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When Employees Are Bad Actors: Risks and New Solutions

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Materials Referenced in Presentation and Related Materials

1. 'Pass the Harasser' Is Higher Ed's Worst-Kept Secret. How Can Colleges Stop Doing It?, Chron. of Higher Ed., June 27, 2019.
2. NSF unwittingly hired a professor guilty of bullying, highlighting the 'pass the harasser' problem, ScienceMag.org, Nov. 18, 2019.
3. U of Wisconsin System proceeds with plan to disclose misconduct findings against employees to their new employers, Inside Higher Ed, September 25, 2018.
4. University of Wisconsin System Policy 1261 Personnel Files §4.F.
5. University of Wisconsin System Policy 1275 Recruitment Policies §4.C.
6. UC Davis is the latest institution to adopt a reference check policy to stem faculty misconduct, Inside Higher Ed, June 27, 2019.
7. Letter from UC Davis Vice Provost of Academic Affairs Philip Kass, dated July 20, 2018.
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9. University of Illinois System Board of Trustees, Resolution Concerning Sexual Misconduct, Faculty/Student Relationships and Related Matters, November 14, 2019.
10. Johns Hopkins Letter.

EXHIBIT 1

'Pass the Harasser' Is Higher Ed's Worst-Kept Secret. How Can Colleges Stop Doing It?

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Body

ABSTRACT

Worried about defamation suits and bad publicity, colleges often keep findings under wraps, but they're facing pressure to be more transparent.

FULL TEXT

A professor or administrator commits sexual harassment, resigns quietly, and gets a new job at a different institution. This phenomenon, known as "pass the harasser," is common in academe, and it's come under increasing scrutiny during the #MeToo movement.

In some cases, the college on the receiving end is aware of the previous misconduct and makes the hire anyway, wooed by the person's credentials. In others, the college doesn't know about the harassment because institutions don't share that information. Often, colleges sign confidential settlement agreements with employees who've committed harassment, moving them on without anyone outside of that institution knowing what they've done.

But the pressure is building on colleges to stop allowing harassers to move from job to job with no consequences. A few institutions are testing out new policies to try to bolster their reference checks, keep harassers off their campuses, and inform other colleges about employees' past misconduct.

State lawmakers are also stepping into the fray in an effort to crack down on what they see as secrecy in the handling of sexual-misconduct complaints. Title IX, the federal gender-equity law, requires colleges to investigate such complaints, but it doesn't compel them to share the information with police or prospective employers. Some lawmakers want to see that required at the state level.

In Washington State, lawmakers plan to meet with university leaders and victims' rights groups over the summer to consider ways to make the hiring process more transparent. They announced that effort after The Seattle Times described how a former athletics administrator at the University of Washington moved on to another college after being found responsible for sexually assaulting a volleyball player in his truck.

The university reached a settlement with the alleged victim, agreeing to pay up to \$20,000 for therapy as long as she waived any claims against the university. The employee, Roy Shick, then senior associate athletic director, resigned, and his colleagues were told he had moved on to another opportunity. A year later, he was hired as vice president for advancement at Grand Canyon University, which knew nothing about the findings against him. Grand Canyon put him on administrative leave and then fired him after the Seattle newspaper alerted the Arizona college about Shick's background, and the university conducted its own inquiry.

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University of Washington officials say they were following proper internal procedures in their handling of Shick's case. The investigation continued after he left and a "do not rehire" notation was put in his file. But because a university doesn't have legal standing to find someone guilty of an actual crime, those notations don't show up in a criminal background check.

That's why some colleges are tweaking their hiring processes to account for institutional investigations. Still, plenty of barriers - legal and otherwise - keep colleges passing their harassers down the line.

Colleges have long balked at sharing information with other institutions about employees' disciplinary history because administrators fear defamation suits and bad publicity. That creates incentives to keep complaints quiet. Some faculty leaders also worry that professors' privacy could be violated, and that unproven allegations against the innocent could sink their chances of moving on with their career.

Not Reported to the Police

The situation involving Washington and Grand Canyon is just the latest high-profile example of a university passing along a harasser.

Grand Canyon officials said they conducted a background check before hiring Shick, but since the matter was never reported to the police, the incident didn't show up.

It's unclear whether Grand Canyon asked whether Shick had any misconduct complaints against him, but that's the only way it would have received that information. The University of Washington's policy calls for releasing such information only if it's specifically requested.

Washington State passed a law aimed at preventing public schools from passing on harassers, but no such law yet exists for colleges. Some state lawmakers want to extend those protections to higher education, and they will be meeting with university leaders over the summer to discuss it.

Rep. Gerry Pollet, a Seattle Democrat who serves on a House committee on college and work-force development, believes that public universities should be required to report credible allegations of sexual assault to the police, regardless of the victim's wishes. That way, he said, it would be treated as the serious crime that it is, and it would also show up when an outside institution conducts a background check on a prospective employee.

"If there's evidence of someone stealing a few hundred dollars from the athletic department, there's no doubt the athletic department would report to police," he said. "I find it ironic and sad that something far more serious isn't treated the same way."

He would also like to see interstate higher-education consortia agree on common standards for reporting sexual misconduct. "We need to have an assurance that people who are predators aren't being moved from institution to institution."

Ana Mari Cauce, president of the University of Washington, said the university would be re-examining its reporting procedures and working with legislators to increase transparency in ways that are fair to everyone.

"Victim and survivor advocates generally believe, often passionately so, that allowing for confidential reporting that protects the privacy of survivors is critical to encouraging them to come forward," she wrote in a prepared statement. "Balancing their privacy needs while holding harassers and abusers accountable can be like walking a tightrope."

On the Receiving End

Most colleges don't have standardized policies on reference checks and sharing information about past discipline when faculty members and administrators are going through the hiring process. But a few institutions are working on it.

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Sheila O'Rourke, senior campus counsel at the University of California at Davis, knows all about confidential settlement agreements that colleges sign with employees who have committed misconduct.

"I have to say, I've drafted a lot of these in my day," O'Rourke said, in a presentation this week at the annual conference of the National Association of College and University Attorneys. "And I'm embarrassed, looking back, at the number of people I've separated or assisted with that separation."

The university was inspired to crack down after "bitter experience in really short succession hiring two faculty members from prestigious peer institutions who had engaged in egregious misconduct," she said. "We had no information about any of that during the entire hiring and vetting process."

While checking references, the university has started asking previous employers whether faculty applicants have committed harassment or research misconduct.

"One of the things that's held us back is this notion that sexual misconduct is outside of scholarship, it's outside of teaching, so it's not properly part of how we evaluate faculty candidates," O'Rourke said.

All job postings now include a statement indicating that Davis officials will request information about past policy violations. Applicants must sign a form authorizing those institutions to release the documents - even if they have signed a confidential settlement agreement with that institution.

As it's currently a pilot program, O'Rourke said, the university checks the form only for finalists for tenured faculty jobs, not for other faculty or staff candidates. If they don't sign it, their applications won't be considered. The hope, she said, is to dissuade harassers from applying for Davis jobs altogether.

But past harassment doesn't automatically disqualify faculty members, she said. The university considers the nature of the misconduct, how long ago it happened, and whether people have taken steps to improve their behavior.

