

November 30, 2018

To: Joseph Bristow
Chair, UCLA Academic Senate

From: Robert Gould
Chair, Undergraduate Council

RE: Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment

Thank you for inviting the Undergraduate Council to opine on the Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment. At its November 9th, 2018 meeting, the Council had a lengthy and in-depth conversation of the proposal, which is summarized below.

1. Throughout the document, the term complainant is used. A complainant is defined as “a person, alleged, in a report to the Title IX Officer, to have experienced prohibited conduct.”¹ The policy then goes on to list violations in terms of conduct experienced by the complainant (e.g. “deliberately causing the Complainant to be incapacitated (for example, through drugs or alcohol”).²

While understanding that the use of the term complainant is likely an attempt to avoid use of the term victim, which has negative connotations, the policy, as written, says that conduct is **only** prohibited against complainants (a status which is created only after a report has been created). Surely the policy is meant to protect all individuals who have been subject to sexual violence and/or sexual harassment, and not only those mentioned in reports to the Title IX Officer.

2. While understanding the desire to resolve investigations quickly, the revised policy states that

The Alternative Resolution process will be completed promptly, typically within 30 to 60 business days of the date the Title IX Officer sends the written notice of initiation of the process. However, the Title IX Officer may extend the process beyond the 60th day for good cause.³

¹ Page 6, Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment.

² Page 4, Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment.

³ Page 19, Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment.

This timeline may be problematic for a few reasons. First, faculty and students are on an instructional calendar, and are obligated to be present at the university for all business days. For instance, investigations beginning in late spring will likely extend into summer when faculty and students are not present (and cannot be compelled) on campus and are unavailable to participate in investigations. Second, these investigations are serious and should not be rushed. It is, perhaps, better to change business days to instructional days, and to state something to the effect of “Ideally, cases should be resolved within 60-90 instructional days.”

3. A note added to the policy states that “Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.”⁴ This note seems to allow for a defense of “the complainant was drunk, but not incapacitated.” This seems to be a backward step in protecting individuals who might have been sexually assaulted or harassed while intoxicated. Furthermore, how is drunkenness defined?
4. The U.S. Secretary of Education, Besty Devos, has released new proposed federal title IX guidance. The proposed guidance moves from the current “preponderance of evidence” model to a “clear and convincing evidence” standard. The new federal policy, as proposed, would have major implications for campuses. How might this policy be altered/invalidated by a revised federal policy? Would it be better to wait on determining the future of this policy until after the future of the federal policy is clear?

Thank you again for the opportunity to comment on this important policy proposal. If you have any additional questions or concerns, please do not hesitate to contact me or Eric Wells, the Undergraduate Council Analyst.

⁴ Page 3, Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment.