

Confidential Investigation Report

July 20, 2016

To: Maureen Stanton
Vice Provost—Academic Affairs

Wendi Delmendo
Chief Compliance Officer

Re: Michael O'Mahony

I. Introduction

██████████ is a graduate student in the ██████████ department. Michael O'Mahony was ██████████ ██████████ continued her professional relationship with O'Mahony and was his ██████████. On April ██████████, 2016, ██████████ former academic advisor, ██████████ was visiting with ██████████ in a public area of the ██████████, when O'Mahony approached and joined their conversation, making a comment about the reason why ██████████ had left his lab.

On May 10, 2016, we were charged with investigating the allegation that O'Mahony made an unwelcome and demeaning comment of a sexual nature during that April ██████████ conversation. ██████████

██████████
██████████
██████████ We were provided a deadline of August 4 to complete this report.

The University of California Sexual Violence and Sexual Harassment policy requires a preponderance of the evidence standard. Preponderance of the evidence means that the evidence on one side outweighs, preponderates over, or is more than the evidence on the other side. Faculty disciplinary procedures require a clear and convincing evidence standard. Clear and convincing evidence means that the evidence is highly and substantially more likely to be true than not.

II. Summary of Allegations and Findings

Allegation 1:

O'Mahony allegedly made an unwelcome and demeaning comment of a sexual nature to a graduate student on April ██████████ 2016, in the presence of her former academic advisor ██████████

Finding on Allegation 1: This allegation is substantiated by clear and convincing evidence, and is found to be a violation of the Sexual Violence and Sexual Harassment policy, and of the Faculty Code of Conduct.

Allegation 2:

[REDACTED]

Finding on Allegation 2: This allegation is not substantiated by clear and convincing evidence.

Allegation 3:

[REDACTED]

Finding on Allegation 3: This allegation is not substantiated by clear and convincing evidence.

III. Applicable Policies

APM 015, The Faculty Code of Conduct

Types of unacceptable conduct:

1. Failure to meet the responsibilities of instruction, including:
 - a. Arbitrary denial of access to instruction;
 - b. Significant intrusion of material unrelated to the course;
 - c. Significant failure to adhere, without legitimate reason, to the rules of the faculty in the conduct of courses, to meet class, to keep office hours, or to hold examinations as scheduled . . .
2. Discrimination, including harassment, against a student . . . for reasons of . . . sex . . . physical or mental disability . . . or for other arbitrary or personal reasons.
3. Violation of the University policy, including the pertinent guidelines, applying to nondiscrimination against students on the basis of disability.

UC Policy on Sexual Violence and Sexual Harassment

- a. Sexual Harassment is unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal, or physical conduct of a sexual nature when . . .
 - ii. Hostile Environment: 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.
- b. Consideration is given to the totality of the circumstances in which the conduct occurred . . .

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Confidential information may not be released without the student's written consent specifying the records to be disclosed and those to whom the disclosure can be made . . .

IV. Evidence Regarding the Allegations

Witnesses

Name	Title	Date Interviewed
[REDACTED]	[REDACTED]	5/25/16
[REDACTED]	Professor, [REDACTED]	6/2/16
[REDACTED]	[REDACTED] student	6/2/16
[REDACTED]	Professor Emerita, [REDACTED]	6/2/16
[REDACTED]	Postdoctoral Scholar	6/8/16
[REDACTED]	Professor, [REDACTED]	6/18/16
Michael O'Mahony	Respondent	6/18/16

Attachments

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]
13. [REDACTED]

Interview Summaries

[REDACTED]

[REDACTED] his interactions with [REDACTED]

O'Mahony were minimal, taking place primarily in faculty meetings. In those meetings, O'Mahony had a reputation for saying things that were politically incorrect.¹ [REDACTED] thought it was O'Mahony's attempt at humor, adding that the comments perhaps were considered acceptable many years ago or in a non-professional setting, but were not appropriate in faculty meetings. However, people generally just tolerated the comments and did not discuss them with O'Mahony.

[REDACTED] first learned that O'Mahony made a "crude sexual joke" to [REDACTED] from [REDACTED]. [REDACTED] told [REDACTED] she found out about the incident when she saw [REDACTED] "extremely distressed" and crying while speaking to [REDACTED]. [REDACTED] was not present when O'Mahony made the comment to [REDACTED] but [REDACTED] reportedly told [REDACTED] that the comment was related to [REDACTED] making sex tapes in the lab. [REDACTED] spoke briefly to [REDACTED] about the allegation before referring the complaint to Academic Affairs.

