

REPORT OF INVESTIGATION AND FINDINGS
Allegations of Sexual Harassment, Residential and Student Service Programs (RSSP)
January 2011

I. BACKGROUND

On October 30, 2010 the Campus Climate and Compliance Office was contacted by [REDACTED] of a report of inappropriate behavior in a campus residence hall. [REDACTED] and [REDACTED] claimed that Ernest Williamson, a custodian in RSSP, stared at her while she showered in the first floor bathroom [REDACTED] in early October 2010. [REDACTED] (hereafter "complainant") reported the incident to [REDACTED] on October 27, 2010, who immediately brought the issue to the [REDACTED]. Williamson (hereafter "respondent") was placed on paid investigatory leave.

II. JURISDICTION

The Title IX Compliance Officer has campus-wide responsibility for initially responding to sex discrimination complaints and implementation of the University Policy on Sexual Harassment and Complaint Resolution Procedures, which includes the investigation and resolution of complaints received from faculty, staff and students.

III. APPLICABLE POLICY [complete text available: <http://ccac.berkeley.edu/>]

The University is committed to creating and maintaining a community in which all persons who participate in University programs and activities can work together in an atmosphere that is free from all forms of harassment, exploitation, or, intimidation, including sexual harassment. Thus, sexual harassment is prohibited by law and University policy.

Definition of Sexual Harassment:

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.

Sexual harassment may include incidents between any members of the University community, including faculty and other academic appointees, staff, coaches, housestaff, students, and non-student or non-employee participants in University programs, such as vendors, contractors, visitors, and patients. Sexual harassment may occur in hierarchical relationships or between peers, or between persons of the same sex or opposite sex.

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In determining whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

This policy covers unwelcome conduct of a sexual nature. Consensual romantic relationships between members of the University community are subject to other University policies, for example, those governing faculty-student relationships are detailed in the Faculty Code of Conduct.¹ While romantic relationships between members of the University community may begin as consensual, they may evolve into situations that lead to charges of sexual harassment, subject to this policy.

IV. INVESTIGATION

The following people were interviewed as part of this investigation: the complainant, the respondent, [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. During his interview the respondent was accompanied by [REDACTED], an employee representative from the American Federation of State, County and Municipal Employees Union (AFSCME).

Interview with Complainant

The complainant is in her [REDACTED] year and has been working [REDACTED]. She has known the respondent since she began her job as an [REDACTED]. The complainant explained that generally her job responsibilities do not include much interaction with the custodian assigned to the residence hall floor (the respondent). She also said she has received numerous complaints from residents that he closes the bathrooms for excessively long periods, and that showers are not clean.

The complainant said she did not know the respondent personally and never engaged him in any personal interactions, though he regularly greeted her and tried to engage her in casual conversation. Though courteous and friendly, she said his attentions bothered her. She said that shortly after meeting the respondent she noticed him staring awkwardly at her and others when talking to them. When asked to elaborate, she described him looking "too intently" when he spoke to her. She said the level of directness and intensity felt disproportionate to a greeting, that he also appeared to look at her and others "up and down" sometimes when speaking to them, and that he often followed her with his eyes for what seemed too long a time when she passed by. She described that she noticed this behavior when he tried to greet her, which was every time he saw her. She stated that the respondent never made any unwelcome comments directly to her and that the content of his remarks to her were never inappropriate, but stressed that his mannerisms made her uncomfortable. She said that when he spoke to her she would return his greeting politely and hurry along so as not to get engaged in conversation. The complainant said even when she tried to turn away and talk to others she could see out of her peripheral vision that he continued to stare at her, and on a couple of occasions when she tried to avoid interacting with him by taking the stairs instead of waiting for the elevator, she turned back to see him at the top of the stairs continuing to look at her.

