



### **III. Jurisdiction**

The Office for the Prevention of Harassment and Discrimination (OPHD) has campus-wide responsibility for implementing, and investigating potential violations of the UC Policy on Sexual Harassment and Sexual Violence. The OPHD responds to allegations of sexual harassment, sexual violence, domestic violence, dating violence, stalking, and sexual assault brought forward by students, staff, and faculty.

### **IV. Applicable Policies**

#### **A. Sexual Harassment**

The Respondent's conduct occurred from July 1, 2014 to the present. The sexual harassment provision of the University of California Policy on Sexual Harassment and Sexual Violence ("the Policy"), effective February 25, 2014, applies to this complaint. The relevant portions of the Policy for this complaint, defines sexual harassment as:

“[U]nwelcome sexual ...verbal, nonverbal or physical conduct of a sexual nature. Sexual harassment is conduct that explicitly or implicitly affects a person's employment...or interferes with a person's work... or creates an environment that a reasonable person would find the conduct intimidating, hostile or offensive.”

### **V. Summary of Findings**

Based upon a preponderance of the evidence, the Respondent violated the sexual harassment provisions of the UC Policy on Sexual Harassment and Sexual Violence. Detailed discussions of the findings are included in Section VII.

### **VI. The Investigation**

#### **A. Statements of Parties and Witnesses**

##### **1. Complainant's Statement**

I met with the Complainant for an interview on April 6, 2015. I also spoke over the phone with the Complainant on several occasions.

The first part of the Complainant's complaint is that the Respondent is “rude and demeaning” to her and that collectively his behaviors are gender discrimination. The Complainant stated that the Respondent uses demeaning, loud language and instructs the Complainant to engage in personal errands for him, which she believes are more “personal assistant” jobs than “executive assistant” jobs. For example, he once yelled at her, “█ water!” when he wanted her to get him some water. He yelled from his office, “█ my tea is cold” in December of 2014, when he expected the Complainant to get him a new cup of tea. In this instance the Complainant recalled responding: “You know I'm not your maid.”

The Respondent asked the Complainant to get him snacks, go to the lunch truck to pick up his lunch, drop off and pick up his dry cleaning, find a wash and fold laundromat for him, fax personal mortgage documents for him, pick him up the special tea he likes, and calls her into meetings to get water or coffee for him, and asks her to go get him special espressos. (They later purchased an espresso machine for the office.) The Complainant acknowledged that some of the duties are part of her job, but she takes issue with the Respondent's demeaning tone, and that his demands are so time consuming on a daily basis that they interfered with her substantive work. The Respondent also gossips and vents about staff and faculty and has referred to them as: "assholes," "son of a bitch" and "mother fuckers."

The second part of the Complainant's complaint is that the Respondent has touched hugged and kissed her since September of 2014, and that this behavior constitutes sexual harassment. The Complainant stated that this behavior started out as "bear hugs" where he opened his arms wide and gave her a hug every few days. However, the hugging and kissing on her cheek quickly escalated into a daily event, occurring five to six times a day. For example, initially the Respondent blocked the entrance of her cubicle with his arms spread to give her a "bear hug," but over time the hugs became "tighter and he [continued to] kissed me on the cheek." Eventually, the Complainant began to feel "smothered" and "encroached upon" when the hugging and kissing started to occur daily. The hugs from the Respondent became "more lingering." Then a kiss on the cheek would be added to the lingering hugs.

The Respondent would also come up behind the Complainant while she was at her desk typing and rubbed her shoulders from behind, rubbed the side of her arms from her shoulders to her elbows and kissed her on the cheek from behind. The Respondent has also squeezed the Complainant's arm when he passes by her desk.

The Complainant reported that the Respondent's pattern of hugging and kissing the Complainant on the cheek, escalated in February of March 2015 to multiple times, daily. The Complainant reported that the Respondent would hug and kiss her when he was "happy." For example, he'd hug and kiss her good morning, after he had a good meeting, and to say good-bye. He kissed her mostly on the cheek, but also kissed her on the top of the head if she was sitting down at her desk.

In January of 2015, the Respondent took the Complainant's hands and put them on his waist, rubbed her hands and wrists that were on his waist, and kissed her on the cheek. After this incident the Complainant went to the bathroom and cried. The Complainant believed that others observed the Respondent's behavior, and she felt that her professional reputation in the office was compromised. [REDACTED]

On March 1, 2015, the Complainant received an annual salary increase from \$66,000. to \$75,000. The Complainant wondered if this was "pacification" and related to the Respondent's behavior. She stated that they've know that she's "worked hard, worked overtime and was underpaid" for a long time. The salary increase was not explained to her and although she was grateful for the salary increase, she was fearful there was a *quid pro quo* that she would have to continue to tolerate the Respondent's unwelcome physical contact.

The Complainant stated that she was so upset about the Respondent's cumulative behavior towards her that she visited [REDACTED] on or around March 13, 2015. The Complainant told [REDACTED] about the Respondent's behavior of demeaning conduct and unwelcome touching and kissing. The Complainant told [REDACTED] not to report to anyone about it. [REDACTED] told the Complainant to take some time-off of work to decide how she wanted to handle the situation.

The Complainant noted that an interaction with the Respondent on March 16, 2015 was "the straw that broke the camel's back," that resulted in the Complainant writing the six page email to the Respondent. The Complainant is in charge of the Respondent's calendar. From March 8-13, 2015, the Complainant, the Respondent and a third party sent short, professional emails to each other in order to arrange a meeting with the third party and the Respondent. (All of the emails were cc'd to [REDACTED]) On March 16<sup>th</sup>, the Complainant wrote a short email to the Respondent at 8:04 p.m. asking for advice about communicating with others about the meeting between the third party and the Respondent. At 8:08 p.m., [REDACTED] wrote to the Complainant, "Are you still in the office?" The Complainant wrote back to [REDACTED] at 8:08 p.m. "For very good reason!!" At 8:35 p.m. [REDACTED] responded, "I'm not talking to you about this tonight. We can talk in the morning. Go home please." The Complainant explained that she and [REDACTED] have a good relationship, and she understood that [REDACTED] wanted her to leave the office. That same night at 10:59 p.m. the Respondent sent an email to the Complainant (cc'd to [REDACTED]) stating: "Stand down please! [REDACTED] will task this to [REDACTED] and he will handle all email traffic." The Complainant stated that she was shocked at the Respondent's exclamation to "stand down please!" which she found rude. The Complainant's initial internal reaction was: "I'm not your dog!"

The Complainant spoke to the Respondent about his comment in the email at her desk when she returned to work. She told him "I don't appreciate the comment 'stand down!'" In her email of March 19, 2015, the Complainant apologized that she should have requested to speak to the Respondent privately in his office to discuss this matter.

The Complainant's six page email to the Respondent noted that she was "upset" with him, and that his conduct caused her a "significant amount of stress and anxiety...for a very long time," and her health was suffering. She stated that she never observed the Respondent hugging or kissing anyone else in the office. After her OPHD interview the Complainant sent an email, excerpted below, describing the Respondent's conduct and the impact it had on her:

[REDACTED]

[REDACTED]

[REDACTED]

2. Witnesses

a. Witness 1

Witness 1 is [REDACTED]  
Witness 1 was interviewed over the phone on April 8, 2015 by OPHD Assistant Director, Mr. Will Mallari.

Witness 1 noted that she became aware of the situation between the Complainant and the Respondent [REDACTED] several days before the Complainant sent the email to the Respondent on March 19, 2015. She noted that the Complainant “wanted advice, just between them” about the Respondent being “very affectionate [with the Complainant.]” Witness 1 stated that the Complainant described the Respondent’s behavior towards her and that it was “consistent with what she described in the [March 19] email- but with more detail.”

At that time, Witness 1 told the Complainant that she needed to look into the matter. Witness 1 recalled that she spoke to [REDACTED] (“Witness 2”) [REDACTED]

Witness 1 recalled that she and Witness 2 agreed that Witness 2 would talk with the Respondent about his behavior with the Complainant to stop the unwelcome touching. However, the Complainant wrote the March 19, 2015 email to the Respondent before Witness 2 spoke with the Respondent. The Complainant forwarded the email to Witness 1 the same day it was sent to the Respondent.

Witness 1 noted she discussed the Complainant’s email with [REDACTED] on either March 19<sup>th</sup> or the 20<sup>th</sup> over the phone. Witness 1 also spoke to the Respondent over the phone. Witness 1 informed the Respondent that the issue must be referred to the OPHD office for an investigation. Witness 1 stated that the Respondent expressed feelings of “embarrassment, maybe shame, because his behavior was unconscious, he wasn’t trying to make anyone uncomfortable on purpose... He felt bad.” [REDACTED]

[REDACTED] Witness 1 has had no other conversations with the Complainant or the Respondent.

Mr. Mallari asked Witness 1 if she ever witnessed the Respondent kiss, hug or touch the Complainant as the Complainant described in her email. Witness 1 noted that she observed the Respondent kiss the Complainant on the cheek once as he was leaving the office for the day as a “good-bye” or “thanks.” Witness 1 observed the Complainant sitting at her desk while the Respondent stood behind her, but did not observe any other touching.

Witness 1 noted as her role as a confidante to the Respondent, he’s kissed her on the cheek and hugged her on occasion. She recalled the Respondent kissed her on the cheek once when she returned to the office after a month. Witness 1 experienced the Respondent’s occasional affectionate behavior as “familial-like.” [REDACTED]

b. Witness 2

Witness 2 is [REDACTED]

[REDACTED] Witness 2 was interviewed on April 8, 2015 over the phone by OPHD Assistant Director, Mr. Will Mallari.

Witness 2 confirmed that she had spoken to Witness 1 and it was her intention to talk to the Respondent to inform him that the Complainant “was not a fan of hugging.” However, the Complainant’s email of March 19, 2015 was distributed before she had the opportunity to talk to the Respondent. Witness 2’s understanding was that the Respondent “has expressed affection that makes some uncomfortable.” Witness 2 noted that the Respondent reached out to her the same day he received the Complainant’s email, and it had become clear to him that “hugging was uncomfortable to [the Complainant.]”

Witness 2 noted that the Complainant never shared this information directly with her. Witness 2 did not recall witnessing any behavior as described in the Complainant’s email, or it “didn’t phase her if [she had] witness[ed it].” Witness 2 recalled that the Respondent hugged her once in her second month of employment, but she was not uncomfortable about it. Witness 2 observed the Respondent hug Witness 1 once, but she did not perceive it as an uncomfortable situation for Witness 1.

3. Respondent’s Statement

I met with the Respondent and his attorney on May 12, 2015. The Respondent became the Dean of Berkeley Law on July 1, 2014.

We reviewed each of the Complainant’s examples of “rude and demeaning” conduct. The Respondent did not recall the majority of the examples. He stated that he was “sorry if she felt that his [communications] were demeaning...”

The Respondent noted that when he first arrived at UCB he lived in a hotel, and had never lived in the east bay before, so he asked the Complainant to find him a laundromat and a local dry cleaner. He believed that he did ask the Complainant to pick up his dry cleaning. He acknowledged that he requested the Complainant to fax mortgage papers, but a UC mortgage was part of his benefits package for his position, and therefore he considered faxing the papers to be work related. The Respondent noted that he “used very unfortunate language” and “put [the Complainant] in an uncomfortable position” when he talked about others as “assholes or “sons of bitches.” He did not recall calling people “mother fuckers.” He added that the context was that as his Executive Assistant, the Complainant was responsible for his calendar, and he would openly discuss with her why he would refuse various meetings with people.

