

In Strict Confidence

TO: Maureen Stanton, Vice Provost of Academic Affairs
Wendi Delmendo, Chief Compliance Officer
FROM: Professor Nicole Baumgarth, School of Veterinary Medicine
Wendy Lilliedoll, University Investigator
DATE: July 5, 2016
RE: Report of APM 015 Review, Department of [REDACTED]

I. INTRODUCTION

On April 11, 2016, you appointed us to investigate allegations that Respondent, a professor in the Department of [REDACTED], engaged in behavior that could violate University policy, including the University's Policy on Sexual Violence and Sexual Harassment and the Faculty Code of Conduct.

Specifically, it is alleged that Respondent engaged in unwelcome touching of a graduate student, gave the student a [REDACTED] gift, and made unwanted comments about the student's physical appearance. In addition, it is alleged that when Complainant objected to Respondent's conduct by returning the gift and expressing that she felt it was inappropriate, Respondent retaliated. These allegations, if true, could constitute violations of one or more University policies, including the Faculty Code of Conduct. This report summarizes the scope and results of our inquiry.

II. SUMMARY OF FINDINGS

Clear and convincing evidence substantiates that Respondent violated the Faculty Code of Conduct and University sexual harassment policy. The substantial weight of the evidence supports that Respondent hugged Complainant, kissed her cheek, gave her a [REDACTED] gift, showed her messages saying she was cute, touched her, and stood uncomfortably close to her when they were working alone together in the lab. The evidence supports that those actions were unwelcome and created an intimidating, hostile work environment for Complainant.

In addition, the evidence supports that when Complainant objected to Respondent's conduct, Respondent privately and publicly criticized her, made statements toward her that Complainant and a witness viewed as threatening, reassigned her projects to another individual, and limited his communication with her. The timing, nature, and context of these behaviors toward Complainant suggests that they were motivated by Complainant's objections to his conduct and thus violate University policy.

III. METHODOLOGY

A. Standard of Proof

"Preponderance of the evidence" means that a proposition is more likely to be true than not true. "Clear and convincing evidence" means that a proposition is substantially more likely to be true than not true. Each of the factual findings and policy conclusions reflected in this report is made on a clear and convincing evidence basis. Because the clear and convincing evidence standard is a higher burden than the preponderance of the evidence standard, the evidence also satisfies the preponderance of the evidence standard.

B. Relevant Policy Provisions

1. APM 015: The Faculty Code of Conduct

Complainant is a graduate student. The policy governing professional responsibilities, ethical principles and unacceptable faculty conduct defines “unacceptable conduct” toward students to include:

“Discrimination, including harassment, against a student...for reasons of ...sex,... gender...or for other arbitrary or personal reasons.” (APM 015-II-A-2).

In addition to faculty members’ responsibilities toward students, the Faculty Code of Conduct also clarifies obligations toward the University, prohibiting:

“Serious violation of University policies governing the professional conduct of faculty, including but not limited to policies applying to research, outside professional activities, conflicts of commitment, clinical practices, violence in the workplace, and whistleblower protections.” (APM 015-II-C-7).

2. University Sexual Harassment Policy

The system-wide Sexual Violence and Sexual Harassment policy, effective January 1, 2016, defines and prohibits sexual harassment. It provides:

Sexual Harassment is 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.”

Section II-C of the sexual harassment policy also prohibits retaliation, which “includes threats, intimidation, reprisals, and/or adverse employment or educational actions against a person based on their report of Prohibited Conduct....”

A “serious violation” of the Sexual Harassment and Sexual Violence policy also implicates Faculty Code of Conduct section II-C-7, which prohibits serious violations of other University policies.

Because this event spanned a period before and after January 1, 2016, we also considered UC Davis PPM 400-20, which was in effect from June 19, 2014 through December 31, 2015 provides:

Sexual Harassment is defined as 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 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.

C. Interviews and Reports

During our investigation, we interviewed the following individuals¹:

¹ [REDACTED]

Complainant (5/ [REDACTED]/2016): Complainant is a graduate student [REDACTED]

Respondent (5/11/2016): Respondent is a Professor [REDACTED].