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In early October, the complainant recalled going into the second floor bathroom late in the morning to take a shower. She recalled that the bathroom was empty, which was not unusual for that time of day. She explained that the bathrooms were very busy early in the morning as students prepared for early morning classes, but later in the morning it was normally quiet. She entered the shower, closing the stall door but not pulling the inner curtain. A minute or two after beginning her shower, she turned and saw someone standing right up against the outside of the stall door, looking at her. She saw the person through the space between the actual hinged door and the rest of the stall wall. The space is about an inch wide but enough for her to see someone standing there. The person was not moving or walking by, but rather standing still, facing her and peering through the space. When asked if she could identify the person watching her, the complainant said she saw a man of the same height as the respondent, with the same complexion, short black hair, wearing glasses, and wearing a blue shirt like the ones custodians wear. She said she recognized the person as the respondent.

The complainant described feeling completely shocked for a few seconds at seeing a man standing there, and then pulled the curtain closed. After about five minutes she finished showering and when she opened the curtain she saw that no one was standing outside anymore. She did not see or hear him leave. She quickly dressed, exited the stall and walked toward the main bathroom entrance and exit. She noted that the sign that custodians normally put up to indicate the bathroom was closed for cleaning was now up. She said that the respondent was not in bathroom, and she didn't see him on the floor as she made her way to her room to prepare to go to class. The investigator asked the complainant if the sign was up when she entered the bathroom, and she responded that she was sure it was not.

The complainant said she continued to feel disturbed about the shower incident but did not tell anyone or report it to her supervisor at first, putting the situation out of her mind to get through her school work and other responsibilities. A few weeks afterward, as she was walking out of [REDACTED] accompanied by her friend, Student 1, she noticed the respondent call out Student 1's name and attempt to say hello to her. The complainant and Student 1 kept walking and did not stop to talk with the respondent. After exiting the building the complainant asked Student 1 how she knew him. Student 1 proceeded to relay her experience with being stared at by the respondent while working at [REDACTED]. The respondent confided her similar experience of being stared at by the respondent in [REDACTED] and then relayed the shower incident to Student 1. Perceiving this to be an escalation of a pattern of inappropriate behavior, Student 1 encouraged the complainant to report the shower incident immediately.

Interview with the Respondent

The respondent has been working as a custodian in [REDACTED] since October 2009. He explained that his basic duties include cleaning the bathrooms, hallways, stairwells and lounges on floors 1-4 of [REDACTED]. He clarified that no one else is assigned to these floors, and that cleaning assignments such as his are covered by a single custodian, i.e., no one else works with him at the same time. He has been working at UCB for 14 years.

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In response to the complainant's allegations, the respondent denied ever seeing the complainant in the shower as described by her. He said he'd never seen her in the bathroom at all, and had encountered her only leaving or entering her room or walking down a hallway. He said he interacts with the complainant and [REDACTED] when there are custodial issues with bathrooms, which is often, as the students often leave the bathrooms in bad condition. The respondent said he wears a uniform, consisting of a blue shirt, work pants and work boots every day. He said he wears glasses all the time to correct his vision. He said he occasionally wears contact lenses, but most often wears his glasses at work.

The investigator asked the respondent for information about the specific task of cleaning bathrooms. He explained that in normal circumstances bathroom detail takes about 90 minutes from start to finish. However, he said the bathrooms are sometimes very dirty, involving vomit and blocked toilets, and in those circumstances bathrooms take much longer to clean. He added that he has had to bring these situations to the attention of the complainant multiple times over the semester, and is dismayed at how the residents' messy habits make his job difficult. He said he'd received specific bathroom detail training from [REDACTED].