He recalled that at the end of December of 2014, [REDACTED] brought to his attention that the Complainant asked that he not make requests for her to bring him snacks, lunch, coffee and tea. The Respondent recalled that he complied with this request. He did not have a conversation with the Complainant about the request the Complainant made via [REDACTED].

The Respondent admitted that he hugged and kissed the Complainant on multiple occasions, but “there was never any sexual intent.” He stated he did this at the end of a long day, as a way to “say thanks for managing the office.” The Respondent noted that he would hug and kiss the Complainant more often than others, but he also hugged his [female] [REDACTED]. He did not believe that the hugs and kisses occurred daily with the Complainant.

The Respondent admitted that he “definitely touched the Complainant’s shoulders and arms to provide support because her days were packed.” It was his way of “saying thanks.” He recalled he passed the Complainant’s desk to get to the Chief of Staff’s office and that he would squeeze her arm as he passed by her desk, as a way to show gratitude. The Respondent did not recall kissing the Complainant on the cheek while she sat at her desk. The Respondent denied kissing the top of the Complainant’s head.

I asked the Respondent if he hugged or kissed males in the office to provide gratitude, and he replied, “No.” The Respondent noted that he saw and interacted with the Complainant and the Chief of Staff in the office almost every day. I asked the Respondent how he shows appreciation to others, and he replied, “a [verbal] thank you, a hello to student workers, a pat on the back or shoulder to the [male] greeter... a slap on the back with associate deans.”

The Respondent admitted that he did take the Complainant’s hands and placed them on his waist. He denied that he rubbed her hands with his hands. He recalled he did this once with the intent to “maybe calm her down” although he could not recall the circumstances. He acknowledged that this was “very inappropriate and poorly judged.” He added there was “no sexual intent” to his behavior.

I asked the Respondent about his personal management style. The Respondent explained that he is used to working in a “flat hierarchy” at other Universities, and he was new at being a Dean and “being someone’s boss.” He feels he is in a learning mode as he works with others.

He added that as a Professor in New York or in Toronto that he would hug and pat coworkers. He added that he received no sexual harassment prevention training in New York or Canada.<sup>1</sup>

The Respondent noted that the Complainant's email came "out of the blue." He was out of the office when he received it, and the Complainant was away when he returned, so he didn't have the opportunity to talk to the Complainant in person. The Respondent noted that he "was very sad that [the Complainant] was unhappy in her work environment, but [also] sad that other moments of levity such as, meeting her children, the birthday party, and the 'Black Lives Matter' t-shirt were lost." (The Complainant [REDACTED], was proud that the Respondent wore a "Black Lives Matter" t-shirt to work.) He regrets that he missed the signs of the Complainant's unhappiness, and stated he was "regretful and sorry." He noted he "wants to be a good leader and effective, and he would appreciate the opportunity to be better." He added that "every interaction matters, in particular, respect[ing] professional boundaries." The Respondent complimented the work performance of the Complainant. His final thought at the end of the interview was: "I'm sorry."

After the interview, I sent the Respondent an email summarizing his response to my question. I wrote: "During [your] interview you denied that you hugged and kissed [the Complainant] on a daily basis. Can you please estimate how often you did hug and kiss [the Complainant] on the cheek?" The Respondent wrote back, "...My best recollection is that I did so no more than once or twice a week."

## **B. Documentary Evidence**

Below is a list of the documentary evidence reviewed for this report:

1. Email string between Complainant, [REDACTED] Third Party and the Respondent regarding calendar scheduling, dated March 8-16, 2015;
2. Email from Complainant to Respondent, dated 3/19/15, 6 pages;
3. Forwarded email from Complainant to [REDACTED], dated 3/19/15;
4. Email from Complainant to OPHD re "Other Thoughts and Consideration;"
5. Complainant's Job Description; and
6. Email from HR explaining salary increase for the Complainant, date 5/11/15.