[REDACTED] was also aware that O'Mahony tried to approach [REDACTED] on two occasions after he made the alleged comment in an attempt to talk to her about it. [REDACTED] was able to steer O'Mahony away from [REDACTED] before she saw him at a ceremony. [REDACTED] understood that earlier the same day, O'Mahony approached [REDACTED] in the [REDACTED] class where she was [REDACTED], and that [REDACTED] was shaken by the earlier encounter with O'Mahony.²

[REDACTED] stated he has spoken to O'Mahony numerous times about similar allegations. In addition, he has written several letters to O'Mahony regarding his behavior, and is aware that O'Mahony has a long history of this behavior, dating back to at least the late 1980s. [REDACTED] stated that O'Mahony's reaction to the conversations they've had is "odd" because he doesn't seem to recognize that he's done anything wrong, and displays no remorse or regret. O'Mahony's reaction to the latest conversation [REDACTED] had with O'Mahony regarding this allegation was limited to a remark that it might cost him his job. [REDACTED] added that O'Mahony's similar behavior is known to individuals on the [REDACTED] leadership board, which consists of individuals who work in the industry, external to the University, and that he has been asked why the University continues to employ O'Mahony.

[REDACTED]

¹ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] She has never personally had an issue in her

4 [REDACTED]

[REDACTED]

6 [REDACTED]

7 [REDACTED]

interactions with O'Mahony, but has been told by others that they are uncomfortable with him. [REDACTED] specifically recalled a time in the early 80s when a friend of hers asked [REDACTED] to accompany her to a meeting with O'Mahony because she was uncomfortable with things he had said to her. She also recalled years later that another friend had said a similar thing to her.⁸ In addition, [REDACTED] stated that they both work in [REDACTED] [REDACTED] and therefore, are part of the same professional community, and that there is talk about O'Mahony's tendency to be "verbally inappropriate" with young Asian women.⁹ [REDACTED] clarified that she understands his comments were sexual in nature.

██████████ was not present during the interaction between ██████████ and O'Mahony, but learned about it from ██████████ the next morning. ██████████ saw ██████████ on the phone in a public area of the building. ██████████ said ██████████ was clearly upset when on the phone, then was in tears in the lab. ██████████ asked ██████████ to talk to her in her office, and ██████████ told ██████████ that O'Mahony had made a comment the previous day that the reason ██████████ had to leave his lab was because she was too sexually active in the lab. ██████████ also recalled ██████████ reported O'Mahony made a more explicit comment related to finding men on Craigslist, but she did not recall the specifics of the additional comment. Although ██████████ was hesitant to say anything because she didn't want to create a problem, ██████████ persuaded ██████████ to report the incident to ██████████.¹⁰

██████████ stated that for a week to 10 days following the interaction with O'Mahony, ██████████ was not herself. She described ██████████ as quiet and slightly depressed. ██████████ told ██████████ that she shouldn't have reported the incident because it might have been her overreacting due to lack of sleep. ██████████ thought that ██████████ seemed to get back to normal after she learned from ██████████ that O'Mahony had been put on leave. ██████████ was concerned about ██████████ blaming herself for the situation, adding that she has never shared O'Mahony's reputation with ██████████ but that ██████████ finds O'Mahony's history of behavior concerning.

██████████ stated she did not leave O'Mahony's lab because of any problems and that there was no animosity between them as a result, adding that she continued ██████████ O'Mahony ██████████ ██████████

Regarding the April [REDACTED] interaction, [REDACTED] stated she did not want to be there discussing the matter and that she didn't think it was worth investigating. She described that she was under a lot of stress at that

8 [REDACTED] stated that these incidents were not reported to anyone because this type of behavior was more accepted at that time.

9 [REDACTED]

16 [REDACTED] stated she felt strongly that this needed to be reported because a previous incident that allegedly occurred in September had gone unaddressed due to the unwillingness of witnesses to report their concerns [REDACTED]

time because [REDACTED] and that she did not react well to O'Mahony's comment [REDACTED] stated that O'Mahony jokingly told the [REDACTED] that he had to kick [REDACTED] out of his lab because she had sex in the lab.