Witness A (5/ [REDACTED]/2016): Witness A is [REDACTED]

D. Other Evidence Considered

Attachment 1: Relevant policy sections

IV. SUMMARY AND ANALYSIS OF THE EVIDENCE

A. Sexual Harassment

1. Evidence Related to Sexual Harassment Allegation

Complainant and Respondent agree that Complainant started working in Respondent's lab [REDACTED] Until she was moved into another [REDACTED] lab in connection with these events, Complainant and Respondent sat next to each other in the lab at a continuous table with a partition. [REDACTED]

Complainant alleges that in 2015, Respondent started touching her and standing too close to her, blocking her in when they were working alone together on [REDACTED] For example, previously when Respondent wanted to show Complainant something on her computer, he would ask permission to use her mouse. More recently, when he would come to her desk space, he would reach over her and put his hand on top

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

of hers to use the mouse. Complainant started standing up and moving back from her desk whenever she had to show Respondent something on her screen so that he would not be able to pin her in.

[REDACTED] His behavior stood out to Complainant as different from Respondent's prior behavior and also different from his behavior during the week when others were present. (Complainant). Respondent denied these allegations. (Respondent). In a February [REDACTED] note to Complainant he said, "Actually it's you who always and all the time come to me and stand close to me and touch me while I'm working in the lab. Several times you have removed 'stuff' from my shirt. Please do not do so in the future."⁴ [REDACTED]. In his April [REDACTED] 2016 letter to his Department Chair and Vice Chair, Respondent stated "I have never ever made a romantic body expression to this graduate student." [REDACTED].

Complainant alleges that in or around December 2015, Respondent prepared a [REDACTED] letter for [REDACTED] for Complainant. He called her to show her the draft letter on his computer screen. The first paragraph was normal, but the first sentence of a paragraph further down the page was, "[Complainant] is cute." When he got to that sentence, he stopped scrolling down and looked up at Complainant, evidently to watch her reaction. [REDACTED]. She did not know what to say, so she moved away. (Complainant). Respondent denied that he wrote that Complainant was cute. When asked about these allegations he said that he does not typically show her what he writes but, "Her eyes are almost always on my screen." Respondent agreed that Complainant would need his [REDACTED], so he might have written her a [REDACTED] letter, but he did "absolutely not" write that she was cute in a draft [REDACTED]. [REDACTED]

Complainant also alleges that on her first day in the office after the New Year, Respondent hugged her and told her Happy New Year. He pressed his body against hers and held her. [REDACTED] [REDACTED]. According to Complainant, it was the first time Respondent had hugged her in that way. On one previous occasion, he had hugged her, but that previous hug had been brief, and he did not press his body against hers. The prior hug was awkward because it was a hug from a mentor, but it did not feel inappropriate. (Complainant). In contrast, the January 2016 hug made Complainant feel sick to her stomach. [REDACTED]. Respondent stated that he hugged Complainant "two times probably." (Respondent). The first time was a "sideways hug" maybe after he had not seen her for about a month because he had been on vacation. He does not believe that he hugged her [REDACTED]. According to Respondent, neither of the hugs has been as long as a romantic hug. By the time he first hugged her, they had been sitting next to each other for [REDACTED] years and chatting about a lot of things "scientifically and non-scientifically," and it seemed there was some kind of friendly connection between them that made the hug appropriate to Respondent. (Respondent).

Complainant alleges that before Respondent left for an [REDACTED] in January 2016, he told Complainant that he would miss her. [REDACTED]. Respondent agreed that he was gone for [REDACTED] days in January 2016, but he denied saying that he would miss Complainant. (Respondent). In response to Complainant's February [REDACTED] 2016 letter in which she referenced his statement that he would miss her, Respondent wrote, "You conveniently forgot to mention the context of our discussion; I was talking about when you complete your [REDACTED] and move on to your next job. That is when I said I will miss you (because there is no one fully trained like you in the lab)." [REDACTED].