The respondent explained that the bathroom layout was like a horseshoe, with a long galley area with lockers on the left wall and on the right a mirrored wall with a row of sinks. On the other side is a row of shower stalls on one side and toilet stalls on the other. When asked to outline the process he follows for cleaning bathrooms, the respondent described that custodians are instructed to place a "closed for cleaning" sign at the bathroom entrance, then enter the bathroom, announce their presence out loud, and check both sides of the facility, i.e., the sink/locker side and the toilet/shower side, for occupants. He stated that he was trained to announce his presence by saying, "Hello, custodial coming in to clean," or something to that effect. The respondent stressed several times during the interview that he always puts the sign up at the entrance when he is cleaning. He stated that if students are in the bathroom he waits for occupants to leave before starting to clean, and asks those wanting to come in to come back later, though it is often difficult because students often try to walk in past the "closed for cleaning" sign while he was trying to clean. He said he discourages them from coming in, but sometimes makes exceptions if they just want to wash their hands or get something quickly from their lockers.

The investigator asked him to describe the protocol in cases where students are already using the showers or toilets when he comes in to clean. The respondent replied that he could still work in the bathroom with a student showering, stating that he could either clean toilets or showers not currently in use. The investigator asked the respondent if he could clean a shower next to one currently being used by a student. The respondent replied that he could do that. Confused, the investigator asked him to explain how that scenario reconciled with the process he had first described. The respondent said he had been instructed that he could clean showers or toilets even when others were in use. The investigator pointed out again to the respondent that he had stated earlier that custodial instructions were to announce their presence in a bathroom before cleaning, and wait for users to finish before closing the bathroom and beginning to clean, and asked if he was absolutely sure that it would be permissible for him to clean a shower stall while a student stood naked in the shower stall next to him. He again replied that this practice was ok.

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When asked again if he had ever cleaned a shower or toilet while another student was showering, he replied that he might have, but wasn't sure. In response to the question of whether this cleaning protocol was written down so that it could be verified, the respondent said he did not know.

The investigator asked the respondent if he had anything else to add, as the interview was coming to an end. The respondent stated that he loved his job, enjoyed working for the university, and had the highest respect for students. He then said that he wanted to apologize to the complainant and that he respected her. The investigator asked why he would want to apologize to the complainant, given that he had denied seeing her in the shower, further specified that he had never even seen her in a bathroom, and had stated that his interactions with her had been cordial, and mainly business-related. At the same time as this question was being posed to the respondent, [REDACTED], who was seated next to the respondent and across from the investigator, turned and stared at the respondent. The respondent turned to her, moved and winced as if he had been kicked under the table, and replied to [REDACTED], "What?!" After a couple of seconds, he turned back to the investigator, and said that what he meant to say was that he wanted to apologize if anything he *may* have done had made the complainant feel uncomfortable. He added that she was a "wonderful person." He restated that he had been a dedicated employee for 14 years and that "people admire me here at UC."

Follow up discussion with the Complainant

The complainant was asked if she had received numerous complaints from the respondent about vomit or blocked toilets on her floors. She explained that she checks the bathroom on both of her floors twice each night, before and after 11 pm. She recalled only one incident this semester involving vomit in a sink for which she submitted a maintenance tag. She said the respondent did not report this incident directly to her. She was unaware of any other incidents of this nature on her floors. She disputed the respondent's contention that he interacted with her numerous times regarding custodial issues related to residents leaving the bathrooms in a bad state. She recalled only one occasion when the respondent stopped her and asked her to remind students not to come in to the bathroom once the cleaning sign was posted at the entrance. She said she brought this information to the first floor residents, and several students responded with complaints about the respondent closing the bathrooms for too long (two hours or more), and sometimes seeing the respondent sitting or lying on the sofa in the lounge, or standing outside near the Bear Market while the closed sign was still up.

The investigator also asked the complainant again about the respondent's uniform and appearance. She reiterated that she was sure that she always saw him with the same uniform, which consisted of a blue shirt, work pants and work boots. When asked if she had ever seen the respondent without glasses, she said no. She added that it would be difficult to confuse him with another male custodian on the floor, as he was the only one assigned to that floor.

