

Confidential Investigation Report

August 22, 2016

To: Wendi Delmendo
Chief Compliance Officer
Title IX Officer

Maureen Stanton
Vice Provost—Academic Affairs

Re: [REDACTED]

I. Introduction

The University of California is committed to creating and maintaining a community where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of sexual violence and sexual harassment.

[REDACTED]

[REDACTED]

On June 14, 2016, we were charged with investigating the allegations against [REDACTED], and provided a deadline of September 8.

[REDACTED]

The findings in this report are based on the preponderance of the evidence, meaning that the evidence on one side outweighs, preponderates over, or is more than the evidence on the other side.

II. Summary of Allegations and Findings

Allegation 1:

[REDACTED] alleges that [REDACTED] engaged in unwelcome or unwanted touching, which included hugging her on two occasions, and made comments of an intimate nature to her, including telling her that he had developed feelings for her.

██████ alleges that after she rejected his advances, ██████ treated her differently, including denigrating her to others.

Finding on Allegation 2: This allegation is substantiated by the preponderance of the evidence and is found to be a violation of the Sexual Harassment and Sexual Violence policy and the Faculty Code of Conduct.

University of California Sexual Harassment and Sexual Violence Policy²

Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment is conduct that explicitly or implicitly affects a person's employment or education or interferes with a person's work or educational performance or creates an environment such that a reasonable person would find the conduct intimidating, hostile, or offensive.

This Policy prohibits retaliation against a person who reports sexual harassment or sexual violence, assists someone with a report of sexual harassment or sexual violence, or participates in any manner in an investigation or resolution of a sexual harassment or sexual violence report. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education.

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 the 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.

This policy also prohibits retaliation against persons making a report about sexual harassment or sexual violence, assisting someone with such a report, or participating in any manner in an investigation or resolution of sexual harassment or sexual violence report. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education.

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Academic Personnel Manual 015, The Faculty Code of Conduct

Types of unacceptable conduct . . .

Discrimination, including harassment, against a student on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), or service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons. . .

Use of the position or powers of a faculty member to coerce the judgment or conscience of a student or to cause harm to a student for arbitrary or personal reasons. . .

Entering into a romantic or sexual relationship with any student for whom a faculty member has, or should reasonably expect to have in the future,⁴ academic responsibility (instructional, evaluative, or supervisory).

IV. Evidence Regarding the Allegations

Witnesses⁵

Name	Title	Date Interviewed
[REDACTED]	[REDACTED]	6/ [REDACTED] /16 (phone)
[REDACTED]	Administrative Assistant	6/ [REDACTED] /16 (phone)
[REDACTED]	Staff Research Associate	7/ [REDACTED] /16 (phone)
[REDACTED]	Professor	7/ [REDACTED] /16 (phone)
[REDACTED]	Professor	7/ [REDACTED] /16

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[REDACTED]

Attachments⁶

1. [REDACTED] notes regarding the incidents

Interview Summaries

A. [REDACTED]

[REDACTED] stated that when she first became a [REDACTED] in [REDACTED] her relationship with [REDACTED] was professional. She described his personality as “different,” and clarified that he was a strict instructor and had exacting standards. She had some trouble adjusting to his personality, but stated it did not impact her success in her position.

According to [REDACTED] things changed when she returned from a trip to [REDACTED] on [REDACTED]. She stated that [REDACTED] started acting differently around her. Initially she noted that he seemed “extremely caring” about everything she worked on, which was unusual. On June [REDACTED] 2015, the facility staff celebrated [REDACTED]. [REDACTED] stayed late after work and specifically thanked [REDACTED] even though everyone brought desserts. He then gave her a very long hug,⁸ telling [REDACTED] that he felt really good with her and didn’t know why he felt that way. [REDACTED] stated she managed to get out of the situation by indicating she felt a paternal connection to him.

About two weeks later, [REDACTED] saw [REDACTED] in the [REDACTED] room. When [REDACTED] asked who wanted to help him with the [REDACTED] someone else offered so [REDACTED] left because she had other work to do. When [REDACTED] saw her later, he told her that he was upset she didn’t help him with the [REDACTED]. She explained that he didn’t appear to need more help and she had other things to work on. He then gave her a long hug similar to the previous incident.⁹ This time she acted cold to stop the embrace.