During the first year of the program, she said, 16 finalists went through a reference check. Twenty-six institutions were contacted for information, and only one did not respond - a foreign university, O'Rourke said. The others reported that the faculty members in question had no history of disciplinary problems.

The University of Wisconsin system took similar steps this year after several Wisconsin campuses came under fire for their handling of harassment cases.

In one case, a former assistant dean of students and Title IX coordinator at the Stevens Point campus committed harassment, moved on to a similar job at Knox College in Illinois, and then was hired back into the Wisconsin system, at the Eau Claire campus. Neither of the hiring institutions knew about his misconduct at Stevens Point. He resigned once UW-Eau Claire learned about his disciplinary history.

Now the system has explicit policies on documenting harassment in personnel files, disclosing harassment to other institutions, and ensuring that Wisconsin campuses ask about harassment during the hiring process, said Quinn Williams, general counsel for the system, during the NACUA conference.

Under Investigation? Just Resign.

Of course, an employee would have a documented disciplinary history only if the institution finished its investigation and made a finding of responsibility. Many professors and administrators resign before investigations are completed.

"We advise people when there's an allegation to get out and start looking for a new school before there is a finding. We don't have a lot of faith in the ability of schools to conduct fair investigations," said Joshua A. Engel, a lawyer who represents faculty members and students accused of harassment. Engel has also taught criminal law and consulted with the federal government on Title IX matters.

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"An allegation is just that, an allegation," he said. If colleges are required to report any level of accusation, he said, "it would privilege even the most spurious or flimsy accusation from a student upset about a grade."

Human-resources officials tend to err on the side of withholding information, Engel said, because they don't want to risk a defamation lawsuit. But colleges that are doing a thorough job of vetting faculty candidates should reach out to colleagues and others who might be more forthcoming.

Generally speaking, an investigation process should remain confidential until it's completed, said Brett A. Sokolow, chief executive of TNG, a risk-management firm that works with colleges. But that's assuming the accused person sticks around. What happens if a person quits and applies for other jobs? What, if any, ethical obligation does the former employer have to warn the other colleges about pending investigations?

"The ethical litmus test is whether you have a good-faith belief that the employee poses an ongoing risk of harm," Sokolow, who is also president of the Association of Title IX Administrators, wrote in an email. "You may be able to determine that well before an investigation is 'complete' from a procedural perspective, depending on where you are in the evidence-gathering process. If so, it's ethical to share that information as necessary to avert the harm."

University of Wisconsin campuses have started asking prospective faculty and staff hires whether they're the subject of active investigations. Wisconsin campuses are now also required to finish all investigations, regardless of whether their employees resign before they're done. "You don't interrupt them midway through and settle them out," Williams said. "You go all the way to the end."

If a Wisconsin faculty or staff member under investigation becomes a candidate for a job at a different college, the Wisconsin campus will disclose that investigation if the hiring institution asks during a reference check, he said. And Wisconsin will share the outcome of the investigation if the hiring institution follows up.

"We don't have an affirmative obligation that we've set to say, We will now, once it's done, send it out," Williams stressed. It's on the other college to ask Wisconsin.

Complicating matters for administrators trying to decide what information to divulge is that states have different standards for sharing information, said Peter F. Lake, director of the Center for Excellence in Higher Education Law and Policy at Stetson University. If a professor who's under investigation applies for 10 jobs in 10 states, the university sharing the information about a pending investigation would have to consider the implications across many boundaries.

He sees a potential for complaints of age discrimination, since older professors generally cost more to keep on and, given their years at the institution, are more likely to have had interactions that offended someone. That could make them vulnerable to claims from disgruntled colleagues or students that could derail their chances of moving on, Lake said. The university on the receiving end doesn't have to give a reason, he said, for declining to interview someone.

"Given today's climate," Lake said, the attitude of a hiring institution is "if there's even so much as a single hair in the food, I'm sending it back to the kitchen." Requesting information about harassment investigations "may be an excellent tool to filter out" serial harassers who move from place to place, Lake said. "But it could also be a tool to oppress people."

Some faculty members sound alarms about privacy and defamation when colleges try to increase transparency around disciplinary investigations.

The American Association of University Professors hasn't taken a position on how campus misconduct inquiries are handled. But the association considers blanket criminal background checks, which would turn up information reported to police, "a disproportionate invasion of privacy relative to the potential benefit," said Hans-Joerg Tiede, associate secretary for academic freedom, tenure, and governance.

Institutions doing any kind of background check, the AAUP says, should inform the candidate of the check and move ahead only after the candidate authorizes it in writing. The candidate should be given a copy of the final

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report and be allowed to "contest or clarify its accuracy" before any adverse action is taken based on the report, the AAUP says.

Tiede also said the AAUP would be concerned "if administrations reported findings of misconduct and impositions of sanctions in which they did not provide adequate academic due process."

Williams, of Wisconsin, said university officials weighed the legal risks associated with their policy changes. They concluded that such defamation and discrimination claims are rare in most states - because there are "safe harbor" protections with respect to reference checks, as long as the information is not "malicious or objectively false." He added: "The law bends towards equity."

He said colleges hoping to stop passing harassers shouldn't overestimate the opposition or the legal risks. "One of my suggestions is that if you feel like you're getting stuck in policy implementation on getting it perfect, don't get it perfect. Just get it out," he said. "You can always come back and change it later."

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Graphic

Colleges have long balked at sharing information with other institutions about employees' disciplinary history because administrators fear defamation suits and bad publicity. That's changing.

Luis Sinco, Los Angeles Times, Getty Images

Sexual Harassment Protest

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EXHIBIT 2

Advertisement



NSF unwittingly hired a professor guilty of bullying, highlighting the 'pass the harasser' problem

By **Jeffrey Mervis** | Nov. 18, 2019 , 10:30 AM

The #MeToo movement has focused attention on an ugly tradition in higher education: having faculty members found guilty of bullying or sexual harassment move to a new job without their new employer being aware of their past conduct. The practice of "passing the harasser" is abetted by privacy and labor laws that limit how much prospective employers can be told about a job applicant.

In a bid to penetrate that veil of silence, two major research universities in the University of California (UC) system have launched pilot programs that require certain faculty candidates to agree to waive some privacy protections. But an incident in which the National Science Foundation (NSF) unwittingly hired a tenured faculty member who had been found guilty of abusive behavior suggests research institutions still have a long way to go before passing the harasser fades into history.

Punishment, then silence

The NSF saga began in May 2017, when the University of Wisconsin (UW) in Madison concluded that engineering professor Akbar Sayeed had created a toxic environment in his laboratory through an unrelenting barrage of derogatory and racial epithets and other intimidation tactics aimed at his students. The investigation was triggered by a query from the family of John Brady, a graduate student in Sayeed's lab who committed suicide in October 2016 after enduring years of such abuse.

Soon after the university completed its investigation, Sayeed applied for a job at NSF's headquarters in Alexandria, Virginia. In October 2017 he started work as a program manager in its division of electrical, communications, and cyber systems. A few weeks later the university told Sayeed that he would be suspended for 2 years, without pay, starting in January 2018.

home institution, with NSF covering his \$141,000-a-year salary while he worked at the agency. UW remained silent when the university approved a renewal of that arrangement in October 2018.

NSF didn't get its first whiff of Sayeed's misconduct until this January, after a reporter with the *Wisconsin State Journal* in Madison requested public records of all university investigations into alleged harassment by employees. "I informed [NSF] of the complaint against Dr. Sayeed and the death of the graduate student [John Brady]," Ian Robertson, dean of UW's engineering college, said in a written response to questions from *Science*. "I offered to provide additional information upon request."

NSF didn't take him up on that offer, and the university maintains that it had no legal obligation to inform the agency about the investigation. But this April, the university shared its report with the agency after releasing hundreds of pages of documents to the *Wisconsin paper*, which last month **broke the story** of Sayeed's suspension and temporary employment at NSF.

Robertson explained the delay by citing a state law that gives Sayeed the opportunity to appeal the release of any personnel records. Sayeed declined to appeal the newspaper's request, however, and UW sent NSF its report on Sayeed "as a courtesy," says Meredith McGlone, a UW spokesperson. Within days of receiving that material, NSF terminated Sayeed.

Sayeed wouldn't have been hired had NSF known about his conduct, says an agency official who requested anonymity because they are not authorized to discuss personnel issues. And once he was suspended, Sayeed was no longer eligible to work as a rotator, the agency says. That's because an NSF policy requires a faculty member to have been on their home institution's payroll for at least 90 days before showing up at NSF.

When Sayeed's contract was renewed in October 2018, he had been on unpaid status for 9 months. Robertson acknowledges that "the university failed to provide NSF a timely update on [Sayeed's] status" after his suspension began.

Sayeed did not respond to interview requests from *Science*. He remains a full professor after the investigation concluded that his behavior "was not serious enough to warrant dismissal."

University officials initially said he would be free to return to campus and resume his duties once his suspension ended. But last week, Robertson announced Sayeed would not teach any courses during the spring semester and that he had been "reassigned to administrative duties" in Robertson's office. "This assignment will remain in place until the department chair, the provost and I are satisfied that adequate measures are in place to provide oversight of the faculty member as a

couldn't prevent him from finding work during his leave, says Brady, a Ph.D. chemist who works in private industry.

Brady says he isn't familiar with the exact sequence of events but that "the timeline should make anyone queasy ... Sayeed apparently took advantage of his relationship with NSF, based on previous funding from the agency, to follow a path that would mitigate [the university's] punishment."

In Brady's view, what happened suggests that "something is awry and needs a bit of attention."

NSF as a model

Ironically, when Sayeed became an NSF rotator, he joined a government agency that has won praise for its response to the growing number of reports about harassment by scientists carrying out federally funded research. In October 2018, NSF announced a new policy requiring institutions to tell it about any finding of harassment against anyone on campus with an NSF grant, as well as any administrative steps they have taken in response to an allegation of harassment that might hinder an investigator's ability to work on the grant. This July, the U.S. House of Representatives overwhelmingly **passed a bill** that proposes governmentwide policies to combat sexual harassment that are modeled on NSF's rules.

"NSF holds all staff to the highest standards of professionalism and integrity and does not tolerate any type of harassment," says Amanda Greenwell, head of the agency's office of legislative and public affairs. "We will continue to have zero tolerance for harassment, discrimination, or bullying of any kind within the agency, at awardee organizations, field sites, or anywhere science or education is conducted." NSF sees requiring disclosure of harassment investigations as one step toward stamping out the behavior.

A privacy waiver

In California, meanwhile, the desire to avoid hiring faculty found to have committed harassment has spurred two UC campuses to change their approach to vetting finalists for tenured faculty positions.

At UC Davis, a pilot project begun in July 2018 asks those candidates to allow their current employer to share with the school any findings of harassment against them. Anyone who doesn't sign the waiver allowing the disclosure of such information, which is normally kept confidential, is considered to have an incomplete application and is removed from consideration.

available to the university.

"I'd rather err on the side of excluding someone with a history of harassment rather than allowing someone to sneak through," Kass says. At the same time, he notes, discovering a finding of past harassment wouldn't automatically trigger a rejection. UC Davis typically asks institutions to go back roughly 10 years into personnel records, on the assumption that rehabilitation is possible.

"It's not a case of one strike and you're out forever," Kass says. "If someone has admitted they made a mistake and learned from it, that's a positive sign."

This summer, UC San Diego (UCSD) launched a similar pilot. It was spurred by a "false alarm" involving allegations of past harassment by a newly hired faculty member, says Robert Continetti, senior associate vice chancellor for academic affairs. After completing the investigation, Continetti says, "We found ourselves without any policy to guide us going forward."

The new policy applies only to tenured positions, Continetti says, because "it's a laborious process to remove someone with tenure." In contrast, those seeking "tenure-track appointment are already on probation," meaning any harassment finding could lead to a denial of tenure. Overall, UCSD officials expect the 3-year pilot will affect roughly 20% of the 75 to 80 tenured faculty searches that the university conducts in a typical year.

UCSD officials worked closely with the faculty senate in designing the pilot, Continetti says. One concern they addressed is that the additional vetting could slow recruitment to the point that the best candidates might choose to go elsewhere. "We're committed to taking no more than 5 days" for the background information requests, he says, "so we don't think it will be an impediment to making an offer."

Privacy versus disclosure

Kass and Continetti believe the new procedures will weed out bad apples while maintaining an employee's right to privacy. "It's not going to be 100% perfect, but it is such a common sense approach that I'm surprised more universities haven't adopted it," says Kass, who this June testified before Congress at a hearing on ways to stop harassment in science.

The University of Illinois appears headed in that direction after its Board of Trustees last week embraced recommendations from a faculty committee to launch a pilot based on the UC Davis model. And this week, UC Davis officials will speak at a national symposium hosted by the University

regents, all UW institutions must now share findings of harassment with other state entities—and any outside employer—that asks for it.

The new policy also establishes rules for what institutions must keep in their personnel files. The new standards are meant to ensure that institutions are properly documenting any findings of harassment, Williams explains, and also that they can answer questions about them from prospective employers.

Williams thinks the new policy signals a greater willingness by universities and other large organizations to overcome their natural tendency to preserve the status quo in the name of combatting harassment. “Institutions of higher education aren’t designed to change quickly,” he says. “But it’s no longer acceptable to mitigate risk by quietly letting someone leave.”

Wisconsin’s unique policy went into effect in January. But it wasn’t put to the test in the case of Sayeed and NSF. The policy doesn’t require the university to be proactive in passing along troubling information about a past or present employee to a prospective employer. And NSF never asked.

It’s possible that NSF might learn about a finding of harassment while talking to people about a job candidate’s scientific credentials, agency officials say. And there are no federal laws or policies that would prohibit the agency from asking a home institution such a question. But, in general, rotator candidates are subject only to the same screening as all other federal job candidates. That includes filling out a form that asks a candidate about any past criminal convictions. It does not, however, ask about having been investigated or found guilty of harassment.

In the wake of Sayeed’s firing, NSF moved quickly to prevent a recurrence. Within a few weeks, the agency had revised its standard rotator agreement with universities to emphasize their obligation to inform NSF of relevant personnel matters.

The form now reads: “If the employment status of this individual changes while on assignment, NSF MUST BE NOTIFIED IMMEDIATELY.”

Posted in: [Scientific Community](#)

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Jeffrey Mervis

Jeff tries to explain how government works to readers of *Science*.

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EXHIBIT 3



Published on *Inside Higher Ed*
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U of Wisconsin System proceeds with plan to disclose misconduct findings against employees to their new employers

Submitted by Colleen Flaherty on September 25, 2018 - 3:00am

Pass the trash, pass the harasser: call it what you will, but the University of Wisconsin System doesn't want to do it anymore. So it's moving forward with a policy ^[1] on disclosing misconduct findings against employees to future employers during reference checks. The system will automatically share such information between its campuses and other state agencies. And it wants such disclosures on its own potential hires, too.

Wisconsin fast-tracked the policy change this summer, after it was revealed ^[2] that Shawn Wilson, a former assistant dean of students at the Stevens Point ^[3] campus and deputy coordinator for Title IX of the Education Amendments of 1972, which prohibits gender-based harassment, resigned during an investigation that would eventually find he had likely repeatedly asked a campus business employee to go home with him and made sexual innuendos.

Wilson soon picked up the same job at Knox College ^[4], which has said it was not notified of the findings against Wilson during a reference check. He left Knox a year after arriving -- the college has not said why -- and was promptly hired as an assistant dean and deputy Title IX coordinator back in Wisconsin, at the university system's Eau Claire ^[5] campus. Eau Claire also has said it was unaware of the findings against Wilson, who resigned after a system employee learned that he had returned.

The scenario seems extraordinary, in part because institutions within the same university system failed to share pertinent personnel information with one

another, and because Wilson was supervising harassment investigations in all three of his jobs. But the general scenario, in which an institution quietly terminates a harasser or lets him or her resign and move on to another institution without raising a red flag, is not unusual. The phenomenon even inspired Representative Jackie Speier, a California Democrat, to call for mandatory misconduct disclosures ^[6] regarding students, faculty and staff, in 2016.

That idea, as it applies to faculty and staff, hasn't taken national hold thus far. But in Wisconsin, local press reports about Wilson became national news, and Governor Scott Walker called on the state university system to do something. In June, the university system's Board of Regents approved a resolution calling for the system to develop a more thorough, uniform reference check policy.

The policy framework resembles requirements for K-12 schools across the country under a provision ^[7] of the federal Every Student Succeeds Act and other state laws ^[8]. College students increasingly face disclosures of sexual misconduct findings ^[9] on their transcripts, too.

Wisconsin officials have said that in the Wilson case, they answered the questions they were asked during reference checks, and that sexual misconduct didn't come up. But under the system's new policy framework, potential employers would automatically be directed to contact a central human resources office for any findings on misconduct during these checks. And system institutions would have to ask other institutions about sexual misconduct findings against potential hires.

What Disclosure Means, and What It Doesn't

Wisconsin's current policy draft ensures the consistent disclosure of sexual violence and harassment policy violations to institutions considering hiring its onetime employees. Chairs and other supervisors wouldn't share what they know about misconduct during reference checks. Rather, they'd direct all misconduct questions to a designated, trained human resources office. The policy also stipulates that Wisconsin institutions ask about sexual violence and harassment findings during their own hiring processes.

The content of employees' personnel files would be standardized under the policy and automatically shared between system institutions and other state agencies. Investigative materials would not be included, just findings and resolutions. And because employees accused of harassment sometimes resign during investigations as a way of shirking responsibility, institutions would have to complete all investigations, whether the employee was still there or not. In such cases, the personnel file would note that the employee left during an investigation.

Crucially, the policy does not include the disclosure of unsubstantiated allegations: those investigated for and cleared of misconduct would not be impacted. And according to information from university system's policy working group, disclosure is not an automatic disqualifier for employment at Wisconsin: findings on potential employees would be weighed against other personnel information in the hiring process.

'Leading the Charge'

"It's cutting-edge and I think the other systems are looking at us in Wisconsin, leading the charge," John Robert Behling, president of the system's governing board, said last month upon being briefed on the draft policy.^[10] by the working group of Title IX, legal and human resources experts and administrators from across the system.

Quinn Williams, the system's general counsel, said at the time, "This is an issue everyone is wrestling with now and in real time ... This is a significant employee and student safety issue."

The policy, which is still being formalized, is expected to take effect in January. The working group said other institutions in other states already have taken interest in its plans.

One reason institutions often don't share harassment findings is that they fear legal retaliation by past employees who lose out on jobs over disclosures. But the Wisconsin working group found little evidence of successful defamation claims where the disclosed misconduct findings were based on sound investigations.

The National Association of College and University Attorneys declined to comment on Wisconsin's plan, saying it doesn't comment on legal issues involving member institutions. But member institutions have discussed what to do about reference checks and misconduct disclosures of late.

Natasha Baker, a San Francisco-based attorney who works with colleges and universities on issues including Title IX, said she hadn't seen a provision such as Wisconsin's just yet, but that that could change quickly.

"If you look at the way the student process of disclosure is going, and the increasing numbers of reports of faculty and staff misconduct, it's easy to see things going this way," she said. California, in particular, has seen recent [legislation](#) [11] protecting employers who share, without malice, "privileged information" on employee misconduct with potential employers.

Dispelling the Defamation 'Myth'

Special provisions for sexual misconduct aside, Baker said that the truth has long been a strong legal defense against defamation claims. So she's always trying to dispel for her clients the legal risk "myth" surrounding disclosure. Nevertheless, the notion persists, she said.

"We include this in every single training we do on providing reference checks, but it is this myth we cannot break open," she said. "It just makes me crazy."

Sometimes settlement terms between an institution and departing faculty or staff member accused of harassment or assault specify nondisclosure in reference checks, as in "name, rank and serial number" only. But that's the exception, not the rule, Baker said -- as long as investigations are fair and thorough.

Another reason academic supervisors, such as department chairs or deans, don't mention findings of harassment in background checks is that they "panic," Baker said. That's because many of these supervisors have lots of disciplinary training but no real administrative preparation for their roles. So they're afraid of saying too much or too little.

That is changing, even if some academic administrators still resist training and tasks traditionally associated with human resources professionals. But in the interim, Baker said, asking supervisors to automatically direct misconduct history questions to a central office -- as Wisconsin will -- is a smart strategy.

“If you are going to disclose this information, there’s an appropriate way to do it,” Baker said. “And I would think that institutions would want to be careful to be providing reference checks based on findings rather than allegations.”

Source URL: <https://www.insidehighered.com/news/2018/09/25/u-wisconsin-system-proceeds-plan-disclose-misconduct-findings-against-employees>

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- [7] <https://www2.ed.gov/policy/elsec/leg/essa/section8546dearcolleagueletter.pdf>
- [8] <http://docs.legis.wisconsin.gov/2017/related/acts/130>
- [9] <https://www.insidehighered.com/news/2015/07/10/states-requiring-colleges-note-sexual-assault-responsibility-student-transcripts>
- [10] https://www.wisconsin.edu/news/download/bor/Personnel-File-and-Reference-Check-Policy-Presentation-for-BOR_2018-08-24.pdf
- [11] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2770

EXHIBIT 4



UW System Administrative Policy 1261 (*formerly HR 13*)

Personnel Files

This policy was a part of the former UPS Policy set that was integrated into the System Administrative Policy set. It applies to all University of Wisconsin institutions except for UW-Madison. For UW-Madison's policies, please see the [Human Resource Design Policies \(https://kb.wisc.edu/ohr/policies/page.php?id=53204\)](https://kb.wisc.edu/ohr/policies/page.php?id=53204) website.

Original Issuance Date: July 1, 2015

Last Revision Date: January 1, 2019

1. Policy Purpose

The purpose of this policy is to provide guidance regarding information that must be included in each employee's personnel file; to outline the requirements on when personnel files must be shared with other state employers; and to provide references to the policies that govern the retention and disposition of personnel records.

2. Policy Background

[Wis. Stat. § 36.115 \(https://docs.legis.wisconsin.gov/statutes/statutes/36/115\)](https://docs.legis.wisconsin.gov/statutes/statutes/36/115) requires the Board and the UW-Madison chancellor to establish and maintain personnel systems separate and distinct from Wisconsin's civil service system as established under [Chapter 230 of the Wisconsin Statutes. \(https://docs.legis.wisconsin.gov/statutes/statutes/230\)](https://docs.legis.wisconsin.gov/statutes/statutes/230) After the Board of Regents adopted Resolution 11038 (adopted June 7, 2018) for all UW institutions regarding employee personnel files and reference checks, this policy was modified to address concerns related to sexual violence and sexual harassment.

3. Policy Definitions

Please see [SYS 1225, *General Terms and Definitions*, \(https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/general-terms-and-definitions/\)](https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/general-terms-and-definitions/) and [Regent Policy \(https://www.wisconsin.edu/regents/policies/sexual-violence-and-sexual-harassment/\)](https://www.wisconsin.edu/regents/policies/sexual-violence-and-sexual-harassment/) [Document 14-2: Sexual Violence and Sexual Harassment \(https://www.wisconsin.edu/regents/policies/sexual-violence-and-sexual-harassment/\)](https://www.wisconsin.edu/regents/policies/sexual-violence-and-sexual-harassment/) for a list of general terms and definitions.

Definitions specific to this policy:

Employee means any individual who holds a faculty, academic staff, university staff, or limited appointment with any UW System institution.

Final personnel decisions means personnel decisions that relate to any employee that include, but are not limited to, dismissal, demotion, suspension, written reprimands, notice of non-renewal, layoff or end of appointment, other disciplinary actions, and violations of the UW System institution's sexual violence and sexual harassment policy. A personnel decision is not a final personnel decision until all applicable administrative appeals are concluded.

Negotiated resolution means, at the discretion of the UW System institution, an agreement between parties without the need for a full investigation or findings.

Settlement agreement means a contractual agreement in writing between parties to actual or potential litigation by which each party agrees to a resolution of the underlying dispute. All settlement agreements for personnel matters must at a minimum be reviewed by the applicable legal counsel and approved by the UW System institution's Chancellor, President or their designee. A non-disclosure or confidentiality agreement must not be included as a term in any settlement agreement that resolves a sexual violence or sexual harassment allegation. Non-written settlement agreements are prohibited.

State agency means a department or independent agency as defined under Wis. Stat. § 15.01(5), (<https://docs.legis.wisconsin.gov/statutes/statutes/15/1/01/5>) and § 15.01(9), (<https://docs.legis.wisconsin.gov/statutes/statutes/15/1/01/9>).

UW System institution means any of the following: UW-Eau Claire; UW-Green Bay; UW-La Crosse; UW-Milwaukee; UW-Oshkosh; UW-Parkside; UW-Platteville; UW-River Falls; UW-Stevens Point; UW-Stout; UW-Superior; UW-Whitewater; UW-System Administration.

4. Policy

A. Contents of the Personnel File

Every employee's personnel file must, at a minimum, contain the following employment records if they exist:

- a. Letters of application
- b. Research proposal (at hire, if required)
- c. Resume or curriculum vitae (CV)
- d. Letters of offer, appointment, reappointment, assignment, or promotion
- e. Letters of acceptance of employment, tenure, or indefinite appointment
- f. Letters of resignation or retirement
- g. Position description
- h. Title change records
- i. Employment contracts

- j. Interchange agreements (<https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/temporary-interchange/>)
- k. Personnel action forms (PAF)
 - l. Pay-related actions, such as base rate or title change requests and actions or other actions affecting employee's pay status
- m. Awards, grants, or notifications of named professorships
- n. Emeritus, annuitant, distinguished service, or other recognition
- o. Decisions on leave of absence requests (but do not include any protected health information)
- p. Faculty sabbatical leave
- q. Performance reviews or evaluations including evaluations during probationary periods, but excluding student evaluations
- r. Records that relate to final personnel decisions
- s. Any relevant negotiated resolutions or settlement agreements or reference to those records identifying and describing the resolution or agreement and where the resolution or agreement can be found
- t. Notices of active investigation or administrative appeal
 - 1. The notice serves as a placeholder until the investigation or administrative appeal is completed
 - 2. Upon conclusion of the investigation or administrative appeal:
 - i. If the employee is found not to have violated the policy, the notice must be removed from the personnel file
 - ii. If the employee is found to have violated the policy, documentation of the final determination and notice of finding of the investigation must be included in the personnel file
- u. Personnel files received from other institutions

B. Maintenance of Personnel Files

Personnel files must be maintained by the UW System institution's human resources department.

The items described in 4.A. must be added to the personnel file whenever created and cannot be removed from the personnel file except in extraordinary circumstances, and then only upon the review and approval of the UW System institution's human resources department, the Chancellor or their designee, and the applicable legal counsel. The only exception is item 4.A.t., which is removed upon conclusion of the investigation as detailed in 4.A.t.2. Any records removed would still need to be maintained pursuant to the applicable General Records Schedule (<https://www.wisconsin.edu/general-counsel/general-schedules-and-records-management-services/>) absent any authority to destroy them. Documents described in 4.A.r. regarding violations of the UW System institution's sexual violence and sexual harassment policy cannot be removed from the personnel file. The items described in 4.D. should be maintained outside of the personnel file.

All employment records, including electronic records, must be appropriately maintained in a secure and confidential manner.

C. Supervisor's Working Files

The personnel file must include the employment records identified in Section 4.A. of this policy. However, selected duplicate or working copies of those records may be maintained for convenience or reference purposes by supervisors. These files may contain information that the supervisor believes is helpful or necessary to manage workload and employees.

Supervisor's working files should be secure and confidential. Supervisors should be aware that if they share this information with any other person the material may become subject to public records law requests. Supervisors may also maintain personal supervisor notes in a working file, which are not considered to be a personnel record if they are prepared by the supervisor for their own use and are not shared with anyone else. These notes may be protected from disclosure under the public records law. But, in the event of a lawsuit, applicable discovery rules apply to the disclosure of documents. Many documents that would be confidential under the public records law must be released in discovery.

D. Maintaining Files Outside of the Personnel File and Supervisor's Working File

Certain employment records should not be placed or maintained in an employee's personnel file or in a supervisor's working file. The following records are examples of records that should be maintained in secure, confidential, and separate files outside of the personnel or supervisor's working file with limited or restricted access.