Asked once again if she was sure that the "closed for cleaning" sign was up when she entered the bathroom at the time of the alleged peeping incident, she repeated that she was absolutely sure that the sign was not up when she entered the bathroom to take a shower, but was up when she left the bathroom. She said the sign would have been "impossible to miss," since it completely

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blocks the doorway when it is put up. The investigator verified this information with RSSP Central Housekeeping. The sign hangs from a spring-loaded bar that stretches across the doorway, and measures 18 x 11.25 inches. The sign has a yellow background with black writing, and the bar hangs at approximately 4 feet above floor level, i.e., at a height that would require someone entering to either climb over or stoop underneath it in order to access the bathroom.

When asked if she could be more specific about the date of the alleged incident, the complainant said that she could not remember the exact day, but knew it could not have occurred on a Thursday or Friday, since she was working at another job on those days and not in [REDACTED] in the mornings. She estimated the incident occurred on the 4th, 5th, or 6th of October.

Interview with Student 1

Student 1 is a [REDACTED], currently working at a [REDACTED] in [REDACTED]. She corroborated the complainant's account of their discussion that led to the complainant reporting the shower incident. When asked about her experience of unwelcome behavior from the respondent, she explained that during academic year 2007-08 she worked in [REDACTED] while she was a [REDACTED], and met the respondent. She recalled exchanging pleasantries with him as she did with many other colleagues in this large facility. It took her by surprise, therefore, to find a Facebook friend request from the respondent shortly after they met, which she said she ignored, i.e., she did not allow him access to her Facebook page. During her time at [REDACTED] Student 1 worked [REDACTED], and noted that the respondent always went out of his way to greet her and attempt to start a conversation. She described his behavior as sometimes "a bit too friendly" and sometimes irritating, but nothing inappropriate. She began to observe that the respondent talked to himself loudly while working. She described it as more than occasional muttering to oneself. She also noticed that he stared too long at her when they spoke, and also did that to others. Student 1 said she tried to avoid his attention by hurrying to her next task or focusing intently on the task at hand to avoid eye contact with him. She worked in [REDACTED] until the end of her [REDACTED] year. Last year, she recalled eating in [REDACTED] one evening. Seated at a table alone, she looked up and noticed the respondent standing near her with a mop or broom in his hand, watching her. She looked away, assuming he would continue working or move on. Instead, he continued to stare at her for several minutes. She ignored him, hoping he would move away, which he eventually did. She described feeling very uncomfortable, since she could tell from her peripheral vision that he had been standing still looking intently at her and no one else for several minutes. She left the table as soon as she finished eating.

Interview with Student 2

Student 2 is a [REDACTED] living in [REDACTED]. She has observed the respondent working on the first floor this semester, and said she noticed some mannerisms that she characterized as "very odd." She described him staring at people with "X-ray vision" when he talked to them. When asked to elaborate Student 2 explained that he looked "intensely" and "long, often too long" at both women and men when he spoke to them. She said she has never noticed him specifically looking at her body when he talked to her, but did see him sometimes stop and turn his head and follow other students with his gaze after they walked by. She also said she and others noticed that he always talked loudly and often to himself as he worked, as if he was having a

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conversation with himself. Student 2 described two recent incidents that she witnessed that now have motivated her to “steer clear” of him when she sees him.

In the first half of September, she entered the first floor bathroom in [REDACTED] one weekday morning. She entered the bathroom and walked around to the area with showers and toilets so that she could go to the bathroom. She entered the stall next to the disabled stall. Seated on the toilet, she heard noises from the disabled stall next to her. She described lots of animated talking and music, like a game or talk show, and assumed the person next to her was watching something on a laptop or listening to some other kind of mobile device. Then she heard what sounded like a male voice giggling and laughing in response to what was being watched and/or heard. Looking down at the floor in the adjacent stall, she saw the work boots and pants worn by the respondent. She said she felt “creeped out” by this, and specifically checked to see if his pants were around his ankles, i.e., that he was using the bathroom, and said it didn’t appear to be the case. Nevertheless, she exited her stall as soon as she finished and went to the other side of the bathroom to wash her hands, which took about 15 seconds. The recording still seemed to be playing and the laughing continued as she left the bathroom.