## **VII. Factual Findings and Analysis**

### **A. Standard of Evidence: Preponderance of the Evidence**

Findings in this investigation report are based on a "preponderance of the evidence" standard. In other words, after reviewing all the evidence, including the relative credibility of the parties and their statements during interviews, whether it is more likely than not that the conduct

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<sup>1</sup> The Respondent began his job on July 1, 2014. The UCOP AB 1825 mandatory sexual harassment prevention training course was assigned to him on September 22, 2014. The Respondent did not complete the course. After the Complainant filed a complaint with OPHD, on April 2, 2015, I sent an email to [REDACTED] reminding her that the Respondent had not completed the mandatory AB 1825 training. The Respondent then completed the course on April 13, 2015.

occurred as alleged. If the conduct did occur as alleged, then an analysis is completed to determine whether the conduct violated University policy. (Please note: the report's findings do not reach conclusions whether the alleged conduct violated state or federal laws, but instead address whether the University's policies were violated.)

B. Fact Finding

1. The Respondent's conduct of kissing, hugging and touching the Complainant was unwelcome and of a sexual nature.

Under the UC Policy, the first two elements of the definition of sexual harassment are: 1) the Respondent's conduct must be unwelcome and 2) the conduct must be sexual in nature. Here, the Complainant reported that she was uncomfortable with the Respondent's initiating hugging, kissing and touching. The Respondent admitted to the following conduct towards the Complainant:

- a) Hugged her;
- b) Kissed her on the cheek;
- c) Touched her shoulders and arms from behind while she sat at her desk;
- d) Squeezed her arm when he passed by her desk; and
- e) Held her hands to his waist.

The Respondent did not defend that the Complainant initiated physical contact towards him. The Respondent always initiated the physical contact with the Complainant. The Complainant wrote in an email, "Hugs (from friends and family) never made me feel uncomfortable, humiliated, exposed and dirty. I have never been hugged so hard by a co-worker or supervisor that I could feel my breast harshly compress into their chest." The evidence reflects that the Respondent's conduct was unwelcome to the Complainant.

The Respondent defends that there was no "sexual intent" to his conduct towards the Complainant, but instead it was a way to express gratitude to the Complainant. First, sexual intent is not a requirement for sexual harassment. Under the UC Policy, an analysis of sexual harassment focuses on the nature of the conduct and the impact on the Respondent. Second, the Respondent did not engage in similar conduct with male colleagues to greet them or show gratitude. The Respondent would appropriately give "a [verbal] thank you, a hello to student workers, a pat on the back or shoulder to the [male] greeter... a slap on the back with associate deans." The Respondent had many other ways to show the Complainant "gratitude," and "thanks" for her hard work, such as, writing her a thank you card, sending her a positive memo, telling her "thank you" verbally, acknowledging her work publicly at a staff meeting, nominating her for a performance award, etc. Instead, the Respondent engaged in intentional physical touching of the Complainant: hugging, kissing her cheek, squeezing her arm, rubbing her arms and shoulders, and holding her hands to his waist at the workplace. These actions consistently occurred over seven months. Therefore, the evidence reflects the Respondent's conduct was unwelcome and objectively sexual in nature.

2. The Respondent's conduct explicitly affected the Complainant's employment.

The third and final element of the definition of sexual harassment under the UC Policy is: Sexual harassment is conduct that explicitly or implicitly affects a person's employment... or interferes with a person's work ...performance; or creates an environment such that a reasonable person would find the conduct intimidating, hostile or offensive.