- Investigative materials excluding the documents described in t.
- Medical information relating to the employee from any source including but is not limited to:
 - Employee medical leave requests and forms
 - FMLA/WFMLA approval letters
 - Leave options letters (when they contain medical information)
 - Medical certifications and supporting medical documentation that explain the need for leave, accommodations, or absences
- Employee benefits applications or related materials
- Income Continuation Insurance (ICI) records
- Insurance forms – health, dental, vision,
- Tax Sheltered Annuity (TSA) salary reduction agreements
- Tuition reimbursement requests
- Vacation carryover requests
- W-4 forms
- Letters of reference accepted under assurances or with the expectation of confidentiality

E. Redaction of Sensitive Personally Identifiable Information (PII)

Personally identifiable information (PII) is any data that could potentially identify a specific individual. There are two types of PII: sensitive and non-sensitive. Non-sensitive PII is publicly available and easily accessible information that can be gathered from a variety of sources (e.g., public records, phone books, publicly accessible websites). Sensitive PII is information which, if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Sensitive PII includes information such as unique identifiers, financial information, and medical information.

Sensitive PII should not be included in the personnel file. When adding documents to the personnel file, the following information **must be redacted**:

- Social security numbers
- Employer and tax identification numbers
- Financial account numbers (bank accounts, credit cards, passwords, and PINs)
- Driver license and state identification numbers
- Passport numbers
- Other data protected from disclosure by law, contract, or University policy

Additionally, when sending a personnel file to another UW System institution or a state agency, the personnel file must be reviewed and any sensitive PII redacted before the personnel file is shared.

F. Sharing Personnel Files

Hiring UW System institutions must request the personnel file of any current or former UW System institution, UW-Madison, or other state agency employee upon hire. Upon request of the hiring UW System institution, UW-Madison, or other state agency, UW System institutions must share a copy of the complete personnel file of any current or former UW System institution employee upon hire. The original personnel file must be maintained according to the applicable General Records Schedule. (<https://www.wisconsin.edu/general-counsel/general-schedules-and-records-management-services/>)

G. Access to Personnel Records

Wis. Stat. § 103.13 (<http://docs.legis.wisconsin.gov/statutes/statutes/103/13>) grants employees the right to inspect certain records in their personnel files. If an employee disagrees with information contained in a personnel file, a correction or removal of the information may be mutually agreed upon. If such an agreement cannot be reached, the employee may submit a written statement explaining their position, which must be included in the personnel file.

Please reference Wis. Stat. § 103.13 (<http://docs.legis.wisconsin.gov/statutes/statutes/103/13>)(6) for employment records not subject to inspection by an employee or an employee's representative.

H. Retention of Personnel Records

The University of Wisconsin System & UW Madison General Records Schedule, Human (https://www.wisconsin.edu/general-counsel/download/public_records/records_schedules/2016-UW-System-and-UW-Madison-HR-GRS.pdf) Resources and Related Records (https://www.wisconsin.edu/general-counsel/download/public_records/records_schedules/2016-UW-System-and-UW-Madison-HR-GRS.pdf) governs the retention and disposition of the personnel records for all UW System institution employees (see UWHR0400-UWHR0404 for personnel files). Under the General Records Schedule – and under Wisconsin law – a UW System institution may not destroy any records that it generates or receives, including employment records, unless destruction of the record is consistent with the General Records Schedule.

Retention periods for official personnel files begin at final separation from UW System institution employment, but emeritus status does not constitute separation for this purpose. Following the appropriate retention periods, employment records may be destroyed in accordance with the applicable UW System institution policies.

5. Related Documents

University of Wisconsin System and UW Madison General Records Schedule – Human (https://www.wisconsin.edu/general-counsel/download/public_records/records_schedules/2016-UW-System-and-UW-Madison-HR-GRS.pdf)

Resources and Related Records (https://www.wisconsin.edu/general-counsel/download/public_records/records_schedules/2016-UW-System-and-UW-Madison-HR-GRS.pdf)

Regent Policy Document 14-2: Sexual Violence and Sexual Harassment (<https://www.wisconsin.edu/regents/policies/sexual-violence-and-sexual-harassment/>)

Wis. Stat. § 103.13, Records open to employee (<http://docs.legis.wisconsin.gov/statutes/statutes/103/13>)

6. Policy History

Rev. 1/1/2019

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EXHIBIT 5



UW System Administrative Policy 1275 (formerly TC 1)

Recruitment Policies

This policy was a part of the former UPS Policy set that was integrated into the System Administrative Policy set. It applies to all University of Wisconsin institutions except for UW-Madison. For UW-Madison's policies, please see the [Human Resource Design Policies \(https://kb.wisc.edu/ohr/policies/page.php?id=53204\)](https://kb.wisc.edu/ohr/policies/page.php?id=53204) website.

Original Issuance Date: July 1, 2015

Last Revision Date: October 14, 2019

1. Policy Purpose

The purpose of this policy is to provide a framework for UW System institutions to use in the development of merit-based recruitment, selection, and hiring processes that produce a talented, effective workforce and that reflect UW System's commitment to the principles of equal employment opportunity, non-discrimination, and diversity.

2. Policy Background

[Wis. Stat. § 36.09\(1\)\(e\)](https://docs.legis.wisconsin.gov/statutes/statutes/36/09/1/e) (<https://docs.legis.wisconsin.gov/statutes/statutes/36/09/1/e>) authorizes the Board of Regents to appoint the requisite number of limited appointees, faculty, academic staff, and other employees. Several Regent actions have served to delegate much of the appointment authority to the System President, who in turn further delegates this authority to the chancellors.

[Wis. Stat. § 36.115](https://docs.legis.wisconsin.gov/statutes/statutes/36/115) (<https://docs.legis.wisconsin.gov/statutes/statutes/36/115>) requires the Board and the UW-Madison Chancellor to establish and maintain personnel systems separate and distinct from Wisconsin's civil service system as established under [Chapter 230 of the Wisconsin Statutes](https://docs.legis.wisconsin.gov/statutes/statutes/230) (<https://docs.legis.wisconsin.gov/statutes/statutes/230>). After the Board of Regents adopted Resolution 11038 (adopted June 7, 2018) for all UW System institutions regarding employee personnel files and reference checks, this policy was modified to address concerns related to sexual violence and sexual harassment.

Faculty and academic staff recruitment policies are outlined in [UWS 3.02](https://docs.legis.wisconsin.gov/document/administrativecode/UWS%203.02) (<https://docs.legis.wisconsin.gov/document/administrativecode/UWS%203.02>) and [UWS 10.02\(1\)](https://docs.legis.wisconsin.gov/document/administrativecode/UWS%2010.02(1)) ([https://docs.legis.wisconsin.gov/document/administrativecode/UWS%2010.02\(1\)](https://docs.legis.wisconsin.gov/document/administrativecode/UWS%2010.02(1))) of the Wisconsin Administrative Code, respectively. The majority of limited appointee recruitments follow established university recruitment policies. However,

recruitment procedures for chancellors, senior vice presidents or vice presidents are outlined in [Regent Policy Document 6-4, Search and Screen Procedures for Chancellors, Senior Vice Presidents or Vice Presidents](#) (<https://www.wisconsin.edu/regents/policies/selection-process-for-system-president-chancellors-vice-chancellors-and-uw-system-senior-leadership-positions/>).

