

In Strict Confidence

TO: Wendi Delmendo, Chief Compliance Officer
FROM: Wendy Lilliedoll, University Investigator
DATE: April 25, 2016
RE: Report of Investigation, [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 harassment.

Complainant A alleges that Respondent paid her unwelcome attention, made unwelcome comments of a sexual nature to her, and engaged in sexual advances. Complainant B alleges that Respondent made offensive statements related to her sexual orientation and religion and verbally harassed her. Complainant C described an interaction in which Respondent put her arm around Complainant C and commented that Complainant C could be Respondent's girlfriend or girlfriend on the side. These alleged actions, if substantiated, may violate the UC system-wide and local policies on sexual harassment and discrimination. On or about February 18, 2016, you charged me in your capacity as UC Davis Chief Compliance Officer and Title IX Compliance Officer to act as University investigator to review the above allegations. You asked that I provide this written report no later than May 11, 2016, finding facts sufficient to enable you to determine based on a preponderance of the evidence whether the allegations are substantiated. This report analyzes the relevant incidents under University policy and not under any related laws.

II. SUMMARY OF ALLEGATIONS

Complainant A alleges that in late January 2015, while Respondent was being seen in the [REDACTED] [REDACTED] and was under the influence of [REDACTED] Respondent made a sexual advance, complimenting Complainant A and saying that if she (Respondent) were single, she would try "to convert" Complainant A [REDACTED]. The following day, Respondent reiterated the advance in a card to Complainant A, which included a [REDACTED]. Over the next few days, Respondent sent Complainant A several text messages, including messages stating that she hoped she did not freak out Complainant A, that she had a "friend crush" on Complainant A, and that she was "not stalking" her. Respondent also invited Complainant A to a movie sometime. Complainant A responded to that string of messages with a joke that she was just trying to get Respondent discharged before Respondent realized how cute the nurses were [REDACTED]. She also said that she would of course love to do movies and other things with Respondent. Respondent sent a message back saying that there were "so many flirtatious remarks" she could make about Complainant A's text, but she would not.

The following week, Complainant reported Respondent's unwanted advances to their supervisors. She stated that in the meantime, Respondent's advances caused her stress to the extent that she literally felt ill. The day before her report, she missed part of a shift because of a headache that she believes was caused by that stress.

[REDACTED]

Then, Respondent said that Complainant B needed therapy and needed to get out of the closet herself. Complainant B felt that Respondent used her size and voice to intimidate her, but Complainant B stood up to her. Respondent told Complainant B to leave, but Complainant B said that she was not going to leave work until her shift ended. The next day, Complainant B had to pick up the shift from Respondent, and they agreed to work together and be congenial coworkers. Complainant B decided not to report Respondent's conduct unless Respondent did something else, because she did not want Respondent to lose her job. Although Complainant B did not tell people what Respondent had said to her, Respondent told several coworkers. As a result, that incident came out in the context of the complaint regarding Respondent's behavior toward Complainant A.

Complainant C described an additional encounter with Respondent in Fall 2015 in which Complainant C asked if there was anything she could do for Respondent (by which she meant to assist Respondent with her work), and Respondent answered yes, put her arm around Complainant C, and made a comment about Complainant C becoming her girlfriend or girlfriend on the side. Complainant C stated that she felt Respondent's comment was inappropriate given the setting—at work in the [REDACTED]—so she left the area to keep the situation from escalating and to prevent complaints. However, Complainant C did not experience Respondent's statement as a sexual advance. Rather, she thought that Respondent was making an awkward attempt at striking up a friendship. It did not impact their working relationship going forward, and Respondent never repeated that behavior to Complainant C.

III. EXECUTIVE SUMMARY OF FACTUAL FINDINGS

The preponderance of the evidence substantiates that Respondent's behavior toward Complainant A violates the UC Sexual Violence and Sexual Harassment policy in effect at the time. Complainant A and Respondent provided generally consistent accounts of Respondent's actions, although Respondent denied that they were sexual in nature. The totality of the circumstances supports that Respondent's communications with Complainant A were sexual advances—her card reiterated while sober and on-duty the advance she had made the [REDACTED] before; the frequency and wording of her texts suggests sexual interest; and Respondent deleted the communications so that her [REDACTED] would not see them. Witnesses corroborated Complainant A's account of the impact Respondent's behavior had on her.

[REDACTED]

[REDACTED]

IV. INVESTIGATIVE BACKGROUND

A. Relevant Policy Provisions

The University of California Sexual Violence and Sexual Harassment Policy effective beginning January 1, 2016 defines sexual harassment as “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.” In evaluating whether activity meets the definition of sexual harassment, “Consideration is given to the totality of the circumstances in which the conduct occurred.”

[REDACTED]

B. Witnesses

All witnesses were advised of the confidential nature of the investigation, the expectation of honest responses to all questions, and the University’s prohibition of retaliation for cooperating with an official investigation.

Name	Title	Date Interviewed
Complainant A	[REDACTED]	March 3, 2016
Complainant B	[REDACTED]	March 3, 2016
Witness One	[REDACTED]	March 3, 2016
Respondent	[REDACTED]	March 17, 2016
Witness Two	[REDACTED]	March 31, 2016
Complainant C	[REDACTED]	April 5, 2016

C. Other Evidence Considered

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

D. Evidence Not Considered

All documentary evidence submitted was considered.

E. Standard of Review

Each of the factual findings and policy conclusions reflected in this report is made on a preponderance of the evidence basis. "Preponderance of the evidence" means that the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side.