According to Complainant, when she was at work on [REDACTED] February [REDACTED], Respondent came and handed her a white bag that said '[REDACTED]' on the outside. Complainant felt uncomfortable, so she set it

⁴ Complainant responded that she had removed a spider from his shirt but that otherwise she was not sure what he was referring to. [REDACTED]

aside and continued to work [REDACTED] Respondent later insisted that she open the gift, which was a small [REDACTED] purse [REDACTED] and contained chocolate. [REDACTED] He asked if he should have also brought her flowers, and she said no, [REDACTED]. [REDACTED] She was uncomfortable that Respondent was giving her a [REDACTED] gift, and she did not know what to say. (Complainant). On [REDACTED] February [REDACTED] she returned the purse by having a coworker (Witness A) place it on Respondent's desk with a note saying she felt it was inappropriate and asking him to respect her personal space. [REDACTED] [REDACTED] On February [REDACTED] 2016, Complainant wrote a more detailed email to Respondent expressing her concerns when she heard that Respondent wanted to discuss the incident in a lab meeting.

In his February [REDACTED] written response to Complainant, Respondent stated, "I did not give you any gifts on [REDACTED] 2016. Actually it was you who gave me Chocolates on both 20[REDACTED]/20[REDACTED] days." In his April [REDACTED] 2016 letter to his Department Chair and Vice Chair he stated, "I have never ever given a gift to this graduate student on [REDACTED]" In his investigation interview, Respondent acknowledged giving Complainant the [REDACTED] item on February [REDACTED], but he denied that it was a [REDACTED] gift. He stated that it was an item he purchased at the [REDACTED] on clearance but he did not remember when. He said that many times he just buys what is on clearance and it lies in his car for a month, so the purse was just lying around. He did not expect that Complainant would be there that [REDACTED]. [REDACTED] (Respondent). Respondent emphasized that Complainant had given him gifts, including a movie, a cake and a cake recipe. [REDACTED] He stated that Complainant also offered him gifts that he did not accept, including food—like snacks from [REDACTED]—throughout her employment and an [REDACTED] (Respondent).

Complainant and Witness A stated that Complainant frequently brought food to share with the whole lab. [REDACTED] When Complainant was asked whether she gave Respondent a movie, she initially looked confused then stated that she gave him a children's movie to give to his [REDACTED] because Complainant's [REDACTED] had mistakenly purchased [REDACTED] instead of [REDACTED] for her [REDACTED].⁸ (Complainant). She stated that she offered to lend an [REDACTED] to the lab for use in an area without [REDACTED] access. [REDACTED] Witness A stated that Respondent did not give her a gift near [REDACTED] or for other occasions like [REDACTED] (Witness A).

Also on February [REDACTED] Complainant alleges that Respondent hugged her and kissed her cheek. Both parties described working on a piece of broken equipment and being

greasy. (Complainant, Respondent). Complainant stated that after Respondent gave her the gift and before she opened it:

He then walked in for a hug. Again I did not know what to do, I did not want to hug him and froze as he hugged me. Again he clamped on, holding me very close. He held on to me, I put my arms down and I tried to get away but he would not let go, as I was trying to get away and pulling back, he pulled in and kissed my cheek. I felt disgusted, uncomfortable and realized that he was definitely not hugging me professionally.
[REDACTED]

In his interview, Respondent acknowledged hugging Complainant, but he denied that it was a romantic hug. He stated that he hugged Complainant because he appreciated her help and was relieved when he could tell that they were going to be able to fix the broken equipment. [REDACTED]. He stated that he was all greasy and was sweating and does not see how she could view the hug as romantic. (Respondent). In his initial written response to Complainant on February [REDACTED] he did not mention that he was motivated by their anticipated success fixing the broken equipment: "Since early 20[REDACTED] that you are in lab, I may have hugged you just TWO times and I am not a good hugger. Isn't it a [REDACTED] tradition to give a peck on the cheek after you hug a person whom you know for long time?" (Attachment 4). In his interview, Respondent explained that his April [REDACTED] statement that, "We both consented to hug"—meant that Complainant also came forward and embraced Respondent. According to Respondent, he was not able to put his arms around Complainant because of the grease. In his interview, Respondent stated he was [REDACTED] much of the time between his January trip and February [REDACTED] [REDACTED] [REDACTED] [REDACTED]. He came to lab occasionally but he primarily communicated through emails because he likes to sit in his office when he is [REDACTED] so that he does not get other people [REDACTED] February [REDACTED] was a typical [REDACTED] and he would have gone home if the machine did not break. There would have been no gift and no hug. (Respondent).

