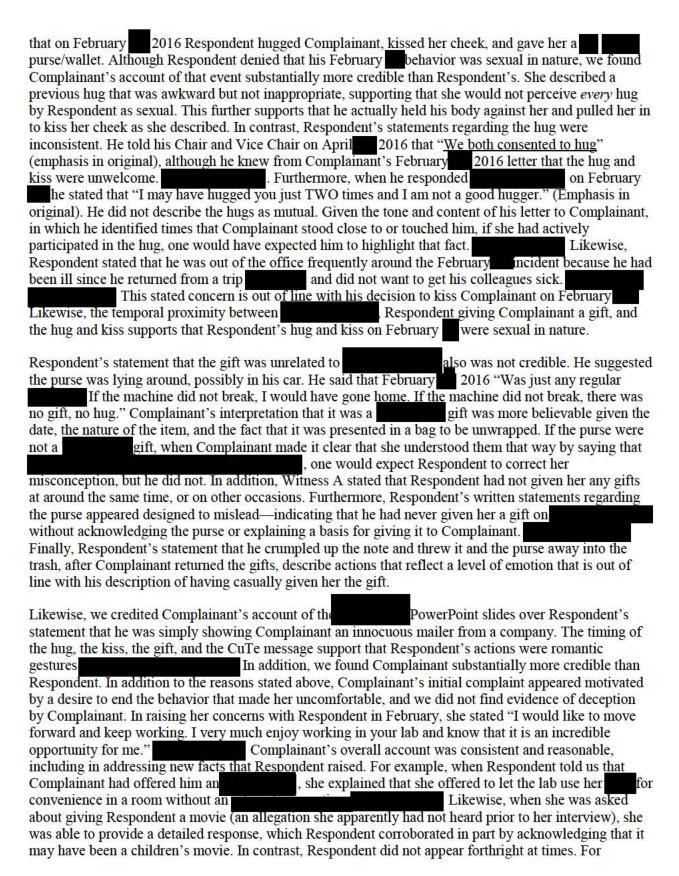
Analysis of Sexual Harassment Allegation

This investigation found clear and convincing evidence supporting Complainant's allegation that Respondent engaged in behavior that violates University sexual harassment policy and the Faculty Code of Conduct.

a. Did Respondent Engage in Unwanted Sexual Conduct?

Sexual Harassment includes "unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature." Respondent's conduct toward Complainant constituted "unwelcome sexual advances" and "nonverbal, or physical conduct of a sexual nature." The parties agree





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example, he refused to commit to an interview for longer than 1 hour, although there was no clear reason provided as to why he had to leave after that one hour. He ended his interview by vaguely stating that Complainant had done "millions of things" wrong, without providing details. He also suggested that Complainant spontaneously gave him the cake recipe and video without explanation, but his documentation suggested they had discussed it previously.

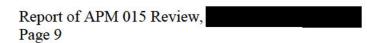
Complainant's description of previous incidents also was compelling. Respondent's denial that he said he would miss Complainant when he went on a trip was not convincing. His initial response to her allegation had been that he was saying he would miss her when she went on to her next job, but there was no indication her departure was imminent, so it is not clear why he would be commenting on that in particular. Likewise, her description of the hug was credible for the same reasons discussed above in relation to the February hug. Her description of Respondent's letter was detailed and credible. In contrast, Respondent's suggestion that Complainant's "eyes are almost always on [Respondent's] screen" was not believable.

Although Respondent's April , 2016 letter to his Department Chair and Vice Chair argued that "We both consented to hug" (emphasis in original), the evidence overwhelmingly supports that Respondent's conduct as described above was unwelcome. Complainant raised a concern with Witness A and complained to the University and the Respondent within days of the February 2016 event.

b. Was Respondent's Sexual Conduct Sufficiently Severe or Pervasive That It Interfered with Complainant's Education or Employment and Created an Intimidating or Offensive Environment?

Sexual conduct is prohibited by the January 1, 2016 system-wide sexual harassment policy when it is "sufficiently severe or pervasive that it unreasonably denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment or other programs and services of the University and creates an environment that a reasonable person would find to be intimidating or offensive. The UC Davis sexual harassment policy in effect in 2015 prohibits sexual conduct "when submission to or rejection of this conduct affects a person's employment or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment." In the present case, clear and convincing evidence supports that Respondent's conduct toward Complainant constituted sexual harassment.