V. SUMMARY OF WITNESS STATEMENTS

A. Interview with Complainant A

[REDACTED]

In [REDACTED] 2015, Respondent joined [REDACTED], and Complainant A was enjoying working with Respondent because she is funny and smart. In late January, [REDACTED]

A few hours after that conversation, Respondent fell at work. Another coworker was there too. At first, Respondent thought she would be okay, [REDACTED]. The coworker and Complainant A helped Respondent through the process of being seen in [REDACTED]. The coworker stayed with Respondent for a long time while Complainant A worked, but Complainant A checked in on Respondent a couple of times. At about [REDACTED] a.m., Complainant A peeked in and asked if Respondent needed anything. Respondent invited Complainant A to come in and sit down. Complainant A was there for less than five minutes. She talked to Respondent and arranged to call Respondent's [REDACTED] to come pick her up. Respondent told Complainant that they had given her a [REDACTED] so she was feeling extra good. When Complainant A started to leave, Respondent told her to shut the door and come back. Complainant A shut the curtain, and Respondent said, "That's not the door." Complainant A said, "What deep, dark secret are you going to tell me while under the influence?" Respondent answered by saying that she "would try to convert" Complainant A if she was not in a committed relationship. Complainant A laughed and said, "[REDACTED] does funny things to you. I like you too, but I'm all about the penis. You know I am." Respondent said, "I know."

After the conversation with Respondent, Complainant A returned to her work area. The coworker saw the look on her face and asked what had happened. Complainant A told her, and they decided "this goes to our graves with us." They decided that Respondent was not working and was under the influence so they would never tell anyone.

The next day, Complainant A started her shift at the same time as the coworker who had been there the [REDACTED] before. The coworker had received a card from Respondent, and she opened it in front of Complainant A. It said something like, "Thanks for having my back [REDACTED] literally." The coworker noted that Complainant A had received a card too, but hers was bulky. Complainant A opened the card and was taken aback, realizing that evidently it had not just been the [REDACTED] that motivated Respondent's statements the [REDACTED] before. The card contained the same message about her back and then said, "Oh, & I'm not responsible for anything I may have said while on [REDACTED] last nite. (Actually, I

am—it's all true!)" [REDACTED]

Complainant A threw the card in her drawer and tried not to think about it. Later, Respondent asked Complainant A if she had gotten the card, [REDACTED]

[REDACTED] She tried to ignore Respondent. Meanwhile, Respondent contacted Complainant A [REDACTED] saying, "Meet me in the [REDACTED]" Complainant A said, "I can't meet you. I'm working." Then, Complainant A started getting Facebook messages and private texts from Respondent throughout the whole weekend. Complainant told herself not to make a big deal about it and it would go away.

Complainant A showed me her phone, which reflected a series of text messages from Respondent:

Hey. I hope the [REDACTED] slowed down. Sorry for leaving early. But if you hadn't pushed me down [REDACTED] I would not be having [REDACTED] pain.

I never really got a chance to talk alone to you today. Are we ok? I'm hoping I didn't freak you out [REDACTED].

I guess I just wanted to say that I have "a friend crush" and want us to be better friends. Can we do that?

You have always struck me as a loner? Would a loner friend ever want to go to the movies since we have similar days off?

Ok, I swear, I'm not stalking you.....it's just not as much fun here at work when you're not here. And [REDACTED] is freaking out about everything.

[REDACTED]

Complainant A stated that she felt more and more uncomfortable with Respondent's texts, especially when Respondent said that she had a "friend crush" on Complainant A. But, she has known Respondent for [REDACTED] years, and she told herself not to make a big deal about Respondent's comments and "it will go away." Afterward, she asked herself why she did not say "no" when Respondent proposed that they get together and do things outside of work, but she did not want to be seen as overreacting, so she tried to make a joke, responding, "You are hilarious! Of course I'd love to do movies and other things with you! I wasn't freaked out, just more concerned to get you discharged before you started noticing how cute the nurses are in your [REDACTED] state - lol! Hope you survive the rest of your shift!" Respondent sent a message back that said, "There are so many flirtatious remarks I could make about your last text. But I won't. I hope you're having a good weekend, [Complainant A]."

When she received Respondent's text talking about "flirtatious remarks," Complainant A stopped responding. She "literally got sick."¹ She was having trouble sleeping, was thinking about how to dress and behave at work so that Respondent would stop, and was walking around corners at work hoping that Respondent would not be there. Complainant A was trying to understand why Respondent's behavior had continued despite the fact that Respondent knew she was not romantically interested. She went to Witness Two, who is a close friend of Respondent and asked if she was missing something and if Respondent's recent behavior toward her is just the way Respondent is with her close girlfriends and Complainant A had not realized it because they had not been as close. When Complainant A told Witness Two about the first [REDACTED] in the hospital, Witness Two said it was just the [REDACTED] talking. But, when Witness Two saw the card, she and Complainant B (who also was present for the conversation) said, "Oh, my God." Witness Two said that she had not seen Respondent behave that way [REDACTED]

¹ [REDACTED]

[REDACTED]. Witness Two described it as “grooming behavior” and said that Complainant A should report it.

Complainant A reported Respondent’s actions to her supervisors, and she immediately felt a huge weight lifted. At the end of her meeting with her supervisors, they asked Complainant A if she was aware of any other harassing conduct by Respondent. Complainant A stated that she was but that she did not feel like it was her information to give. The supervisors told Complainant A that she was obligated to inform them if she was aware of any harassing conduct, so Complainant A told them about an interaction between Respondent and Complainant B during Respondent’s [REDACTED] then she went and apologized to Complainant B.²

Complainant A had received her information about that incident from Respondent and had not discussed it with Complainant B. The day after Respondent’s [REDACTED] 2015 confrontation with Complainant B, Respondent reported to Complainant A and others that Complainant B had criticized her for changing her schedule. In response, Respondent reported she told Complainant B, “You wouldn’t be so hard on other people if you were not so hard on yourself.” She accused Complainant B of not living her true life, saying that she was a closeted lesbian. Complainant A was upset. From her perspective, Respondent had taken a work-related criticism by Complainant B and leveled a personal attack in return. [REDACTED]

[REDACTED]. Complainant B is a respected coworker and no one had challenged her about her personal life. Respondent treated the situation as though she had been waiting to put Complainant B in her place and had a right to say the things she had said. She said that she was angry at Complainant B for hosting a [REDACTED] event at her home with her [REDACTED] friends.³ After hearing Respondent’s account, Complainant A asked her what in the world she had been thinking. Complainant A did not report the situation out of respect for Complainant B, who is a private person. The first time Complainant A discussed the event with Complainant B was in the context of apologizing for reporting it to their supervisors.