Complainant also alleges that on February [REDACTED], 2016 Respondent made a series of [REDACTED]-themed PowerPoint slides, and he called her to his desk to watch them. [REDACTED] At the same time as he gave her the gift, he told her that he wanted to give her a card, but the printer was broken. Some of the PowerPoint slides were innocuous and said things like "You are the heart of the lab." But one read, "Are you made of [REDACTED] and [REDACTED] Because you are CuTe." She was stunned and upset, but she had work to do [REDACTED], so she did not feel she could leave. She put in headphones and worked. (Complainant). In Respondent's February [REDACTED] letter to Complainant he said that he showed her "a mailer from [REDACTED]' company which had elements [REDACTED] and [REDACTED] that read 'CuTe', I thought it was clever." (Attachment 4). In his letter to his Department Chair, he stated that he had "never ever uttered any romantic word to his graduate student, including 'cute'" and had "never ever written a romantic text/letter/note/anything to this graduate student, including 'cute'." [REDACTED]

2. Analysis of Sexual Harassment Allegation

This investigation found clear and convincing evidence supporting Complainant's allegation that Respondent engaged in behavior that violates University sexual harassment policy and the Faculty Code of Conduct.

a. *Did Respondent Engage in Unwanted Sexual Conduct?*

Sexual Harassment includes "unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature." Respondent's conduct toward Complainant constituted "unwelcome sexual advances" and "nonverbal, or physical conduct of a sexual nature." The parties agree

that on February [REDACTED] 2016 Respondent hugged Complainant, kissed her cheek, and gave her a [REDACTED] purse/wallet. Although Respondent denied that his February [REDACTED] behavior was sexual in nature, we found Complainant's account of that event substantially more credible than Respondent's. She described a previous hug that was awkward but not inappropriate, supporting that she would not perceive *every* hug by Respondent as sexual. This further supports that he actually held his body against her and pulled her in to kiss her cheek as she described. In contrast, Respondent's statements regarding the hug were inconsistent. He told his Chair and Vice Chair on April [REDACTED] 2016 that "We both consented to hug" (emphasis in original), although he knew from Complainant's February [REDACTED] 2016 letter that the hug and kiss were unwelcome. [REDACTED]. Furthermore, when he responded [REDACTED] on February [REDACTED] he stated that "I may have hugged you just TWO times and I am not a good hugger." (Emphasis in original). He did not describe the hugs as mutual. Given the tone and content of his letter to Complainant, in which he identified times that Complainant stood close to or touched him, if she had actively participated in the hug, one would have expected him to highlight that fact. [REDACTED]. Likewise, Respondent stated that he was out of the office frequently around the February [REDACTED] incident because he had been ill since he returned from a trip [REDACTED] and did not want to get his colleagues sick. [REDACTED]. [REDACTED] This stated concern is out of line with his decision to kiss Complainant on February [REDACTED]. Likewise, the temporal proximity between [REDACTED], Respondent giving Complainant a gift, and the hug and kiss supports that Respondent's hug and kiss on February [REDACTED] were sexual in nature.

Respondent's statement that the gift was unrelated to [REDACTED] also was not credible. He suggested the purse was lying around, possibly in his car. He said that February [REDACTED] 2016 "Was just any regular [REDACTED] If the machine did not break, I would have gone home. If the machine did not break, there was no gift, no hug." Complainant's interpretation that it was a [REDACTED] gift was more believable given the date, the nature of the item, and the fact that it was presented in a bag to be unwrapped. If the purse were not a [REDACTED] gift, when Complainant made it clear that she understood them that way by saying that [REDACTED], one would expect Respondent to correct her misconception, but he did not. In addition, Witness A stated that Respondent had not given her any gifts at around the same time, or on other occasions. Furthermore, Respondent's written statements regarding the purse appeared designed to mislead—indicating that he had never given her a gift on [REDACTED] without acknowledging the purse or explaining a basis for giving it to Complainant. [REDACTED]. Finally, Respondent's statement that he crumpled up the note and threw it and the purse away into the trash, after Complainant returned the gifts, describe actions that reflect a level of emotion that is out of line with his description of having casually given her the gift.