[REDACTED] left the facility and went to see [REDACTED] immediately after the incident. She told [REDACTED] what had happened, and as she was talking to [REDACTED], she received a text message from [REDACTED] saying

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[REDACTED]

that he was sorry for bothering her. [REDACTED] helped [REDACTED] craft a response text message,¹⁰ saying that she thought of [REDACTED] as a father-figure, and they needed to keep their relationship professional.¹¹ [REDACTED] advised [REDACTED] to report the behavior, but [REDACTED] did not want to and asked [REDACTED] to not report the situation either.

The following Monday, when [REDACTED] saw [REDACTED] at the lab, he told [REDACTED] he had feelings for her and wanted to treat her like a daughter, but couldn't help but see her as attractive. [REDACTED] also told [REDACTED] that she needed to be careful around him because he would have trouble controlling his emotions. She then started noticing that [REDACTED] was treating her differently, and felt he was retaliating for her rejection of him.

Specifically, [REDACTED] stated that [REDACTED] started becoming critical of her performance when he had never been critical of her before. When he told [REDACTED] she could be a better [REDACTED] she told [REDACTED] it was only because she had rejected him. He denied that was the reason but she insisted it was the case. When [REDACTED] told [REDACTED] she had told her [REDACTED] about the incidents that had occurred, he started to deny that anything ever happened.

[REDACTED]

[REDACTED] stated that [REDACTED] actions did impact her work environment in general, and she found it stressful to be there when he started treating her differently. She even moved her workspace into the library so she could be further away from him. Overall, she thought she could have been more successful if she had been able to focus on her work and not worry about [REDACTED]; however, she believes that she had already established herself as a competent professional and maintains a good reputation. [REDACTED] added that she has been in touch with [REDACTED] for professional reasons since leaving [REDACTED] and those communications have been fine.

Overall, [REDACTED] stated she is concerned about how [REDACTED] might interact with the current [REDACTED]. She stated she was aware of problems [REDACTED] had with the previous [REDACTED] although she did not know anything about the specifics of those problems, and believe his actions show he is not well suited to be in this position over students.

B.

[REDACTED] stated that she never noticed [REDACTED] behavior towards [REDACTED] change during the time [REDACTED] was there. [REDACTED] recalled seeing [REDACTED] start working in the [REDACTED] towards the end of her time there, and that even after [REDACTED] and her colleague advised [REDACTED]

¹⁰ [REDACTED]

██████████ that ██████████ should be leaving the ██████████ available for others to use, ██████████ continued to allow ██████████ to work in the ██████████ to avoid any confrontation.

█████ recalled a conversation where █████ said she thought █████ was treating her differently, and that she said several times she thought █████ was mad at her. █████, however, did not witness anything she thought was inappropriate or that caused her concern about the relationship between █████ and █████.

The one issue [REDACTED] was aware of related to [REDACTED] is that he has issues taking direction from women, and was aware of some women at the facility having that concern about [REDACTED]

C. [REDACTED]

According to [REDACTED], the only change she ever noticed in how [REDACTED] treated [REDACTED] was towards the end of her time there. [REDACTED] stated that [REDACTED] was often defensive and demanding about her cases, and some people at the facility would take their concerns about her to [REDACTED]. Initially, [REDACTED] would address these issues directly to [REDACTED] but at the end, he would attempt to diffuse the situation by stating that she was almost done, and that they wanted her to have a positive feeling about the lab after she left. She also reported that [REDACTED] would say that [REDACTED] was emotional.

█████ stated she never saw any interactions between █████ and █████ that caused her concern, nor did █████ ever specifically tell her about any problems she was having about █████. However, after █████ left the facility, █████ stumbled upon some information that caused her concern regarding the relationship, adding that the information made her think █████ may have been harassing █████ at one point.¹² After finding this information, █████ recalled one night around September when she had a general discussion with █████ about sexual harassment. █████ stated she believed that a high majority of women encounter sexual harassment in the workplace but men get away with it. █████ stated she disagreed with █████ during that conversation and █████ was adamant about her position. █████ stated █████ never told her she was being harassed in any way.

Regarding [REDACTED] stated she has a decent professional relationship with him, but noted that he does treat women differently in general, as though they are below him. She stated that it seems like if a woman questions him or does something he doesn't like, he will target them for poor treatment. [REDACTED] had not personally experienced this behavior, adding that she has never questioned

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him so never given him reason to treat her poorly, but thought his behavior was getting worse recently.

D.