[REDACTED] stated she tried to brush aside the comment initially, but she was still thinking about it the next morning. She stated the fact that she was operating on very little sleep contributed to her crying in the lab the next day when she spoke to [REDACTED] [REDACTED] reinforced to [REDACTED] that it wasn't her fault and that she needed to talk to the [REDACTED] [REDACTED] also advised [REDACTED] to avoid talking to O'Mahony. [REDACTED] stated the comment has not affected her educational environment, and believed it was her fault that she didn't let O'Mahony apologize to her after it happened.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹¹ [REDACTED]

¹² [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] described their relationship as “good” and “healthy,” but stated they are not close, adding that they would only meet occasionally. [REDACTED] stated he has never had any problems or concerns with O’Mahony, and that he has been nice and helpful in the time [REDACTED] has known him.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Michael O'Mahony

O'Mahony joined the UC Davis faculty in [REDACTED]

[REDACTED] O'Mahony stated his background is in [REDACTED]

O'Mahony stated [REDACTED] because there were so many women in his lab, it led to rumors about his interactions with his students. O'Mahony stated that he was amused by the rumors at the time, and female students would tell him that they would research his behavior before joining his lab, but they would find that the rumors about him were not true.

O'Mahony acknowledged that there have been other sexual harassment complaints filed against him, but maintained that he never harassed anyone. He stated that the first complaint was in 2011 when he

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complimented a student with low self-esteem on her outfit one day, and told her he thought she was clever. He stated that although the student told a friend she thought O'Mahony was hitting on her, she later wrote him a letter thanking him for the compliment. O'Mahony stated that he was counseled to stop complimenting others on their appearance and that he no longer gives out such compliments.

In 2012, O'Mahony stated he was accused of harassing a female staff member who regularly helped him with a [REDACTED]. He stated that one day she was wearing a [REDACTED] V-neck sweater that he found unusual and was staring at. He realized someone might think he was looking at her breasts, and when he diverted his eyes, she caught his eyes. He then told her he was looking at her sweater, and she uncomfortably protested, asking him not to say anything. O'Mahony stated that the information in the investigation report was fabricated, and although he could appeal the findings, he decided he didn't want to endure a faculty meeting that would be required.

Finally, O'Mahony recalled two incidents in a class he taught in 2007. The first involved him passing around pornographic cartoons. He stated he needed a 3D demo for the class and struggled to find any examples. He did find one slide that was harmless, which he pinned to the front of the packet, but he did pass around all of the slides, including those that were pornographic. O'Mahony stated he didn't expect that the students would unpin the slides to look at the ones behind the slide he intended them to see. He also acknowledged making a comment in the class regarding lingua being the root word of cunnilingus. O'Mahony stated it was an unintentional comment, and that his brain blanked out on providing a more acceptable example.

Regarding the incident with [REDACTED] O'Mahony [REDACTED] [REDACTED] [REDACTED] O'Mahony described his relationship with [REDACTED] as being friendly and jokey. In [REDACTED] [REDACTED] was in Davis visiting. O'Mahony had dinner with [REDACTED] one night, then saw him talking to [REDACTED] in an open area of the building the next day. O'Mahony chatted with [REDACTED] and [REDACTED] then told [REDACTED] he was happy she was getting on well in the other lab. O'Mahony stated he then made an ironic joke by saying he had been trying to get rid of her for a long time, that she was making love on the tabletops so they had to get rid of her. O'Mahony recalled that [REDACTED] commented, "That's his sense of humor." O'Mahony stated he didn't think she was bothered by the joke and that [REDACTED] would have told him if he thought [REDACTED] had been bothered by the joke.

O'Mahony stated that [REDACTED] later told O'Mahony's [REDACTED] that he might be in trouble for the comment and he should apologize. The [REDACTED] passed the information to O'Mahony, who tried on two occasions to contact [REDACTED] to apologize but was unable to do so. O'Mahony has not spoken to [REDACTED] since the incident.

¹⁶ We determined it was not necessary to interview [REDACTED] in order to reach a conclusion in this case. As noted in the interview summaries, O'Mahony acknowledged making the comment, and [REDACTED] claimed it did not significantly impact her educational environment. [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

V. Analysis

Allegation 1: O'Mahony allegedly made an unwelcome and demeaning comment of a sexual nature to a graduate student on April [REDACTED] 2016, in the presence of her [REDACTED]

The parties both agree that O'Mahony made a comment in front of [REDACTED] who was visiting at the time, as a joke, regarding [REDACTED] having sex in his lab. Whether or not this comment rises to the level of a violation of the Sexual Violence and Sexual Harassment policy is the question.