About a week or two after this incident Student 2 recalled going to the first floor bathroom just as the respondent was putting up the sign for cleaning. She really needed to take a shower and asked the respondent, who was near the entrance on the sink/locker side of the bathroom, if she could quickly shower before he closed the bathroom. She described that he deliberated for a few seconds, and then agreed to let her in. She said she thanked him and quickly got her shower supplies out of her locker and walked around the corner to the shower/toilet area. Within a minute or two of beginning her shower, Student 2 said she heard the sound of the cleaning sprayer the respondent uses, and realized he was cleaning another stall while she showered. She described feeling “very awkward” at the thought of being in the shower while a custodian was cleaning other showers. She said she had assumed he’d be out of the bathroom, or at least cleaning the sinks while she was on the shower side of the room. However, as she’d asked him to allow her access to the bathroom when it was about to be closed, she felt she could not complain. She finished her shower quickly, changed in the stall and left. As she left the bathroom she called out to him, thanking him for allowing her take a shower, thus “saving her the trip” to another floor. She returned to her room. About two hours later she left her room to go to campus, and as she walked through the first floor lounge Student 2 noticed the respondent cleaning the first floor lounge and muttering loudly, “saved me the trip...saved me the trip...” as he worked. Again, she described feeling “very creeped out.” She said the constant repetition of the same words she’d said a few hours earlier made her feel like he had focused specifically on her in a personal way. She decided at that point to avoid coming into contact with him.

Interview with [REDACTED]

The respondent has reported to [REDACTED] since his assignment at [REDACTED]. He characterized the respondent as a “good” and “dependable” employee. He said he has received no complaints about him. He verified that he provided the basic orientation to the respondent when he came to his custodial group from Crossroads dining, but was out of the office during the period when the respondent received his specific walk-through of bathroom cleaning detail, which was provided by [REDACTED].

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██████████ specified that the overriding principle in the instruction of custodians for bathroom cleaning was “communication with the customer.” He stressed that custodians are taught to announce their presence when entering a bathroom, multiple times if necessary, and that cleaning staff are told to make sure their announcement is acknowledged. If a student is in the toilet or shower stall, custodians should speak loudly and wait for a student to answer so that they know the student is aware of their presence. If they hear that someone is taking a shower or get an indication that someone is using a toilet stall, “common sense” would indicate that they should not enter that part of the room to clean. He stated that there is ample time in a shift to clean bathrooms, even moderately dirty ones, and commented that custodians who find bathrooms occupied should just proceed to another of their four assigned floors for bathroom cleaning.

Interview with ██████████

Like ██████████, ██████████ confirmed that communication with customers, i.e., student residents, was a key training point when orienting custodians to bathroom cleaning procedures. He emphasized that cleaning staff must always put the cleaning sign up at the entrance, and must announce as many times as is necessary that they are entering the bathroom space and wait for acknowledgement from those already present in the room, on either side. He also stressed that proper instructions for handling the chemicals needed for shower and toilet details were very important. The investigator asked if he recalled specifically instructing the respondent that he could clean shower stalls near or adjacent to those being used by students. ██████████ said he could not recall specifically telling the respondent that he could do that, but “may have” said something like that. He added that custodians have to make judgment calls when prioritizing their time and tasks during the day. In light of his earlier comments about the importance of taking care in the use of the chemical products required for heavy cleaning of showers and toilets (“detailing”), the investigator asked again if it was part of a custodian’s training to clean showers while students were actively using other showers, he replied that it was not, but insisted again that staff had to balance multiple issues when making decisions about what to do during a shift, e.g., the use of chemicals, traffic in and out of the bathroom, the amount of time needed to clean exceptionally dirty bathrooms, the state of cleanliness of the other floor areas like lounges and stairwells, etc.