Respondent made no more sexual comments after Complainant A’s report.⁴ Respondent initially stopped talking directly to Complainant A and was using coworkers as go-betweens to talk about their [REDACTED], but she eventually started talking directly with Complainant A about [REDACTED] again. On the one hand, Respondent’s behavior “really threw [Complainant A] for a loop.” The aftermath has affected the work environment on their small team. But, Complainant A feels she is strong, and the behavior came on all of a sudden and did not last for a long duration, so she feels she can go on fine now that she has reported. Another issue that has upset Complainant A is that Respondent has told a mutual friend that Complainant A is raising these issues because she is homophobic, which is not true. Complainant A expressed that she is certain that if a male employee was hitting on Respondent even after she made it clear that she was a lesbian and was not interested, Respondent would see it as an assault on her rights and would be trying to get the person fired. But, Respondent does not seem to recognize how her own behavior is stepping on the dignity of Complainant A and Complainant B. Particularly given the sensitive nature of their work, Complainant A sees Respondent’s lack of insight as a liability for the University. [REDACTED]

² [REDACTED]

[REDACTED]

[REDACTED]

B. Interview with Complainant B

[REDACTED]

[REDACTED]

[REDACTED] Respondent did not report to work when she was scheduled. Complainant B contacted her, and Respondent said she made “a unanimous, unilateral decision” that she was not coming to work that day. Complainant B explained that she worked on a team now and needed to come, and ultimately she did. When Respondent arrived, Complainant B overheard her saying, “I’ll have to tell [Complainant B] that when she gets here.” Complainant B asked “what?” and Respondent said “I swear I’ve never done this before.” Based on her past history being unable to locate Respondent, Complainant B said, “Just with me, personally, your reputation precedes you.” Respondent started yelling “don’t you judge me! Don’t you judge me!” and slamming her stuff around. Then, Respondent went to the bathroom.

[REDACTED]

[REDACTED]

[REDACTED]

One [REDACTED] Complainant A came to work and was clearly upset. She was on the verge of tears. Witness Two was there as well. Complainant A told them about an incident where Respondent got hurt at work and made inappropriate remarks to her about liking her and wanting to do things with her. Complainant B said that she told the Respondent, "I'm really into penises" and chalked it up to Respondent's [REDACTED]. But, she continued to get emails and texts and a card from Respondent. Complainant A showed them the card, which said she was sorry but that it was true that she felt that way. [REDACTED]

[REDACTED]

[REDACTED]

Respondent's conduct in the Fall did not impact Complainant B's ability to complete her work. It has impacted the work environment because Respondent told coworkers. [REDACTED]

[REDACTED] Complainant B had thought that she and Respondent dealt with the issue between them, but then she learned Respondent told a lot of people. The situation between Complainant A and Respondent is making the work environment unpleasant. [REDACTED]

[REDACTED]

C. Interview with Witness One

[REDACTED]

On Thursday, February 4, Complainant A called Witness One and said that she was having a [REDACTED] and would like to take the beginning of her shift off, which Witness One approved. On Friday, February 5, Complainant A started her shift at [REDACTED]. After [REDACTED], Complainant A called their manager's office and asked to speak to Witness One and the manager. Complainant A said that an incident had occurred and she was struggling. She described a series of exchanges the week before involving Respondent. Complainant A also said that she had realized that her [REDACTED] the day before was related to the stress of going to work and not knowing what Respondent was going to do.

When Complainant A finished describing her concerns, Witness One and the manager contacted two directors for advice. Then, they met with Respondent. Witness One did not describe the detailed allegations to Respondent because she did not want to fuel a misinterpretation and she knew that there would be an investigation. Witness One told Respondent that there would be an investigation and that in the meantime, Respondent needed to maintain professional boundaries and work with everyone at a professional level. Respondent said that Complainant A was taking things out of proportion and had misinterpreted the situation. That response struck Witness One, because Witness One had not told Respondent what Complainant A was saying. Respondent asked if her significant other would be called into this, which surprised Witness One because she had not said anything to suggest that would happen and had not described the allegations in detail.

Complainant A later contacted Witness One and expressed concern that Respondent was saying that she had called HR on campus and had learned that Complainant A's concerns would not be a serious incident

and she was going to get a slap on the hand. In addition, Complainant C contacted Witness One and reported an exchange she had with Respondent early on in Respondent's employment where Respondent approached Complainant C, put an arm around her and said that Complainant C could be Respondent's girlfriend, or her girlfriend on the side. In addition, Complainant C described a situation where Respondent accused Complainant B of being a closeted lesbian.

After learning of Complainant A's concerns, Respondent asked for a change in schedule. That was difficult to do, and the Director advised Witness One not to accommodate a schedule change at that time. Instead, Witness One advised all of the parties to be professional, have professional boundaries, and work as a team. Complainant A said that she felt better after disclosing her concerns, and she was able to work with Respondent.

D. Interview with Respondent

[REDACTED]

The [REDACTED] team works very closely in small offices. After Respondent started there, she began to get to know Complainant A as a friend rather than a supervisor. They were mutually complementary of each other's work. When Complainant A learned that Respondent had [REDACTED] an LGBT affinity [REDACTED] and won three or four awards for her diversity work, [REDACTED]. She said that Respondent was destined for better things, and they discussed the pros and cons of management.