[REDACTED]

[REDACTED] first learned of [REDACTED] concerns on June 12, 2015. [REDACTED] came to [REDACTED] home at around [REDACTED] that night after leaving the lab where [REDACTED] had been working with [REDACTED]. [REDACTED] described [REDACTED] as “shaking and crying.” [REDACTED] told [REDACTED] that [REDACTED] had come into her office and told [REDACTED] he had feelings for her. He tried to embrace her but she pushed him off, stating that he had a wife and she thought of him only as a mentor. [REDACTED] told [REDACTED] she felt betrayed by [REDACTED]. She also showed [REDACTED] a text message where [REDACTED] apologized for making [REDACTED] uncomfortable,¹³ and said that [REDACTED] told her [REDACTED] had warned that [REDACTED] should be careful around him the next couple of months.¹⁴ [REDACTED] told [REDACTED] she was required by policy to report the behavior but [REDACTED] begged [REDACTED] not to, saying she was afraid of retaliation because faculty members are generally not held accountable for actions like these. [REDACTED] left [REDACTED] home after about an hour.

[REDACTED] stated [REDACTED] was very upset about the events so she considered the request to not report the allegation, but decided she needed to inform [REDACTED] of the report on the next work day. [REDACTED] asked [REDACTED] if she could keep watch over [REDACTED] which [REDACTED] agreed to. He also asked [REDACTED] if she would feel comfortable talking to [REDACTED] to which she said no because she was not his supervisor, and didn’t feel they had the type of relationship where it would be appropriate for her to discuss the matter with him.¹⁵

[REDACTED] stated that [REDACTED] was upset from that point forward and seemed like she was just trying to get through the end of her [REDACTED]. [REDACTED] felt that the relationship between [REDACTED] and [REDACTED] continued to deteriorate, noting that they argued a lot and he was more frequently upset with her if she was working on other cases or if he felt it took her too long to get to the [REDACTED] room. [REDACTED] also recalled that [REDACTED] became more critical of [REDACTED] telling [REDACTED] that [REDACTED] was very emotional and he didn’t consider her a good [REDACTED] when he had been complimentary of her

¹³ [REDACTED]

skills previously. [REDACTED] also noted that some of the techs in the lab also started calling [REDACTED] emotional at that point, but she didn't know if it was related to [REDACTED] statements.

[REDACTED] was not sure if [REDACTED] actions were retaliatory, or if his actions were intentional. She suspected that he was hurt by [REDACTED] rejection. [REDACTED] did, however, believe that the lab became a hostile workplace for [REDACTED] specifically because of the situation with [REDACTED], and wishes the department had dealt with the allegation better initially so that [REDACTED] would have felt she received some justice.

[REDACTED] was not aware of anyone else having problems of a sexual nature with [REDACTED], but noted he has a tendency to behave in a sexist manner. She stated that he will make comments like, "women learn languages more easily than men," then play them off like jokes. She also knew about [REDACTED] problem with a [REDACTED] tech and [REDACTED] excusing him because it must be hard for him to take direction from a younger woman. [REDACTED] stated she has had similar experiences with that [REDACTED] tech, and received a similar response from [REDACTED] when she raised her concerns. Despite these concerns, [REDACTED] did not think the lab was a hostile environment for the women who work there, stating that the women are strong and will stand up for themselves.

E.

[REDACTED] described [REDACTED] as enthusiastic, motivated, and hard-working, stating they got along well and were friendly with one another. [REDACTED] noted that he was especially impressed with [REDACTED] after he saw her give a scholarly presentation.

[REDACTED] recalled the [REDACTED] celebration held for him in 2015. He stated it was in the office breakroom and believed it had been organized by multiple people, including [REDACTED] and [REDACTED]. He stated that most of the people in the lab participated in the celebration and he thanked everyone for their efforts. He did not recall having a conversation specifically with [REDACTED] to thank her for the celebration, and stated he did not hug her.

[REDACTED] acknowledged there were times when he and [REDACTED] hugged at work, stating that it was always [REDACTED] who initiated the hugs. [REDACTED] stated that it was not uncommon for [REDACTED] to hug her colleagues at the facility, they were friendly hugs, and there was never anything romantic in the hugs he shared with [REDACTED]. [REDACTED] further stated that he never had any romantic interest in or feeling for [REDACTED]. [REDACTED] never commented on or gave her compliments about her appearance, and had never indicated any romantic feelings to her. He did recall telling [REDACTED] that she was important to him, but stated he meant it in her position as a [REDACTED]. He also recalled telling her once that she had "good eyes," but stated it was because she was able to detect things when looking through a microscope.

[REDACTED] also acknowledged having communicated with [REDACTED] through text message, and recalled a message he sent her where he apologized for bothering her. [REDACTED] stated that this

message was related to a professional disagreement they had that night, where he had tried to give [REDACTED] advice regarding a report and she became upset about his suggestions. [REDACTED] stated the message was something like, "Sorry to have bothered you. I didn't mean to upset you." He did not recall if [REDACTED] responded to his message.