The Respondent does not dispute that the conduct occurred since he started his job on July 1, 2014. The only disagreement is how often the conduct occurred. The Complainant states that the Respondent's conduct occurred multiple times on a daily basis. The Respondent reports that his actions occurred "once or twice" per week. I find that the Complainant is credible. The Complainant has no motive to exaggerate. Further, Witness 1 confirmed that when the Complainant talked to her about the Respondent's conduct, the Complainant's reporting to her matched the accounts in her March 19, 2015 email. The Respondent was unconscious of his actions, and likely did not notice them as much as the Complainant did. Further, evidence that the Respondent may not have noticed his own conduct was that the Respondent was surprised and felt that the Complainant's email "came out of the blue." Therefore, the evidence supports that Respondent's unwelcome conduct of a sexual nature occurred *at least* on a daily basis when he was in the office with the Complainant. Note: Even if we take the Respondent's accounting of how often the conduct occurred (i.e., "once or twice a week") this amount would be sufficient to impact the Complainant's employment.

Moreover, in her email the Complainant documented how the Respondent's conduct affected her personally and in her employment.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Respondent's unwelcome conduct of a sexual nature occurred on a daily basis when he was in the office with the Complainant. The Respondent's conduct affected the Complainant personally and in her employment. The Complainant was worried about her reputation and what others thought of her. The ultimate "affect" on the Complainant's employment was that she left her job solely due to the Respondent's conduct towards her, even if initially it meant that she would have to utilize her own accrued sick and/or vacation time. Collectively, this evidence reflects that the Respondent's conduct explicitly affected the Complainant's employment.

3. Complainant's examples of the Respondent's "rude and demeaning" conduct did not violate the gender discrimination policy.

The Complainant reported that the Respondent is "rude and demeaning" to her. Examples of rude, demeaning and unprofessional conduct include:

- Using demeaning, loud language to the Complainant (" [REDACTED] water!;" "My tea is cold;" calling colleagues "assholes" and "sons of bitches;") and
- Instructing the Complainant to engage in "personal assistant" jobs, such as picking up snacks for him, and his lunch, finding a laundromat and dry cleaner, dropping off and picking up his laundry, purchasing the tea he likes for the office, getting his water and tea for his desk and during meetings, etc.

The Respondent confirmed the above examples. (The Respondent denied calling colleagues "mother fuckers.") The Respondent used poor judgment in referring to colleagues as "assholes" and "sons of bitches," and in requesting the Complainant to engage in his personal errands. In December of 2014, the Complainant told [REDACTED] that she no longer wanted to do the Respondent's "personal assistant" jobs. [REDACTED] then spoke to the

Respondent. The Respondent ceased making “personal errand” requests to the Complainant after this discussion with [REDACTED].

OPHD will not examine these allegations under the Policy. There is no evidence to suggest that the Respondent’s conduct was sexualized or gendered in nature or targeted at the Complainant because of her gender or sex. These allegations are more appropriately evaluated under personnel policies and will therefore be forwarded to HR for review under relevant personnel policies.

4. The Complainant’s salary increase on March 1, 2015, was unrelated to any issues with the Respondent.

The Complainant was concerned because she received a salary increase on March 1, 2015, and wondered whether the increase was a type of “pacification” or *quid pro quo* related to the Respondent’s behavior. [REDACTED] confirmed that in December of 2014 a second Executive Assistant position was posted for the Dean’s Office “to help address the increased workload and the expanded needs of the Dean.” “As part of the recruitment effort the salary range for the position was posted from \$47,600 to \$75,000. “In consideration of the hiring range and [the Complainant’s] past performance [REDACTED] decided to align [the Complainant’s] rate to the top of the hiring range.” The Respondent was not involved in the decision. “Consequently, we approved an equity adjustment increasing [the Complainant’s] annual rate from \$66,850 to \$75,000 effective March 1, 2015.” [REDACTED] shared the information about the salary increase with the Complainant on or around February 19, 2015. Therefore, a reasonable business rationale existed for the Complainant’s salary increase on March 1, 2015.

## **VIII. Conclusion**

By a preponderance of the evidence, the Respondent violated the sexual harassment provisions of the UC Policy on Sexual Harassment and Sexual Violence. This report will be forwarded to the Provost’s Office for further review under the Faculty Code of Conduct.