Around the time that Respondent [REDACTED] she and Complainant A became Facebook friends. When Respondent was on her [REDACTED] in [REDACTED], she and Complainant A exchanged Facebook messages, and Complainant A said that it was boring at work without Respondent. Respondent answered that she agreed it was more fun when they worked together. When Respondent returned from [REDACTED] on [REDACTED], Complainant A hugged her in the hall and said she wanted to hear all about the trip. Respondent brought [REDACTED] for the team and separate boxes for Complainant A and Witness Two. Complainant A said that she appreciated the gift. Respondent also showed Complainant A pictures and told her a story about a guy [REDACTED] who tried to pick up Respondent and her [REDACTED] for a threesome while they were in bathing suits on the beach. Respondent was showing pictures of herself and her [REDACTED] at the beach, and Complainant A said "No wonder he tried to pick up on you, you look great." In the past, Complainant A also had complimented Respondent's "great curls" and touched her hair and had complimented how cute she looked in her off-work outfits when Respondent stopped by work on her off day.

On January [REDACTED], 2016 Respondent fell [REDACTED] at work and hit her head. At first she felt fine, but she started to get a [REDACTED] and to feel [REDACTED] so she clocked out and registered as a patient. Complainant A and another coworker supported Respondent through the hospital visit. Respondent received a [REDACTED] and "got pretty happy and loopy." Complainant A was coming in to check on Respondent then relaying telephone messages to Respondent's [REDACTED] about her discharge. The coworker came in, and Respondent asked her to go get Complainant A. Respondent had developed a "friend crush" on Complainant A. By "friend crush," Respondent means that she was enjoying getting to know Complainant A better and spending time with her and thought maybe they could do something at some point outside of work. It is nothing sexual.

When Complainant A came in, Respondent told her to close the door because Respondent had to tell her something. Complainant A closed the door and came back to sit down. Respondent said, "I think you're great; I really like you." Complainant A responded, "I really like you too, [Respondent]." Then, Respondent said, "I think you're smart and funny, and if I were single, I would try and convert you." Respondent recognizes that it was completely inappropriate to say and regrets it, but it came out. Complainant A laughed and said, "I like penis. I don't like balls so much, but I like penis." In response, Respondent said, "See, you were interested in the [REDACTED] story. Should I go see if I can find [REDACTED] again?" In response to a question, Respondent stated that she was not intending to reference the "threesome" element of the [REDACTED] story in particular.

On January [REDACTED] 2016, Respondent brought in cards for each of the coworkers who had helped her the day before, including Complainant A. In all of them, Respondent included the line, "Thank you for having my back." In Complainant A's card, she also said to disregard what she had said [REDACTED] before, then said "actually it was all true." When Respondent said that it was "all true," she was referring to the compliments she gave Complainant A, though she can see how someone might think it was about converting her. In the other two cards, Respondent's message was limited to a thank you and saying that it was nice having such supportive coworkers.

[REDACTED]

Later that evening, Complainant A's [REDACTED] called, and Respondent took a message. Respondent heard Complainant A return the call and refer to Respondent as "my friend" in the conversation with her [REDACTED]. On January [REDACTED] 2016, Respondent worked and Complainant A did not, so Respondent texted that it was not fun to be at work without her. Later in the day, Respondent texted and said she hoped she did not make Complainant A uncomfortable. Respondent also said something like that she had a "friend crush" on Complainant A and maybe they could do things like go to the movies someday.

[REDACTED]

Respondent asked Complainant A if she had gotten her text, and Complainant A said she had written back. Later [REDACTED], Respondent received the text, in which Complainant A said that she was not uncomfortable, was just worried Respondent would start flirting with the nurses, of course they could be friends, and she would love to go to the movies. Respondent waited twenty-four hours to respond then texted and said that she could make some flirtatious comments about the text yesterday, but she wouldn't.

On February [REDACTED] Complainant A was "pleasant but distant" and did not really talk to Respondent. Complainant A's shift starts at [REDACTED] and she was not there, so Respondent called their supervisors. The supervisors responded that they had known that Complainant A was going to be late. When Complainant A arrived at work, Respondent told her that they had been worried because they had not heard anything from their supervisors, so Respondent contacted their supervisors. Later that day, Respondent sent emails to three coworkers inviting them to a movie. When she did not hear back from Complainant A, she went to her and asked if she had checked her email. Complainant A said a movie sounded fun. The next day, Respondent received an email from Complainant A saying that she was uncomfortable and asking her to please stop. Respondent wrote back and apologized.

Respondent noted that she no longer has either the Facebook messages or the texts with Complainant. She would delete them right after she sent them so that her [REDACTED] did not see them. [REDACTED] As a result, her [REDACTED] will get upset if she feels like Respondent is sharing anything with a good friend or has a crush on somebody. Respondent does not delete chit-chatting texts with friends like Witness Two, unless it involves this complaint investigation.

Respondent stated that nothing like this has ever happened to her before, it is extremely stressful, and it has made her [REDACTED] worse. She speculated about Complainant A's motivations, noting, "this smells like homophobia. I don't know if she would have responded this way if a man had made those comments. Maybe it triggered something in her that she hadn't thought about with her sexuality; maybe the only thing she knew how to do was report and push me away." Alternatively, Respondent noted that Complainant A complained the day after Respondent called their supervisor about Complainant A being late, so maybe Complainant A thought Respondent was "narcising" on her. Respondent stated that she has taken the sexual harassment training and reviewed the policy and none of this fits. Since Respondent learned about Complainant A's complaint, Respondent has only talked to her about cases.

[REDACTED]

[REDACTED]

[REDACTED] After the confrontation, Respondent realized she was way out of line. The next morning, they had to do [REDACTED] handoff, and Respondent apologized for what she had said [REDACTED] before, saying that she hoped they could work together well in the future. Complainant B said she hoped they could. It has been fine with Complainant B since then. Respondent felt bad and talked to a number of coworkers saying, "I can't believe I said this to [Complainant B]." In response to questions, Respondent noted that no one was there for the actual confrontation with Complainant B and that she never called Complainant B a "lesbian killer." She may have called her a "closeted gay [REDACTED]" One coworker was present for the initial interaction where Complainant B criticized Respondent's professionalism, but no one was there for the actual confrontation.

Respondent has no recollection of telling any coworker that she could be Respondent's girlfriend or girl on the side. Respondent called one coworker her "work wife," and the other person said the same about Respondent, but both of their partners know about that nickname. The only situation Respondent can think of related to Complainant C was when they worked their first shift, talking at a work station near patients. It was [REDACTED] shift. Complainant C asked Respondent what shift she was working, and when Respondent answered, Complainant C said, "It's our first [REDACTED] together." Respondent speculated that Complainant A must have made up something that Respondent said to Complainant C because that was the extent of their conversation.

After learning of this investigation, [REDACTED]
[REDACTED] provided a copy of the new policy and told her that what she was describing did not sound like it fit

under the policy. She may have talked to Witness Two and told her that her [REDACTED] does this on campus and seems to think Respondent has nothing to worry about.

E. Interview with Witness Two⁶

Witness Two learned about the subject of the present investigation because Complainant A approached Witness Two and one other coworker a week or two after the first incident, when Respondent had been seen in the [REDACTED], to debrief what was happening and to ask advice about how to approach it. [REDACTED]

Overall, Witness Two felt that the parties' stories were consistent about the events and what had been said in writing and verbally. But, the interpretation was very different, [REDACTED]

Based on the communications between Respondent and Complainant A that the parties described or showed to Witness Two, Respondent "was certainly flirting, and possibly hitting on" Complainant A. For example, Respondent admitted to saying, "[REDACTED] I would try to convert you." It seems to Witness Two that Respondent was "testing the waters" and it surprised Witness Two. The first comment was made when Respondent was under the influence, but Witness Two is surprised Respondent continued to pursue it after she was clear-minded. Witness Two told Complainant A that agreeing to go to a movie sometime was a mixed message if Respondent was looking to see if she was interested. Complainant A said that she wanted Respondent to leave her alone. Witness Two said that Complainant A needed to be clear about that. The next day, Complainant A came back and said she had made a report. She clearly had a weight off her shoulders. Things seemed to really turn around for her from there. She seems to be kind of meek. But, when she reported it, she felt empowered and in control, and things have seemed better from there.

When Complainant A reported to Witness Two what Respondent had been saying, she was shaking and had tears in her eyes. Witness Two asked her what she felt like she needed to do. Complainant is a very [REDACTED] person and was clearly shaken by the interactions with Respondent. She showed Witness Two and Complainant B the card Respondent had given her and told them a condensed version of some of the written exchanges between them. She also mentioned Respondent having texted or sent pictures when Respondent was a [REDACTED] on [REDACTED]. [REDACTED]

Two thinks she would have been "pretty freaked out" if a male coworker in [REDACTED] were giving her unwanted romantic attention as well. [REDACTED]

In talking to Respondent after the report, she saw her comments as harmless and had no idea that Complainant A was upset. Initially, her feelings were hurt and she felt that Complainant A had overreacted. Then, she "spun it into 'It's a total homophobic reaction'" and then to saying that Complainant A was retaliating for telling their boss when Complainant A was late. From Witness Two's perspective, "That's really absurd," and Complainant A would never have done that. Respondent also [REDACTED]

started saying, “[Complainant A] is crazy. She’s out of her mind.” Witness Two has just kept quiet and listened to Respondent. She understands that Respondent is just trying to make sense of events in a way that she feels okay about. But, at the same time, she is concerned that Respondent is not taking responsibility for being out of line and is putting it all back on the Complainant. [REDACTED]

Complainant B knows that Witness Two is friends with Respondent, so she told Witness Two very little about the interaction between them related to Complainant B’s sexual orientation because she did not want to put Witness Two in the middle. When Respondent was new on the team, Complainant B did comment that she knew Witness Two was friends with Respondent, but “I don’t trust her.” Complainant B mentioned in general that she had confronted Respondent on her work ethic, and Respondent was offended and pissed off. Complainant B said that in response Respondent confronted her, laid into her and really attacked her religion. Complainant B was very vague in describing what, exactly, Respondent had said, she just expressed that it was very, very upsetting. She said that she did not plan to report it because she did not want Respondent to lose her job.

At around the same time, Respondent also approached Witness Two and said she “really blew it.” According to Respondent, Complainant B had confronted her about something work-related, and Respondent responded that Complainant B was a bad person because she was [REDACTED] and they are anti-gay. What Respondent did not say, because “she picks and chooses,” is that she called Complainant B a “lesbian killer” because of her religion.⁷ Respondent did tell Witness Two that she had told Complainant B that she needed to come out of the closet. Witness Two told Respondent “that was totally out of line of you.” Respondent went and apologized to Complainant B.

Witness Two described Complainant B as an amazing person to have been able to put aside Respondent’s comments because they “shook her up really badly” and were completely out of line. [REDACTED]

[REDACTED] But, when she talks about her sexual orientation, she is clear that she is [REDACTED]

[REDACTED] Her sexual orientation is none of her coworkers’ business, and Respondent’s accusations, “would shake her to the foundation of her [REDACTED]” Complainant B looked very shaken the day she told Witness Two that she did not trust Respondent. She clearly was not telling the whole story, and when Respondent reported what she had said, Witness Two figured that was because she did not want to repeat the specific comments. However, Respondent had told different people in the office different parts of her interaction with Complainant B that day. Everyone was blown away that Respondent would go there and say those things. Weeks later, when Complainant B talked to Witness Two in more detail about what had happened, people were still talking about what Respondent had said to Complainant B.