3. Policy Definitions

Please see [SYS 1225, General Terms and Definitions](#), (<https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/general-terms-and-definitions/>) for a list of general terms and definitions.

Definitions specific to this policy:

Employee means any individual who holds a faculty, academic staff, university staff, or limited appointment with any UW System institution.

Equal opportunity and affirmative action means an active effort to improve the educational and employment opportunities of members of minority groups and women.

Merit means the qualifications, experience, standard of work performance, and capabilities of those persons that are relevant to the performance of those duties.

Sexual harassment means the same as in [Regent Policy Document 14-2: Sexual Violence and Sexual Harassment](#) (<https://www.wisconsin.edu/regents/policies/sexual-violence-and-sexual-harassment/>).

Sexual violence means the same as in [Regent Policy Document 14-2: Sexual Violence and Sexual Harassment](#) (<https://www.wisconsin.edu/regents/policies/sexual-violence-and-sexual-harassment/>).

State agency means a department or independent agency as defined under Wis. Stat. [§15.01\(5\)](#) (<https://docs.legis.wisconsin.gov/statutes/statutes/15/1/01/5>) and [§15.01\(9\)](#) (<https://docs.legis.wisconsin.gov/statutes/statutes/15/1/01/9>).

UW System institution means any of the following: UW-Eau Claire; UW-Green Bay; UW-La Crosse; UW-Milwaukee; UW-Oshkosh; UW-Parkside; UW-Platteville; UW-River Falls; UW-Stevens Point; UW-Stout; UW-Superior; UW-Whitewater; UW System Administration.

Misconduct means a violation of law, malfeasance, or improper behavior.

Final Candidate means the candidate who will be offered the position.

4. Policy

It is the policy of the University of Wisconsin System to use merit-based principles in the recruitment and selection process. Recruitment must be an active process consistent with sound personnel management practices and done in a manner to recruit a diverse, highly qualified group of applicants. Selection must be made according to merit selection

principles through a competitive process. As appropriate, internal recruitment may be utilized if consistent with equal employment and affirmative action objectives as well as UW System institutional policies or practices.

UW System institutions must consider affirmative action principles and inclusive excellence in all recruitments to ensure that equal employment opportunity, diversity, and affirmative action goals are addressed. Depending on institutional policies or practices, this may include, but is not limited to, activities such as participation in review and/or approval of a recruitment plan which includes consideration of affirmative action goals and targets for advertising to increase diversity of pools, appointment and orientation of search and screen committee members, development of position descriptions, development of interview questions, and review of finalists.

UW System institutions provide equal employment opportunity by ensuring that all personnel actions including hire, promotion, tenure, and any term, condition, or privilege of employment are based on the ability to perform the duties and responsibilities assigned to the particular position without regard to age, race, creed or religion, color, disability, sex, national origin, ancestry, sexual orientation, gender identity or expression, or political affiliation.

A. Responsibilities

UW System institution human resource departments are responsible for providing oversight and guidance during the recruitment process. UW System institutions may also delegate recruitment responsibilities to other appropriate departments and designate who is authorized to respond to reference checks on behalf of the institution.

B. Required Questions for the Final Candidate

At a minimum, a final candidate must be asked prior to hire whether they:

- were ever found to have engaged in any sexual violence or sexual harassment
- are currently under investigation or have ever left employment during an active investigation in which they were accused of sexual violence or sexual harassment

Sample questions can be found in [Appendix 4 \(https://www.wisconsin.edu/uw-policies/download/1275-Appendix-4.pdf\)](https://www.wisconsin.edu/uw-policies/download/1275-Appendix-4.pdf) .

C. Obtaining Employment References

Job related reference information is required as part of the recruitment and selection process for all prospective employees.

When to ask: Reference checks must be performed, at a minimum, for a final candidate for any UW System institution position prior to hire.

What to ask: When checking references, it is a good practice to ask whether disciplinary problems were encountered. At a minimum, reference check questions must be asked about a final candidate prior to hire as to whether they:

- were ever found to have engaged in any sexual violence or sexual harassment

- are currently under investigation or have ever left employment during an active investigation in which
- they were accused of sexual violence or sexual harassment

Additional guidance on reference check questions can be found in [Appendix 2 \(https://www.wisconsin.edu/uw-policies/download/1275-Appendix-2.pdf\)](https://www.wisconsin.edu/uw-policies/download/1275-Appendix-2.pdf) , [Appendix 3 \(https://www.wisconsin.edu/uw-policies/download/1275---Appendix-3.pdf\)](https://www.wisconsin.edu/uw-policies/download/1275---Appendix-3.pdf) , and [Appendix 4 \(https://www.wisconsin.edu/uw-policies/download/1275-Appendix-4.pdf\)](https://www.wisconsin.edu/uw-policies/download/1275-Appendix-4.pdf) .

Who to ask: Reference checks must be conducted at a minimum with a final candidate's most recent employer and with all previous UW System institution and state agency employers from the past seven years.

[Appendix 2 \(https://www.wisconsin.edu/uw-policies/download/1275-Appendix-2.pdf\)](https://www.wisconsin.edu/uw-policies/download/1275-Appendix-2.pdf) contains general guidance on conducting reference checks and [Appendix 3 \(https://www.wisconsin.edu/uw-policies/download/1275---Appendix-3.pdf\)](https://www.wisconsin.edu/uw-policies/download/1275---Appendix-3.pdf) provides sample reference check questions.

Other considerations: The application process must include a requirement for applicants to disclose any prior UW System or other Wisconsin state agency employment. Depending on the specific facts, past misconduct is not an automatic disqualifier. Reference information that reveals past misconduct (including any violation of sexual violence or sexual harassment policies) must be reviewed on a case-by-case basis prior to making any hiring decisions, and when appropriate, legal counsel should be consulted.

D. Providing Employment References

UW System institutions must follow certain minimum procedures when a potential employer makes a reference check regarding a current or former employee.

The potential employer should receive an objective evaluation of the candidate's training, experience, skills, abilities, and job performance as they relate to the duties and responsibilities of the job for which the candidate is being considered.

When a supervisor or agent of management is contacted by a potential employer for a reference check of a current or former employee, the supervisor or agent must notify the potential employer, even if they do not ask, of the appropriate UW System institution contact for any questions related to employee misconduct (including any violation of sexual violence or sexual harassment policies). The appropriate UW System institution contact must disclose whether the employee has ever been found to have engaged in, is currently under investigation for, or left during an active investigation in which they were accused of sexual violence or sexual harassment.

When the potential employer is another UW System institution or state agency, the personnel file of the current or former employee must be shared upon hire (see [SYS 1261, *Personnel Files* \(https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/personnel-files/\)](https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/personnel-files/)).

Sample language and procedures can be found in [Appendix 4 \(https://www.wisconsin.edu/uw-policies/download/1275-Appendix-4.pdf\)](https://www.wisconsin.edu/uw-policies/download/1275-Appendix-4.pdf) .

E. Special considerations under the Wisconsin Public Records Law

Wis. Stat. § 19.36(7)(b) (<http://docs.legis.wisconsin.gov/statutes/statutes/19/11/36/7>) provides that applicants for positions may indicate in writing that their identity should be kept confidential. Except for certain high-level positions described below, only the identity of the individual who is hired for the position may be the subject of a public records request.