Respondent's conduct toward Complainant in 2015 violated the sexual harassment policy in effect at that time by creating an intimidating and offensive work environment for Complainant, Complainant convincingly described feeling uncomfortable and ill as a result of Respondent's conduct. She described avoiding situations where Respondent could touch her or escalate his conduct, such as by trying to work during different hours than he did so they would not be alone together and moving out of her chair when showing him work on the computer so that he would not put his hand on hers or corner her in a space physically close to him. Respondent's authority over Complainant as a result of his position reasonably made his conduct more intimidating. Likewise, Complainant had observed Respondent's attitude toward employees become negative when he disagreed with them or they did not meet his expectations. As a result, she did not feel like she could object to Respondent's conduct without him becoming upset and providing her with a poor recommendation. For example, she described not knowing what to say or do when Respondent showed her the draft where he wrote that she was cute. Respondent's negative statements about Complainant since her present complaint support that Complainant's concerns were reasonable.



Respondent's overall sexual conduct toward Complainant was sufficiently severe or pervasive to interfere with Complainant's work in Respondent's lab and to create an environment that a reasonable person would find intimidating or offensive, in violation of the January 1, 2016 Sexual Violence and Sexual Harassment policy. The sexual harassment policy instructs us to consider the totality of the circumstances in assessing whether behavior constitutes sexual harassment. Here, the totality of the circumstances includes the fact that Respondent was Complainant's supervisor and advisor and that they frequently worked alone together. Given that relationship and the history of Complainant's conduct, Respondent's actions in pulling Complainant into a hug and pressing his body against hers while they were alone together in the lab in January 2016, then repeating the conduct on February 2016 while also kissing her cheek and giving her a purse and chocolate were sufficiently severe or pervasive to interfere with Complainant's participation in and benefit from University programs. The combination of his harassing conduct and his behavior following her complaint ultimately led Complainant to request a transfer to a As was discussed above, prior to that, Respondent's conduct led Complainant to change her work hours to avoid being alone with Respondent. She also became uncomfortable and changed her behavior around someone with whom she worked closely and upon whom she was professionally dependent. Furthermore, Complainant was reasonable in finding the work environment intimidating and offensive as a result of Respondent's actions.

For the same reasons that Respondent's behavior violates the University's sexual harassment policy, clear and convincing evidence also substantiates a violation of APM 015-II-A-2 and APM 015-II-C-7.

and convincing evidence also substandates a violation of APM 015-11-A-2 and APM 015-11-C-7.
B. <u>Retaliation</u>
1. Evidence Related to Retaliation Allegation
In her interview, Complainant stated that after February she could not handle having Respondent's behavior continue or worsen. She debated talking to him directly, but she hates confrontation. She also wanted a record in writing that he could not alter because she had seen Respondent's evaluation of forme employees change when he was unhappy with them. She asked Witness A to leave the purse and a note saying the gift was inappropriate on Respondent's desk after Complainant went out of town Witness A stated that she put the items on Respondent's desk in a bag, so it would not be apparent to others what was there. (Witness A). In his interview, Respondent stated that he found the purse on his desk. There was a note with the returned bag, but Respondent does not know what it said. He just threw it away. He threw away the purse as well. He said, "If she did not like the purse, I threw it away. I got the message that she did not like the gift and I said 'okay." (Respondent).
Witness A stated that the after she left the items on his desk, Respondent appeared upset. He sai that someone put something on his desk that made him uncomfortable and that he wanted to talk about it in the next group meeting. (Witness A). Complainant alleges that Respondent immediately started asking for Witness A instead of Complainant and started assigning Complainant's collaborative projects to Witness A. (Complainant). Witness A corroborated that Respondent told her that she would be taking over projects and that Complainant would begin focusing solely on her (Witness A). Whereas

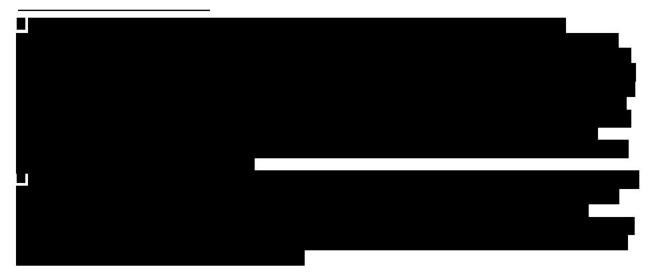


Complainant had been Respondent's primary contact in the lab, Respondent started communicating with her through Witness A or sending her emails even though he and Complainant were sitting next to each other. (Complainant). Witness A agreed that Respondent started asking Witness A to ask Complainant questions when he previously would have talked to Complainant himself. (Witness A). The impression Witness A had was that Respondent was not talking to Complainant so he gave her projects to Witness A. (Witness A). Also, in his letter to Complainant on February 2016, Respondent indicated to Complainant her different standing in the lab in that "... now turned out to be my first student." Respondent stated that he was in the lab infrequently because he was ill and that Complainant stopped talking to him on February or February

The week after Complainant returned the purse, Respondent told Witness A to make sure everyone would be present for lab meeting because he wanted to discuss an item being left on his desk. (Witness A). When Complainant learned that Respondent planned to talk to the lab, she wrote and emailed it to Respondent on February The document explained her concerns and noted "I do not wish to discuss this issue again or further. I definitely do not think it should not [sic] be brought up in lab meeting."