[REDACTED] stated his primary concern about [REDACTED] performance throughout the time she was a [REDACTED] was her resistance to criticism, and it would frustrate him when she wouldn't listen to him. [REDACTED] acknowledged discussing this issue with [REDACTED], and added that [REDACTED] would come to him with the same concerns. He also acknowledged having spoken to [REDACTED], [REDACTED] and a [REDACTED]⁶ about [REDACTED] being emotional; and with [REDACTED] and [REDACTED] about [REDACTED] being immature. [REDACTED] stated that while [REDACTED] became a little better about accepting criticism over time, she never liked it and [REDACTED] progressively became more frustrated with her reactions to his feedback.

[REDACTED] claimed that he never discussed any personal matters with [REDACTED] although he knew that she had a lot of friends and would go out with her friends on the weekends. [REDACTED]

[REDACTED] Overall, he described their relationship as friendly, but professional.

When asked to respond to the specifics of the allegations, [REDACTED] stated he never initiated any hugs with [REDACTED], and only hugged her when she initiated. He described the hugs as friendly, lasting 10-15 seconds, and that there was nothing romantic about them. [REDACTED] stated he never indicated any romantic interest in [REDACTED], never told her that he thought she was available to him, and never told her that she needed to be careful around him. He suspected that a tech at the lab¹⁷ was the sources of the allegations because he had recently given the tech an [REDACTED] [REDACTED] and had recently accused him of having harassed someone else.

V. Analysis

Allegation 1: [REDACTED] alleges that [REDACTED] engaged in unwelcome or unwanted touching, which included hugging her on two occasions, and made comments of an intimate nature to her, including telling her that he had developed feelings for her.

There is very little that the parties in this case agree on. The main point of agreement is that there is a culture in the [REDACTED] facility where friendly hugging has been accepted, and that [REDACTED] had shared hugs with [REDACTED]. But according to [REDACTED], things changed after the [REDACTED]

¹⁶ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

celebration for [REDACTED], at which time he allegedly engaged in a prolonged hug, telling [REDACTED] how good it felt to hug her. [REDACTED] denied this ever happened.

[REDACTED] stated there was a second similar hug a couple of weeks later that also seemed romantic in nature. Again, [REDACTED] denied any such interaction between the two of them. In this case, [REDACTED] immediately went to [REDACTED] and reported what had occurred. [REDACTED] described [REDACTED] as “shaking and crying” while she described what had happened, and felt that [REDACTED] seemed upset at work from that point forward. [REDACTED] also verified she was aware [REDACTED] messaged [REDACTED] saying she was upset about what had occurred between them that night, and saw [REDACTED] text message to [REDACTED] apologizing to her.

While [REDACTED] was not present during either of the hugs, or the subsequent alleged conversations between [REDACTED] and [REDACTED] regarding his feeling, [REDACTED] was providing information to her about the situation at the time it was occurring. The fact that [REDACTED] was providing this information to [REDACTED] bolsters [REDACTED]’s credibility. It is also significant that [REDACTED] asked [REDACTED] not to report the harassment, and did not pursue an investigation into the harassment, demonstrating that [REDACTED] did not intend for an investigation to take place. The concern came to the Title IX office much later through [REDACTED], and the decision to investigate the allegation was made by the Title IX office. It was not prompted by [REDACTED], again demonstrating that she did not intend to pursue the matter.

[REDACTED]’s actions both at the time of the alleged harassment and in the time following shows it is unlikely she was inventing the allegation or was planning to set up [REDACTED] for some reason. If she had some motivation to invent an allegation to get [REDACTED] in trouble, there is no reason she would have asked [REDACTED] to keep the allegation private, or to not report it directly to the Title IX office or up her chain of command. And as noted above, although the concern eventually made its way to the Title IX office, it was not by [REDACTED].

In [REDACTED] interview, even he did not call into question [REDACTED]’s credibility or accuse her of falsely inventing allegations against him. When asked why he thought the allegations were made, he accused another staff member of making up the allegations, even stating that the staff member accused him of harassing someone else. There is no evidence that the staff member he named had any knowledge of [REDACTED]’s allegations, knowledge of this investigation, or involvement in this allegation coming to the Title IX office.