As a single incident, while the comment may be considered unprofessional and inappropriate, it is not clear it would be considered a violation of the Sexual Violence and Sexual Harassment policy. [REDACTED] claimed she knew it was a joke and it did not adversely affect her educational environment. While an argument could be made that [REDACTED] was impacted more than she acknowledged as

evidenced by ██████ learning about the incident from ██████ after she noticed ██████ was upset, policy requires that the behavior be “sufficiently severe or pervasive that it unreasonably denies, adversely limits, or interferes with a person’s participation in or benefit from the education . . . and creates an environment that a reasonable person would find to be intimidating or offensive.” The evidence does not support this level of impact on ██████

However, there is a long history of complaints regarding O’Mahony’s conduct and previous substantiated allegations of sexual harassment, indicating a pattern. O’Mahony has, self-admittedly, been counseled about comments he has made in the past. Yet, his behavior demonstrates either an inability or unwillingness to cease introducing subjects of a sexual nature into his interactions with students.

The Sexual Violence and Sexual Harassment policy states that “consideration is given to the totality of the circumstances in which the conduct occurred.” In this case, the conduct occurred shortly after a March ██████ 2016 meeting O’Mahony had with ██████ and ██████ where he was counseled regarding an allegation of inappropriate touching at a ██████ ██████ event ██████ Prior to that, O’Mahony was found to have sexually harassed a staff member in 2013, following an investigation, which led to a temporary reduction in his salary ██████ That was preceded by a 2013 allegation that he had made a student uncomfortable by calling her “gorgeous” and “exotic;” a 2013 allegation that he commented that UC students will “put out” for good grades; a 2011 allegation that he commented about students offering sex for better grades; and the 2007 incident where he passed a pornographic picture around the classroom and made a comment about cunnilingus ██████ ██████

In each of these cases, O’Mahony was counseled about his behavior and warned that his actions were not acceptable. Specifically, the 3/████/16 letter states: “We advised you in the strongest possible terms not to engage in behavior that might be considered not appropriate in the workplace . . . this alleged behavior is not acceptable and must not be repeated, if it occurred.” Similar language is found in all of the other letters issued to O’Mahony following each of the reports regarding his behavior.

While O’Mahony offered various explanations or denials for the past actions, and claimed that the previous investigation was not accurate, it is not our role to re-investigate these issues. O’Mahony not only consistently played down the past allegations and their significance, professing to be completely mystified at the reputation he has developed for harassing female students, but also tried to explain the remarks he made to ██████ as an attempt at humor and a use of “irony,” arguing that the remarks had to be understood in the context of himself, ██████, and ██████ being ██████,” in contrast to Americans who do not “get” irony. Considering that the use of irony does not necessitate bringing up topics of a sexual nature, his argument is weak and unpersuasive.

When considering this history of inappropriate conduct and subsequent counseling, O’Mahony’s conduct in this manner is found by a preponderance of the evidence to be sufficiently pervasive that it creates an environment a reasonable person would find offensive, and therefore, is a violation of the Sexual Violence and Sexual Harassment policy.

The Faculty Code of Conduct identifies “serious violations of University policy governing the professional conduct of faculty” to be unacceptable conduct. Again, if this were an isolated incident, it might not rise to the level of a “serious violation.” However, based on the repeated allegations and substantiation of allegations following a previous investigation, there is clear and convincing evidence that O’Mahony’s conduct represents a serious violation of University policy in violation of the Faculty Code of Conduct.

Allegation 2:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17 [REDACTED]

[REDACTED]

[REDACTED]

Allegation 3: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Conclusion

The evidence shows that O'Mahony has an established history of making comments of a sexual nature around students. This case establishes yet another incident of this behavior, leading to our finding that O'Mahony violated both the Sexual Violence and Sexual Harassment policy, and the Faculty Code of Conduct.

[REDACTED]

Respectfully submitted,

[REDACTED]

Dan Romik
Professor/Chair

[REDACTED]

Molly M. Theodossy
University Investigator/Policy Manager