Document Review

The respondent’s personnel file contains no documentation of any reports or discipline related to the complainant’s allegations. ██████████

Time reporting records indicate that the respondent clocked in for work in ██████████ for the entire month of October 2010, with the exception of Friday, October 1, 2010.

V. DISCUSSION OF THE ISSUES

The respondent denied the complainant's allegations, and there were no direct witnesses to the alleged events. However, in reviewing the information gathered from the interviews with the complainant, respondent, and witnesses, as well as the review of relevant documents, the following issues emerge:

There was consistency in the accounts of the complainant and the two student witnesses of the respondent's tendency to stare at students in a way that created discomfort. These experiences are alleged to have occurred separately and over a period of years, e.g., Student 1 reported being stared at beginning in 2007.

In his interview the respondent made inconsistent statements about the bathroom cleaning procedure. Initially, he described the need to notify occupants of imminent cleaning, allow them to leave, put up a sign that indicates the bathroom is closed for cleaning and then proceed to clean the bathroom space after occupants had left. Later in the interview he stated that he had been instructed that he could proceed with cleaning while students were in the shower. The respondent then stated that he could clean a shower stall that was adjacent to one in which a student was in the midst of showering. The investigator reviewed this scenario twice more with the respondent and pointed out the substantive variation from the information he had presented earlier, but the respondent stated again that cleaning shower stalls while other students were taking a shower in the same area of the bathroom was an acceptable practice, and further said that he may have actually carried out this practice. This last statement not only represents a self-contradiction, but stands in opposition to the information presented by the senior custodial supervisor, who stated that all custodians should know that they should never attempt to clean the toilet/shower portion of a bathroom while that area is occupied by students. The supervisor pointed out that, with four floors to clean, there were numerous alternatives to working in a bathroom under these conditions.

The investigator found the complainant and other student witnesses to be credible. None has a prior personal or professional relationship with the respondent, have no motive to falsify information about him, and do not stand to gain by either bringing allegations forward or by participating in the investigation as a witness. Many of the respondent's responses, on the other hand, lacked credibility. His changing and contradictory description of job duties and practices that is directly relevant to the alleged inappropriate behavior evoked questions about his professional judgment in relation to students' physical privacy. Student 2's account of the respondent once allowing her to enter the bathroom when it was closed for cleaning to take a shower, and later hearing him working in another shower stall while she showered nearby, further suggested that the respondent had engaged in behavior that violated students' privacy. In addition, his account of the frequency with which he has communicated with the complainant about professional topics, i.e., problems with residents' use of the bathrooms, appears to be overstated.

Finally, the respondent expressed a desire to apologize to the complainant, even though he had claimed he had not behaved in any way that would warrant such a sentiment. This statement

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from the respondent elicited what appeared to be a kick under the table from Union Representative [REDACTED], which produced a surprised reaction from him, followed by a revised expression of general regret for anything that “may have” caused the complainant to be upset. The offer of an apology is implausible in the context of the respondent’s specific denial of ever being in the bathroom at the same time as the complainant, as well as his general account of the nature and tenor of his prior interactions with her.

By contrast, the alleged incident as described by the complainant is plausible. Attendance records indicate that the respondent - the only custodian assigned to that floor – was present in [REDACTED] during the relevant time period. The description offered by the complainant of the person she saw looking at her in the shower corresponds to the respondent’s physical stature, appearance, and dress.

VI. CONCLUSION

The investigator evaluated the record of the allegations as a whole and gave consideration to the totality of the circumstances, including the context in which the alleged incidents occurred. Based on the information gathered in the interviews and document review described above, the investigator determines that the respondent more likely than not stared at the complainant while she showered in the first floor bathroom in [REDACTED] [REDACTED] in early October 2010. The respondent’s behavior created a sexually hostile and intimidating environment for a student employee, leaving her feeling physically unsafe and vulnerable in her residence and place of work. The investigator therefore concludes that the alleged behavior constitutes a violation of the University Sexual Harassment Policy.