Likewise, we credited Complainant's account of the [REDACTED] PowerPoint slides over Respondent's statement that he was simply showing Complainant an innocuous mailer from a company. The timing of the hug, the kiss, the gift, and the CuTe message support that Respondent's actions were romantic gestures [REDACTED]. In addition, we found Complainant substantially more credible than Respondent. In addition to the reasons stated above, Complainant's initial complaint appeared motivated by a desire to end the behavior that made her uncomfortable, and we did not find evidence of deception by Complainant. In raising her concerns with Respondent in February, she stated "I would like to move forward and keep working. I very much enjoy working in your lab and know that it is an incredible opportunity for me." [REDACTED] Complainant's overall account was consistent and reasonable, including in addressing new facts that Respondent raised. For example, when Respondent told us that Complainant had offered him an [REDACTED], she explained that she offered to let the lab use her [REDACTED] for convenience in a room without an [REDACTED]. Likewise, when she was asked about giving Respondent a movie (an allegation she apparently had not heard prior to her interview), she was able to provide a detailed response, which Respondent corroborated in part by acknowledging that it may have been a children's movie. In contrast, Respondent did not appear forthright at times. For

example, he refused to commit to an interview for longer than 1 hour, although there was no clear reason provided as to why he had to leave after that one hour. He ended his interview by vaguely stating that Complainant had done “millions of things” wrong, without providing details. He also suggested that Complainant spontaneously gave him the cake recipe and video without explanation, but his documentation suggested they had discussed it previously. [REDACTED]

Complainant’s description of previous incidents also was compelling. Respondent’s denial that he said he would miss Complainant when he went on a trip was not convincing. His initial response to her allegation had been that he was saying he would miss her when she went on to her next job, but there was no indication her departure was imminent, so it is not clear why he would be commenting on that in particular. Likewise, her description of the [REDACTED] hug was credible for the same reasons discussed above in relation to the February [REDACTED] hug. Her description of Respondent’s [REDACTED] letter was detailed and credible. In contrast, Respondent’s suggestion that Complainant’s “eyes are almost always on [Respondent’s] screen” was not believable.

Although Respondent’s April [REDACTED], 2016 letter to his Department Chair and Vice Chair argued that “We both consented to hug” (emphasis in original), the evidence overwhelmingly supports that Respondent’s conduct as described above was unwelcome. Complainant raised a concern with Witness A and complained to the University and the Respondent within days of the February [REDACTED] 2016 event.

b. *Was Respondent’s Sexual Conduct Sufficiently Severe or Pervasive That It Interfered with Complainant’s Education or Employment and Created an Intimidating or Offensive Environment?*

Sexual conduct is prohibited by the January 1, 2016 system-wide sexual harassment policy when it 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. The UC Davis sexual harassment policy in effect in 2015 prohibits sexual conduct “when submission to or rejection of this conduct 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 present case, clear and convincing evidence supports that Respondent’s conduct toward Complainant constituted sexual harassment.

Respondent’s conduct toward Complainant in 2015 violated the sexual harassment policy in effect at that time by creating an intimidating and offensive work environment for Complainant. Complainant convincingly described feeling uncomfortable and ill as a result of Respondent’s conduct. She described avoiding situations where Respondent could touch her or escalate his conduct, such as by trying to work during different [REDACTED] hours than he did so they would not be alone together and moving out of her chair when showing him work on the computer so that he would not put his hand on hers or corner her in a space physically close to him. Respondent’s authority over Complainant as a result of his position reasonably made his conduct more intimidating. Likewise, Complainant had observed Respondent’s attitude toward employees become negative when he disagreed with them or they did not meet his expectations. As a result, she did not feel like she could object to Respondent’s conduct without him becoming upset and providing her with a poor recommendation. For example, she described not knowing what to say or do when Respondent showed her the [REDACTED] draft where he wrote that she was cute. Respondent’s negative statements about Complainant since her present complaint support that Complainant’s concerns were reasonable. [REDACTED]