Witness Two described Complainant B as “amazing.” She does not discuss her religious beliefs at work. [REDACTED]

[REDACTED] Witness Two never heard of Complainant B discussing [REDACTED] At one point, Complainant B set up Witness Two with a [REDACTED] dentist, and Respondent was all over Witness Two to dump the dentist. She mentioned [REDACTED] putting money into [REDACTED]

[REDACTED]

[REDACTED]

F. Interview with Complainant C

Complainant C stated that she heard about the matters related to this investigation from Complainant A before the investigation started. Complainant A told Complainant C that Respondent gave her a card and [REDACTED]

Near in time to that, Complainant C went to their supervisor, Witness One, for an unrelated reason. While she was there, she mentioned an earlier encounter with Respondent that was not harassing but was inappropriate. The second time that Complainant C ever met Respondent, Complainant C asked if there was anything she could do for Respondent, and Respondent answered, "You bet there is," and put her arm around Complainant C. Respondent said that Complainant C could be her girlfriend or her girlfriend on the side. Complainant C was not particularly offended, but Respondent's comments were inappropriate and she made them in an open area at a computer table in the [REDACTED] portion of [REDACTED]. To get out of the situation, Complainant C decided to make a joke and slip away. She said, "You just got [REDACTED] don't start that yet." Then she left the area to end the conversation. Complainant C noted that she felt that if they were there another thirty seconds, someone would tell them to take it outside. Complainant C did not feel that Respondent was propositioning her. Her opinion at the time was that Respondent was trying to become friends and make connections on the team but had an awkward way of doing it that was wrong, particularly given the setting. In response to a series of questions, Complainant C noted that she probably did say that it was their first [REDACTED] together in the course of asking if there was anything she could do for Respondent, but there was nothing flirtatious about her statement. She was enthusiastic, but that was because she was happy to have another competent person joining their team.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Complainant C identified the incident between Respondent and Complainant A as the only instance she was aware of in which Respondent made unwelcome sexual advances to a coworker. Complainant C offered to switch ends of the week with Complainant A so that she would not have to work with Respondent. Complainant A said that she would let Complainant C know if she needed to do that, but so far she had been okay.

Complainant C said that she gets along with both Complainants and the Respondent. She noted that these incidents have caused repercussions on the team. If Complainant C were in Respondent's position, she would be uncomfortable. But, Respondent came in brazenly and said that she had been calling the University and everyone was saying it was okay. From Complainant C's perspective, Respondent's behavior was not okay, the team is unhappy with Respondent, and her response has been unusual.

VI. FACTUAL FINDINGS AND ANALYSIS

Each of the following facts is supported by the preponderance of the evidence:

1. Respondent started working in [REDACTED] in [REDACTED] 2015.
2. When Respondent was in training in [REDACTED] position, she worked an [REDACTED] shift with Complainant C in which Complainant C commented that it was their first [REDACTED] together and asked if there was anything she could do for Respondent. Respondent answered affirmatively, put her arm around Complainant C, and made a comment about Complainant C being her girlfriend or girlfriend on the side. Complainant C felt the comment was inappropriate, particularly because they were in the [REDACTED] section of [REDACTED] at the time, so she left the area to end the conversation. But, she was not personally offended, and she thought that the comment reflected an awkward attempt at pursuing a friendship rather than an advance.
3. Although Respondent denied making a comment about Complainant C being her girlfriend and accused Complainant A of inventing those allegations, Complainant C was more credible. Complainant C downplayed the comment, stating that she did not perceive it as sexual in nature and that it did not impact her relationship with Respondent beyond that [REDACTED]. So there is little reason for Complainant C to have fabricated the incident.
4. Also within Respondent's training period, Complainant B criticized Respondent's [REDACTED]. In response, Respondent approached Complainant B in an empty office, yelled at her, criticized Complainant B's religion, confronted her about [REDACTED] called her a closeted gay [REDACTED] and said that if she were not so judgmental toward herself and her own sexuality, she might not be as judgmental of others.
5. Prior to that, Respondent had expressed frustration about Respondent's religion and had told coworkers she was planning to confront Respondent. Coworkers had advised Respondent not to do so.
6. Respondent perceived Complainant B as a closeted lesbian [REDACTED]
[REDACTED]
7. After confronting Complainant B about her sexual orientation and religion, Respondent told several coworkers what she had said to Complainant B, which led to discussions in their workplace about those topics.

8. Complainant B was upset by Respondent's comments. Unlike Respondent, she did not repeat the detailed comments specifically, but she told Witness Two that Respondent had attacked her religion and that Complainant B did not trust Respondent, even though she knew Witness Two considered Respondent a friend. [REDACTED] stated an opinion that Complainant B did not discuss the details of Respondent's comments because she is an exceptionally private person and she did not want to call attention to them.
9. Prior to Respondent's January 2016 encounter with Complainant A, Complainant B stated that she did not want Respondent to lose her job, so she would give Respondent one "bye." However, by the time of her interview, Complainant B indicated that she was contemplating [REDACTED] because of these issues.
10. The preponderance of the evidence does not substantiate that [REDACTED] Complainant B. [REDACTED]
11. [REDACTED]
12. [REDACTED]
13. When she returned from her [REDACTED] Respondent brought [REDACTED] for her coworkers as a group. She also brought individual sets of [REDACTED] for Witness Two and for Complainant A.
14. [REDACTED]
15. On January [REDACTED] Respondent injured herself at work, and she ended up clocking out and being seen in the [REDACTED]. Coworkers who were on duty at the time, including Complainant A, supported her. She was given [REDACTED]
16. While Respondent was in the [REDACTED] as a patient, she asked a coworker to get Complainant A. Respondent told Complainant A to close the door to her room. Respondent said that Complainant A was great and that Respondent really liked her. She specified that Complainant A was smart and funny and that if Respondent were single she would "try and convert" Complainant A. In response, Complainant A joked that she liked penises. Respondent then asked if she should go and find [REDACTED] a reference to an individual who had proposed a threesome with Respondent and her [REDACTED] during their [REDACTED] trip.
17. Complainant A was shaken by Respondent's comments, and she discussed them with a coworker who also had been aiding Respondent that [REDACTED]. They decided that Respondent [REDACTED] and that her judgment was impaired as a result. They agreed to keep Respondent's statements confidential.
18. The next day, Respondent brought cards for each of the coworkers who had assisted her the [REDACTED] before. Each of the cards thanked the recipient for having Respondent's "back." But, Complainant A's card also said "Oh, & I'm not responsible for anything I may have said while on opiates [REDACTED]. (Actually, I am—it's all true!)" [REDACTED]
19. Complainant A threw the card in her drawer and tried not to think about it. Respondent asked Complainant A if she had gotten the card, [REDACTED]. She also declined a [REDACTED] request from Respondent to meet her in the cafeteria, responding that she was working. However, initially, Complainant A did not make any more explicit objection to Respondent's statements or conduct.

