



1111 Franklin Street
Oakland, CA 94607-5200
Phone: (510) 987-9074
Fax: (510) 987-9086
<http://www.ucop.edu>

October 9, 2009

CHANCELLORS

Re: Changes to Sections 102.09 and 102.11, *Grounds for Discipline*,
University of California Policies Applying to Campus Activities, Organizations and Students

Dear Colleagues:

The enclosed policy is effective immediately and will replace the existing Sections 102.09 and 102.11 of the University of California Policies Applying to Campus Activities, Organizations, and Students until such time as a formal review can take place. Section 102.9 prohibits sexual harassment and other forms of discriminatory harassment by University of California students. Section 102.11 prohibits harassment based on other protected characteristics. The enclosed policy which should be distributed widely to campus constituencies, replaces 102.09 and 102.11 with a single policy that addresses the same conduct and applies the same legal standard to various discriminatory behaviors.

The existing policies were problematic for several reasons. First, they applied two different standards for a student alleged to have engaged in sexual harassment, since harassment on the basis of sex is referred to in both 102.09 and 102.11. Second, they applied different legal standards to sexual harassment (in 102.09) and other forms of discriminatory harassment (102.11), which is difficult to justify. Finally, the current policies create certain legal vulnerabilities. Among other things, they do not track current case law regarding the standards for discriminatory harassment.

The General Counsel's Office has recommended that these policies be modified so that they are consistent with U.S. Supreme Court precedent. The interim policy establishes a single definition of prohibited harassment based on sex, race, national origin, and other protected classifications.

Because the current policies have drawn attention and criticism from both inside and outside the University community, I concur with the General Counsel's recommendation that their revision should not await the full consultative process that typically accompanies Systemwide policy revisions. Accordingly, the new policy is being promulgated on an interim basis, pending further review and adoption of a permanent policy. It has been reviewed by the Vice Chancellors for Student Affairs, the campus Title IX Officers, and the campus Judicial Affairs Officers.

Attached are a printed copy of the new interim policy and a mark-up copy showing changes from the prior policies.

Please disseminate the new policy to the appropriate offices on your campuses.

David Birnbaum or Christopher Patti in the General Counsel's office, as well as General Counsel Robinson, will be happy to respond to any questions you or others on your campus may have.

Sincerely,

Mark G. Yudof
President

Enclosures: Interim PACAOS Section 109.09
Mark-up version of changes to Sections 102.09 and 102.11

cc: Members, President's Cabinet
Universitywide Policy Office

Policies Applying to Campus Activities, Organizations and Students

102.00 Grounds for Discipline

Chancellors may impose discipline for the commission or attempted commission (including aiding or abetting in the commission or attempted commission) of the following types of violations by students, as well as such other violations as may be specified in campus regulations:

...

102.09 (Interim)

Sexual, racial, and other forms of harassment, defined as follows:

Harassment is defined as conduct that is so severe and/or pervasive, and objectively offensive, and that so substantially impairs a person's access to University programs or activities, that the person is effectively denied equal access to the University's resources and opportunities on the basis of his or her race, color, national or ethnic origin, alienage, sex, religion, age, sexual orientation, gender identity, marital status, veterans status, physical or mental disability, or perceived membership in any of these classifications..

Student Employees

When employed by the University of California, and acting within the course and scope of that employment, students are subject to the *University of California Policy on Sexual Harassment*. Otherwise, Section 102.09, above, is the applicable standard for harassment by students.

For both student and/or employee sexual harassment, please refer to the *University of California Procedures for Responding to Reports of Sexual Harassment*.

Changes to the Policies on Campus Activities, Organizations and Students

102.09 (Interim)

Sexual, racial, and other forms of harassment, defined as follows:

Harassment is defined as conduct that is so severe and/or pervasive, and objectively offensive, and that so substantially impairs a person's access to University programs or activities, that the person is effectively denied equal access to the University's resources and opportunities on the basis of his or her race, color, national or ethnic origin, alienage, sex, religion, age, sexual orientation, gender identity, marital status, veterans status, physical or mental disability, or perceived membership in any of these classifications..

~~Sexual harassment, as defined in University policy (see Section 160.00), reads in part:~~

~~Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment. In the interest of preventing sexual harassment, the University will respond to reports of any such conduct.~~

~~Please refer to the *Policy on Sexual Harassment and Complaint Resolution Procedures* (see Section 160.00) for the entire definition. The *Policy on Sexual Harassment and Complaint Resolution Procedures* is incorporated into the *Policy on Student Conduct and Discipline*.~~

Student Employees

When employed by the University of California, and acting within the course and scope of that employment, students are subject to the *University of California Policy on Sexual Harassment*. Otherwise, Section 102.09, above, is the applicable standard for harassment by students.

For both student and/or employee sexual harassment, please refer to the *University of California Procedures for Responding to Reports of Sexual Harassment*.

102.11

~~Harassment by a student of any person. For the purposes of these *Policies*, 'harassment': a) is the use, display, or other demonstration of words, gestures, imagery, or physical materials, or the engagement in any form of bodily conduct, on the basis of race, color, national or ethnic origin, alienage, sex, religion, age, sexual orientation, or physical or mental disability, that has the effect of creating a hostile and intimidating environment sufficiently severe or pervasive to substantially impair a reasonable person's participation in University programs or activities, or use of University facilities; b) must target a specific person or persons; and c) must be addressed directly to that person or persons.~~

~~Prior to applying this provision of policy to any student conduct, the campus is required to consult with the Office of General Counsel regarding its proper interpretation and application in light of the specific circumstances.~~