Respondent's overall sexual conduct toward Complainant was sufficiently severe or pervasive to interfere with Complainant's [REDACTED] work in Respondent's lab and to create an environment that a reasonable person would find intimidating or offensive, in violation of the January 1, 2016 Sexual Violence and Sexual Harassment policy. The sexual harassment policy instructs us to consider the totality of the circumstances in assessing whether behavior constitutes sexual harassment. Here, the totality of the circumstances includes the fact that Respondent was Complainant's supervisor and [REDACTED] advisor and that they frequently worked alone together. Given that relationship and the history of Complainant's conduct, Respondent's actions in pulling Complainant into a hug and pressing his body against hers while they were alone together in the lab in January 2016, then repeating the conduct on February [REDACTED] 2016 while also kissing her cheek and giving her a purse and chocolate were sufficiently severe or pervasive to interfere with Complainant's participation in and benefit from University programs. The combination of his harassing conduct and his behavior following her complaint ultimately led Complainant to request a transfer to a new [REDACTED] lab [REDACTED]. As was discussed above, prior to that, Respondent's conduct led Complainant to change her work hours to avoid being alone with Respondent. She also became uncomfortable and changed her behavior around someone with whom she worked closely and upon whom she was professionally dependent.⁹ Furthermore, Complainant was reasonable in finding the work environment intimidating and offensive as a result of Respondent's actions.

For the same reasons that Respondent's behavior violates the University's sexual harassment policy, clear and convincing evidence also substantiates a violation of APM 015-II-A-2 and APM 015-II-C-7.

B. Retaliation

1. Evidence Related to Retaliation Allegation

In her interview, Complainant stated that after February [REDACTED] she could not handle having Respondent's behavior continue or worsen. She debated talking to him directly, but she hates confrontation. She also wanted a record in writing that he could not alter because she had seen Respondent's evaluation of former employees change when he was unhappy with them. She asked Witness A to leave the purse and a note saying the gift was inappropriate on Respondent's desk after Complainant went out of town [REDACTED].

[REDACTED] Witness A stated that she put the items on Respondent's desk in a bag, so it would not be apparent to others what was there. (Witness A). In his interview, Respondent stated that he found the purse on his desk. There was a note with the returned bag, but Respondent does not know what it said. He just threw it away. He threw away the purse as well. He said, "If she did not like the purse, I threw it away. I got the message that she did not like the gift and I said 'okay.'" (Respondent).

Witness A stated that the [REDACTED] after she left the items on his desk, Respondent appeared upset. He said that someone put something on his desk that made him uncomfortable and that he wanted to talk about it in the next group meeting. (Witness A). Complainant alleges that Respondent immediately started asking for Witness A instead of Complainant and started assigning Complainant's collaborative projects to Witness A. (Complainant). Witness A corroborated that Respondent told her that she would be taking over projects and that Complainant would begin focusing solely on her [REDACTED] (Witness A). Whereas

[REDACTED]

Complainant had been Respondent's primary contact in the lab, Respondent started communicating with her through Witness A or sending her emails even though he and Complainant were sitting next to each other. (Complainant). Witness A agreed that Respondent started asking Witness A to ask Complainant questions when he previously would have talked to Complainant himself. (Witness A). The impression Witness A had was that Respondent was not talking to Complainant so he gave her projects to Witness A. (Witness A). Also, in his letter to Complainant on February [REDACTED] 2016, Respondent indicated to Complainant her different standing in the lab in that "... now [REDACTED] turned out to be my first student."¹⁰ Respondent stated that he was in the lab infrequently because he was ill and that Complainant stopped talking to him on February [REDACTED] or February [REDACTED].

The week after Complainant returned the purse, Respondent told Witness A to make sure everyone would be present for lab meeting because he wanted to discuss an item being left on his desk. (Witness A). When Complainant learned that Respondent planned to talk to the lab, she wrote [REDACTED] and emailed it to Respondent on [REDACTED] February [REDACTED]. The document explained her concerns and noted "I do not wish to discuss this issue again or further. I definitely do not think it should not [sic] be brought up in lab meeting." [REDACTED] The next day, Respondent handed Complainant a blank envelope and told her to read it alone. Complainant thought the envelope would contain an apology, but it did not. (Complainant). In the letter, Respondent denied her allegations and also criticized her conduct. He suggested that she was not "professional" because she had not let him know about her concerns immediately; he said "as you have noted you must have been misinterpreting all the situations¹¹"; he claimed that Complainant "always and all the time come to me and stand close to me and touch me while I'm working in the lab"; and he said "I can list many more situations that were inappropriate from your side." [REDACTED].