20. Over the weekend, Respondent sent Complainant A several messages. The messages included the following: "I never really got a chance to talk alone to you today. Are we ok? I'm hoping I didn't freak you out last [REDACTED]"; "I guess I just wanted to say that I have 'a friend crush' and want us to be better friends. Can we do that?"; "You have always struck me as a loner? Would a loner friend ever want to go to the movies since we have similar days off?"; "Ok, I swear, I'm not stalking you.....it's just not as much fun here at work when you're not here. And [REDACTED] is freaking out about everything"; [REDACTED]
21. Complainant A did not immediately answer Respondent's texts, hoping to subtly discourage Respondent's behavior. In addition to Complainant A's statement, the escalating tone of Respondent's texts, in which she said that she hoped she did not "freak out" Complainant A and promised that she was "not stalking" Complainant A supports that Complainant A was withdrawn and was not responding as Respondent hoped.
22. After Respondent sent the above series of messages, Complainant A eventually responded, "You are hilarious! Of course I'd love to do movies and other things with you! I wasn't freaked out, just more concerned to get you discharged before you started noticing how cute the nurses are in your [REDACTED] state - lol! Hope you survive the rest of your shift!" In retrospect, Complainant recognized that her text did not send a clear message to Respondent indicating that she was bothered by Respondent's statements. She indicated that she was worried about being perceived as overreacting, so she tried to make light of Respondent's comments. Respondent sent a message back that said, "There are so many flirtatious remarks I could make about your last text. But I won't. I hope you're having a good weekend, [Complainant A]."
23. Respondent's reference to making flirtatious remarks made Complainant A feel ill and stressed about how to behave so that Respondent would stop.
24. Respondent's characterization of her statements to Complainant after the [REDACTED] in the [REDACTED] as nonsexual is not convincing. She stated that the section of the card saying that "it's all true" was intended to reference her positive statements about Complainant A but not the statement about wanting to "convert" her. However, that account is not credible. The card attributes Respondent's previous statements to [REDACTED] whereas there would be no reason for Respondent to disclaim positive, nonsexual statements about Complainant A.
25. Likewise, Respondent's choice of language in her texts, referring to a "friend crush" and "stalking" diminishes her contention that she sent those messages because she was concerned that Complainant A might be bothered by her recent statements, and she wanted to pursue a platonic friendship with Complainant A. Even Respondent's statement that she waited a day before responding to Complainant's eventual text back to her sounds like the calculated communication pattern of someone pursuing a romantic interest rather than casual communication with a friend. In addition, when Complainant A downplayed her concern about Respondent's various statements and gave her an opportunity to resume platonic interactions, Respondent instead said that she could have made a flirtatious comment.
26. People who know Respondent well, including Complainant A and Witness Two, interpreted Respondent's communications to Complainant A during and after the [REDACTED] incident as advances. Respondent's own approach to the communications corroborates that interpretation. Respondent deleted her text messages and Facebook messages with Complainant A after the [REDACTED] incident because she did not want her [REDACTED] to see them. In contrast, she stated that she does not hide her written communications with Witness Two (except for those about the present complaint and investigation). She also said that she did not hide her previous communications with Complainant A.
27. When Complainant A described Respondent's conduct to Witness Two and Complainant B, she was shaking and had tears in her eyes. She described feeling ill, [REDACTED], trying to avoid Respondent in a small workspace, and missing part of a day of work with a [REDACTED] she believes was related to the stress of this event.

28. Complainant A and her peers indicated that Complainant A began to feel better immediately after making the report that initiated the present investigation. Complainant C offered to switch shifts with Complainant A so that she would not work with Respondent, and Complainant A has not taken her up on that offer. Witnesses generally described that Complainant A was able to communicate with Respondent regarding cases after the complaint.
29. After Complainant A reported Respondent's conduct, Respondent has told coworkers that Complainant A's complaint is meritless, is motivated by homophobia, and may have been a result of retaliation. Respondent also has stated that Complainant A may be overreacting because Respondent's advances triggered something in her related to her sexuality that Complainant A had not wanted to consider.

VII. POLICY CONCLUSIONS

The preponderance of the evidence supports that Respondent's confrontation with Complainant B in Fall 2015 violated the Discrimination and Harassment policy in effect at the time. That policy prohibits "verbal or physical conduct that unreasonably interferes with a person's work or creates an intimidating, hostile or offensive working environment when that conduct is based on the categories identified in II.A, above," including sexual orientation and religion. The evidence here supports that Respondent engaged in verbal conduct that was directed at Complainant B's religion and perceived sexual orientation. She referred to Complainant B as a "closeted lesbian." Respondent also criticized Respondent's religious beliefs, equating them with an assault on Respondent, even though witnesses described Complainant B as a private individual who does not talk about her personal life and religious and political beliefs at work. Respondent accused Complainant B of "internalized homophobia" and of judging Respondent because Complainant B was judging her own sexual orientation. In contrast, Complainant B's prior criticism of Respondent had been about her work attendance, not anything related to her personal identity.