In addition to [REDACTED] statements about what [REDACTED] told her at the time of [REDACTED] alleged behavior, [REDACTED] also provided information that appears to support [REDACTED]’s version of the events. While [REDACTED] did not report the harassment to [REDACTED], [REDACTED] did become concerned about the relationship between [REDACTED] and [REDACTED] after discovering information [REDACTED] had saved about the harassment. This was information [REDACTED] saved contemporaneously when the behavior was occurring, but was discovered by [REDACTED] only after [REDACTED] had left [REDACTED].

The impact of these actions on [REDACTED] was noted by other witnesses—even on a witness ([REDACTED]) who did not know about the situation. In addition, [REDACTED] noted that [REDACTED] became noticeably unhappy at work and would talk to her about her feelings of discomfort and betrayal. In addition, [REDACTED] characterized the environment as hostile for [REDACTED] following the second embrace. [REDACTED] was also aware of [REDACTED] moving into the library to work, although she did not know why, and that [REDACTED] stated on more than one occasions she was concerned [REDACTED] was upset with her.

Overall, the statements made by the witnesses in the case provide support to [REDACTED]'s version of the events, leading to a finding that the allegations are substantiated by the preponderance of the evidence as a violation of the Sexual Harassment and Sexual Violence policy in place at the time. [REDACTED] actions, hugging [REDACTED], telling [REDACTED] he had romantic feelings for her, and indicating it was her responsibility to stay away from him because he would have trouble controlling his feelings, meets the standard of “unwelcome sexual advances . . . and other verbal, nonverbal, or physical conduct of a sexual nature” as prohibited by policy. The evidence also supports that these actions created “an environment such that a reasonable person would find the conduct intimidating, hostile, or offensive.” The evidence further meets the threshold of clear and convincing evidence required by the Faculty Code of Conduct. As such, we find that [REDACTED] actions do violate the Faculty Code of Conduct.

Allegation 2: [REDACTED] alleges that after she rejected his advances, [REDACTED] treated her differently, including denigrating her to others.

[REDACTED] acknowledged that he did remark to others in the facility that [REDACTED] was emotional and immature. He also acknowledged having discussed concerns with [REDACTED] about [REDACTED]'s ability to deal with criticism.

[REDACTED] stated that she did note a change in the relationship between [REDACTED] and [REDACTED] after [REDACTED] came to her house upset about [REDACTED] embracing her, but was unsure if she would consider it retaliation. Specifically, [REDACTED] stated that [REDACTED] had always been complimentary of [REDACTED]'s performance, but became critical of [REDACTED] sometime after [REDACTED] told [REDACTED] about the harassment. This appears to contradict [REDACTED] claims that his frustrations with [REDACTED] were that she did not take criticism well initially, but that her reaction to criticism improved over time. Although the other witnesses did not note a specific change in [REDACTED] treatment of [REDACTED], [REDACTED] was aware of [REDACTED]'s feeling that [REDACTED] was treating her differently, and noted that [REDACTED] moved out of her office and into the library for a period of time. [REDACTED] also noted a change in the way in which [REDACTED] and [REDACTED] interacted towards the end of [REDACTED].

[REDACTED] maintained that he thought highly of [REDACTED], and that he and [REDACTED] had mutual respect for one another. As evidence, he provided the instructor evaluation he stated she completed, and the letters of recommendation he provided for her. [REDACTED] does not deny that [REDACTED] provided letters of recommendation for her, suggesting that he may have done it so

she would not report his actions. Ultimately, whether or not [REDACTED] provided letters of recommendation to [REDACTED], or [REDACTED] provided positive comments in an instructor evaluation, does not change the impression that [REDACTED] had regarding the change in treatment, or [REDACTED] acknowledgement of the alleged comments.

The combination of [REDACTED] acknowledgement of making the comments alleged by [REDACTED], and the witnesses statements regarding the timing of this change in the relationship between [REDACTED] and [REDACTED] leads to a finding that the allegation is supported by the preponderance of the evidence as a violation of the Sexual Harassment and Sexual Violence policy and the Faculty Code of Conduct.

Conclusion

In the end, the fact that [REDACTED] had discussed her concerns to another faculty member at the time of the allegation provides support to her allegations. In addition, it is significant that [REDACTED] never intended the concerns to be reported through official channels, or for the allegations to be investigated, provides further support regarding the accuracy of her version of the events. As such, the preponderance of the evidence supports the allegations that [REDACTED] engaged in unwelcome or unwanted touching of [REDACTED], and proceeded to treat her differently, including denigrating her to others in the facility, after she rejected his advances.

Respectfully submitted,

[REDACTED]
Stacey Harmer
Professor

[REDACTED]
Molly M. Theodossy
University Investigator/Policy Manager