According to Complainant, that day in lab meeting, Respondent said that someone had left a “nasty” note on his desk. He commented that there is a saying in his language that people who live in glass houses should not throw rocks. (Complainant). Respondent acknowledged that he talked about the issue at lab meeting despite Complainant’s request. He did so because she had left the purse on his desk and anyone might have seen it, so he wanted everyone to know not to do those things. He also told Witness A in advance that everyone should attend lab meeting because he wanted to make an announcement. He talked only in general terms saying not to leave uncomfortable material on anyone’s desk or his desk. He cannot recall whether he referenced “nasty” notes and does not know whether he made a statement about glass houses. He “just wanted people to be courteous and solve problems confidentially.” (Respondent). Witness A, who was present at the lab meeting, said that Respondent did not mention any specifics and

everyone who did not know about the situation seemed confused. He said that someone had left something on his desk that he felt was inappropriate and that if someone had a problem with him they should talk to him and not leave notes on the desk. He also mentioned a quote or saying from [REDACTED] about throwing rocks at someone else when you have a glass house. In response to a question about her reaction, Witness A noted, "It sounded a little threatening to be honest. I felt really uncomfortable the whole time he was speaking." (Witness A).

In his letter to the Department Chair and Vice Chair on April [REDACTED] Respondent stated regarding Complainant that "It appears she being [REDACTED] Further, she even accepted in her communication with me that she might be 'misinterpreting' these events and wanted to move on." [REDACTED]. In a follow-up letter on April [REDACTED] he included excerpts from "examples of comments" from others that had criticized Complainant's [REDACTED] in ways that were unrelated to the present complaint.

[REDACTED] At the conclusion of his interview, Respondent stated that a "thousand times, a million times, she has stepped over the line. She has created this much mess." He noted that "if the time comes," he would "document thousands of things she has done." He added that "She has crossed lines for so many things. I just ignored it because I did not want confrontation. All I did was to go away from the situation. I should have said something." He indicated that he did not want to talk about any of those things, and he ended the interview. (Respondent).

2. Analysis of Retaliation Allegation

University policies prohibit retaliation against an individual who objects to serious policy violations. For example, Section II-C of the sexual harassment policy prohibits "threats, intimidation, reprisals, and/or adverse employment or educational actions against a person based on their report of Prohibited Conduct...."

In the present case, Complainant objected to Prohibited Conduct on February [REDACTED] 2016 when she returned the purse with a note expressing that she believed it was inappropriate, on February [REDACTED] 2016 when she sent [REDACTED] to Respondent, and in or around March, when she went to the Department to ask if she could be moved to a different lab for the remainder of her [REDACTED]

After Complainant's objections, Respondent engaged in a number of actions that, taken as a whole, might deter a reasonable person from objecting to sexual harassment in the future: He publicly (though somewhat anonymously) criticized her conduct in a lab meeting, despite her express request that he not discuss the issue in that forum. His lab meeting statements included a comment about throwing rocks in a glass house that Witness A perceived as threatening and uncomfortable. He began communicating with Complainant over email and through a colleague. He criticized Complainant's behavior generally and related to the complaint—to Complainant [REDACTED], to the Chair and Vice Chair of the Department [REDACTED], and to the Investigators. He turned over Complainant's projects with collaborators to Witness A and stated that Complainant would be focusing on her [REDACTED].¹² The timing of these actions, which followed immediately on the heels of Complainant's objections, strongly supports retaliation.

[REDACTED]

[REDACTED]

[REDACTED]

Furthermore, many of Respondent's negative statements to and regarding Complainant directly related to her complaint. For these reasons, clear and convincing evidence supports that Respondent retaliated against Complainant in violation of the sexual harassment policy and Faculty Code of Conduct.

V. CONCLUSION

For the reasons discussed above, it is our conclusion that clear and convincing evidence supports that Respondent violated the Faculty Code of Conduct and University Sexual Harassment policies.

Respectfully submitted,

Nicole Baumgarth
Professor, School of Veterinary Medicine

Wendy Lilliedoll
University Investigator, Offices of Compliance and Policy and Academic Affairs

Appendix 1

Complainant: [REDACTED]

Respondent: Nilesh Gaikwad

Witness A: [REDACTED]