The weight of the evidence supports that Respondent's behavior toward Complainant B created an intimidating, hostile, or offensive working environment. Three witnesses (Complainant A, Complainant C and Witness Two) learned about the confrontation from Respondent's perspective, and all described it as out of line. Respondent viewed Complainant B as a lesbian woman who had lived with a same-sex partner for decades but had hidden that identity from coworkers and her church because it clashed with her strongly held religious beliefs. Respondent was a new coworker with no legitimate basis to attack Complainant B on the basis of her perceived sexual orientation and religion. Complainant B did not report the incident at the time because she did not want Respondent to lose her job, which suggests that she felt the behavior was severe enough to result in dismissal. Although Complainant B said that she was able to continue performing her job duties and working with Respondent, a witness who spoke to her soon after the event described her as badly shaken. Complainant B told Witness Two that she did not trust Respondent and made a vague reference to Respondent's attack on her religion. In her interview, Complainant B described standing up to Respondent but being intimidated by her. Furthermore, Respondent compounded her impact on the work environment by repeating her statements about Complainant B to coworkers, which led to additional discussion about Complainant B's sexual orientation and religion. Witnesses consistently described Complainant B as a private person who did not talk about her personal life with her coworkers. By the time she was interviewed in this matter, Complainant B indicated that she was contemplating retiring because of these issues. Based on the factual findings in paragraphs 4-10, I conclude that Respondent engaged in verbal conduct based on Complainant B's religion and what Respondent perceived as her sexual orientation that created an intimidating, hostile or offensive work environment for Complainant B.

The preponderance of the evidence also substantiates that Respondent's conduct toward Complainant A in late January and early February 2016 violated the sexual harassment policy in effect at the time. Specifically, the evidence supports that Respondent's conduct constituted unwelcome sexual advances

that were sufficiently severe or pervasive that they interfered with Complainant A's employment and created an environment that a reasonable person would find to be intimidating or hostile.

Respondent engaged in the following unwelcome sexual advances: Before talking to Complainant A in the [REDACTED] Respondent asked her to close the door. She stated that if she were single she would try to "convert" Complainant A, a reference to the fact that Complainant A identifies as heterosexual. When Complainant A jokingly rebuffed Respondent's initial advance by saying that she liked penises, Respondent said she could go find [REDACTED] a reference to a male individual who had proposed a threesome with Respondent and her [REDACTED]. The next day, when Respondent was sober and at work, she gave Complainant A a card reiterating her advances by first suggesting that they were influenced by her condition then saying that it was "all true." Both the frequency and tone of Respondent's texts to Complainant A in the following days also suggest that they were continued sexual advances. She sent Respondent a number of texts over a short period of time when off-duty, even when Complainant A was not responding. Those texts referenced Respondent having a "friend crush" on Complainant A, said she hoped she did not freak out Complainant A, invited her to a movie, and promised that she was "not stalking" Complainant A. When Complainant A responded by making a joke and saying that she was not freaked out and would love to go to movies and do things with Respondent, Respondent answered that she could make flirtatious comments in response but she would not. This cuts against Respondent's statement that she just wanted to go to movies with Complainant A as friends and was contacting her repeatedly because she wanted to make sure that everything was okay between the two of them. Finally, the fact that Respondent deleted her communications with Complainant A right away so that her [REDACTED] would not see them supports that they were sexual advances rather than friendly communications like their previous exchanges or like Respondent's exchanges with Witness Two.

The preponderance of the evidence supports that Respondent's sexual advances toward Complainant A as discussed above and at factual finding paragraphs 11 through 29 were sufficiently severe or pervasive that they interfered with Complainant A's employment and created an intimidating or hostile work environment in violation of the UC Sexual Violence and Sexual Harassment policy. Respondent's sexual advances were not limited to a single incident. They also persisted within a short window after Complainant A jokingly but clearly declined Respondent's first advance. Witness Two described Complainant A shaking and having tears in her eyes when she described her recent interactions with Respondent. In her interview, Complainant A indicated that she felt stressed and missed a part of a work shift because the strain of worrying about interacting with Respondent at work made her ill. Notably, when Complainant A tried to handle the situation lightly by joking with Respondent while expressing that she was heterosexual, Respondent continued her advances. However, when Complainant A complained, Respondent told their coworkers that Complainant A was homophobic, crazy, and retaliatory. She also suggested that her interactions may have "triggered something" in Complainant A related to her own sexuality that Complainant A was not comfortable with.⁸ [REDACTED]

[REDACTED] The parties' coworkers

⁸ [REDACTED]

uniformly expressed significant concern about that action, particularly given the nature of their work,
[REDACTED]

Overall, the preponderance of the evidence also supports that Respondent's conduct toward Complainant A created "an environment that a reasonable person would find to be intimidating and offensive." The parties' coworkers, including two individuals who stated that they have good relationships with both parties, expressed concern about Respondent's actions, particularly the fact that one of her advances included providing Complainant A with [REDACTED]. In addition, Respondent's conduct continued despite Complainant A trying to defuse her advances: by jokingly reaffirming that she identifies as heterosexual, by saying that she planned to [REDACTED] by avoiding Respondent at work, by not immediately responding to Respondent's texts, and by jokingly suggesting that Respondent had not been in control of her behavior "in [her] [REDACTED] state" (i.e. when she first hit on Complainant A) so Complainant A needed to get her discharged and away from the cute nurses. Respondent took issue with the fact that Complainant A did not immediately say that she was bothered by Respondent's behavior. Respondent correctly noted that when Complainant A explicitly said that she was uncomfortable, Respondent's behavior stopped. However, Respondent should not have required an explicit rebuke in order to stop making advances toward a coworker.⁹ Furthermore, when Complainant A complained to supervisors about Respondent's conduct, Respondent told coworkers that Complainant A was crazy and homophobic. Especially given that response, it is reasonable that Complainant A had wanted to address Respondent's inappropriate conduct discretely and to preserve their collegial relationship. The totality of the circumstances reflected in factual findings paragraphs 11 through 29 support that Complainant A was reasonable in experiencing the work environment as intimidating and offensive and that Respondent's conduct violated the UC Sexual Violence and Sexual Harassment policy.

The preponderance of the evidence does not substantiate that the incident between Respondent and Complainant C violated the UC Sexual Harassment policy. Complainant C did not experience the incident as a sexual advance. Furthermore, it was a one-time incident that did not impact Complainant C's ability to do her work or her work environment beyond the moment in which it happened and she left the area.

Respectfully submitted,

[REDACTED]

Wendy L. Lilliedoll
University Investigator
Office of the Provost and Executive Vice Chancellor