The next day, Respondent handed Complainant a blank envelope and told her to read it alone. Complainant thought the envelope would contain an apology, but it did not. (Complainant). In the letter, Respondent denied her allegations and also criticized her conduct. He suggested that she was not "professional" because she had not let him know about her concerns immediately; he said "as you have noted you must have been misinterpreting all the situations 11"; he claimed that Complainant "always and all the time come to me and stand close to me and touch me while I'm working in the lab"; and he said "I can list many more situations that were inappropriate from your side."

According to Complainant, that day in lab meeting, Respondent said that someone had left a "nasty" note on his desk. He commented that there is a saying in his language that people who live in glass houses should not throw rocks. (Complainant). Respondent acknowledged that he talked about the issue at lab meeting despite Complainant's request. He did so because she had left the purse on his desk and anyone might have seen it, so he wanted everyone to know not to do those things. He also told Witness A in advance that everyone should attend lab meeting because he wanted to make an announcement. He talked only in general terms saying not to leave uncomfortable material on anyone's desk or his desk. He cannot recall whether he referenced "nasty" notes and does not know whether he made a statement about glass houses. He "just wanted people to be courteous and solve problems confidentially." (Respondent). Witness A, who was present at the lab meeting, said that Respondent did not mention any specifics and



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everyone who did not know about the situation seemed confused. He said that someone had left something on his desk that he felt was inappropriate and that if someone had a problem with him they should talk to him and not leave notes on the desk. He also mentioned a quote or saying from about throwing rocks at someone else when you have a glass house. In response to a question about her reaction, Witness A noted, "It sounded a little threatening to be honest. I felt really uncomfortable the whole time he was speaking." (Witness A).

In his letter to the Department Chair and Vice Chair on April

Respondent stated regarding

Complainant that "It appears she being

Further, she even accepted in her communication with me
that she might be 'misinterpreting' these events and wanted to move on."

In a follow-up
letter on April

he included excerpts from "examples of comments" from others that had criticized

Complainant's

in ways that were unrelated to the present complaint.

At the conclusion of his interview, Respondent stated that a "thousand times, a million
times, she has stepped over the line. She has created this much mess." He noted that "if the time comes,"
he would "document thousands of things she has done." He added that "She has crossed lines for so many
things. I just ignored it because I did not want confrontation. All I did was to go away from the situation. I
should have said something." He indicated that he did not want to talk about any of those things, and he
ended the interview. (Respondent).

2. Analysis of Retaliation Allegation

University policies prohibit retaliation against an individual who objects to serious policy violations. For example, Section II-C of the sexual harassment policy prohibits "threats, intimidation, reprisals, and/or adverse employment or educational actions against a person based on their report of Prohibited Conduct...."

In the prese	tt case, Complainant objected to Prohibited Conduct on February 2016 when she returned
the purse w	th a note expressing that she believed it was inappropriate, on February 2016 when she
sent	to Respondent, and in or around March, when she went to the Department to ask if she
could be mo	ved to a different lab for the remainder of her
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After Complainant's objections, Respondent engaged in a number of actions that, taken as a whole, might deter a reasonable person from objecting to sexual harassment in the future: He publicly (though somewhat anonymously) criticized her conduct in a lab meeting, despite her express request that he not discuss the issue in that forum. His lab meeting statements included a comment about throwing rocks in a glass house that Witness A perceived as threatening and uncomfortable. He began communicating with Complainant over email and through a colleague. He criticized Complainant's behavior generally and related to the complaint—to Complainant

, to the Chair and Vice Chair of the Department with the complainant would be focusing on her with collaborators to Witness A and stated that Complainant would be focusing on her which followed immediately on the heels of Complainant's objections, strongly supports retaliation.

Furthermore, many of Respondent's negative statements to and regarding Complainant directly related to her complaint. For these reasons, clear and convincing evidence supports that Respondent retaliated against Complainant in violation of the sexual harassment policy and Faculty Code of Conduct.

V. CONCLUSION

For the reasons discussed above, it is our conclusion that clear and convincing evidence supports that Respondent violated the Faculty Code of Conduct and University Sexual Harassment policies.

Respectfully submitted,



Nicole Baumgarth Professor, School of Veterinary Medicine



Wendy Lilliedoll University Investigator, Offices of Compliance and Policy and Academic Affairs

Appendix 1

Complainant: Respondent: Witness A:

Nilesh Gaikwad