The following confidentiality language should be included in all UW job announcements (except for those for high-level positions described below):

The University of Wisconsin System will not reveal the identities of applicants who request confidentiality in writing, except that the identity of the successful candidate will be released. See Wis. Stat. § 19.36(7). ([https://docs.legis.wisconsin.gov/document/statutes/19.36\(7\)\(a\)](https://docs.legis.wisconsin.gov/document/statutes/19.36(7)(a)))

For the positions of President, Vice President, or Senior Vice President of the University of Wisconsin System; Chancellor, and Vice Chancellor, who serves as deputy at each institution (usually the Provost), the following confidentiality language should be included in the UW job announcement:

The University of Wisconsin System will not reveal the identities of applicants who request confidentiality in writing, except that the identities of finalists must be revealed upon request. See Wis. Stat. § 19.36(7). ([https://docs.legis.wisconsin.gov/document/statutes/19.36\(7\)\(a\)](https://docs.legis.wisconsin.gov/document/statutes/19.36(7)(a)))

F. Letters of Appointment

The terms and conditions of an appointment should be specified in a written letter of appointment. The appointment letter must be signed by an authorized official of the UW System institution and should contain details regarding the following:

- type of appointment (e.g., fixed term, probationary, or expectation of continued employment);
- duration of the appointment (starting date, ending date);
- salary (hourly for nonexempt; salary for exempt);
- general position responsibilities;
- definition of operational area;
- duration of the probationary period (if appropriate); and
- recognition of prior service as part of the probationary period (if appropriate).

Accompanying the appointment letter must be an attachment or link detailing the applicable UW System institution employment regulations, rules, and procedures. If the appointment is subject to the approval of the Board of Regents, a statement to this effect must be included in the letter.

If the Criminal Background Check (CBC) or reference check process cannot be completed before an offer is made, the appointment letter must state that the offer will be withdrawn, or the employment terminated if the individual's CBC or reference results are unacceptable. The following statement must be used in the appointment letter:

This offer of employment is conditional pending the results of a criminal background check and a reference check process that includes questions regarding sexual violence and sexual harassment. If the results are unacceptable, the offer will be withdrawn or, if you have started employment, your employment will be terminated.

5. Related Documents

[Appendix 1 \(https://www.wisconsin.edu/uw-policies/download/1275---Appendix-1.pdf\)](https://www.wisconsin.edu/uw-policies/download/1275---Appendix-1.pdf) – Options for Staff Recruitment and Assessment

[Appendix 2 \(https://www.wisconsin.edu/uw-policies/download/1275-Appendix-2.pdf\)](https://www.wisconsin.edu/uw-policies/download/1275-Appendix-2.pdf) – Reference Check Guidelines

[Appendix 3 \(https://www.wisconsin.edu/uw-policies/download/1275---Appendix-3.pdf\)](https://www.wisconsin.edu/uw-policies/download/1275---Appendix-3.pdf) – Reference Check Questions

[Appendix 4 \(https://www.wisconsin.edu/uw-policies/download/1275-Appendix-4.pdf\)](https://www.wisconsin.edu/uw-policies/download/1275-Appendix-4.pdf) – Sample Language Recommendations for Questions and Disclaimers

[Appendix 5 \(https://www.wisconsin.edu/uw-policies/download/Appendix-5_HR-FAQs_2019-07-19.pdf\)](https://www.wisconsin.edu/uw-policies/download/Appendix-5_HR-FAQs_2019-07-19.pdf) – HR Frequently Asked Questions

[Regent Policy Document 14-2: Sexual Violence and Sexual Harassment \(https://www.wisconsin.edu/regents/policies/sexual-violence-and-sexual-harassment/\)](https://www.wisconsin.edu/regents/policies/sexual-violence-and-sexual-harassment/)

[UW System Administrative Policy 420: Travel &Expense – Meal and Incidental Expense \(M&IE\) Per Diem allowance Reimbursements \(https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/travel-expense-meal-and-incidenta-expense-mie-per-diem-allowance-reimbursements/\)](https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/travel-expense-meal-and-incidenta-expense-mie-per-diem-allowance-reimbursements/)

[UW System Administrative Policy 1261: Personnel Files \(https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/personnel-files/\)](https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/personnel-files/)

6. Policy History

Reviewed by the Board of Regents, December 7, 2012

Board of Regents Resolution 11038 adopted, June 7, 2018

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EXHIBIT 6



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misconduct

UC Davis is latest institution to adopt a reference check policy to stem faculty misconduct

Submitted by Colleen Flaherty on June 27, 2019 - 3:00am

Last year, the University of Wisconsin System very publicly launched a new policy ^[1] against "passing the harasser" ^[2] on to unwitting institutions: It said it would disclose substantiated misconduct findings when contacted for employee reference checks. The system also put checks in place to guard against being passed someone else's harassers.

Around the same time, the University of California, Davis, more quietly established its own pilot policy on faculty reference checks. Experts say this kind of policy is still extremely rare in academe -- but that that will soon change.

A year into its pilot, Davis officials are ready to talk about it. Philip Kass, the university's vice provost of academic affairs, who recently testified about the policy during a Congressional hearing on harassment in the sciences, said Wednesday that he and colleagues sought ways to prevent and otherwise address issues of sexual misconduct on campus.

And they started thinking about how it's "possible for faculty to move between universities without the incoming university knowing about substantiated findings and discipline for any reason at a prior university."

K-12 school districts already are "well aware" of this problem, Kass said. But colleges and universities are another story -- even though examples abound of professors disciplined for misconduct moving on to new campuses to harass more students or colleagues. Ultimately, Davis adopted a new reference check

program to "help prevent us from hiring faculty without the ability to evaluate such historic infractions."

The policy centers more on advance warning than disclosure. Job ads say that Davis will conduct reference checks into misconduct. Applicants for tenured and continuing lecturer positions must consent to having a reference check. Those who don't consent don't move forward as candidates.

Davis contacts the former institution or institutions of finalists who do consent, and asks whether there have been substantiated findings of misconduct that would violate the California system's Faculty Code of Conduct -- including sexual assault and harassment.

This process is separate from criminal background checks, which are governed by system policy and don't turn up internal findings of misconduct.

Davis will also share any substantiated findings of misconduct with institutions that ask about its own employees, past or present, provided those institutions present a signed waiver from the candidate consenting to the reference check.

Since last summer, 14 candidates for jobs at Davis have required reference checks. Nine have been completed, with 23 institutions contacted. Nineteen responses have been provided. None included information about candidates receiving discipline.

Were the institution to receive pertinent information, academic affairs personnel and the relevant dean and department chair would conduct an individualized assessment to see if the candidate was still eligible for the job in question. They'd consider the nature of the conduct, the length of time passed, discipline or corrective action taken, and the applicant's explanation.

Kass said that his office received no complaints from applicants or institutions about the policy this year. How many applicants have self-selected out of applying to Davis is impossible to know. But Kass told Congress during the hearing on harassment in the sciences that "potential applicants for faculty positions who have been disciplined, upon reading UC Davis's requirement for a signed authorization in order for their application to be considered, will be dissuaded from applying."

He added that Davis's reference check program "is an intervention for reducing the incidence and negative consequences of sexual harassment in both the STEM and non-STEM workforces, [for both] students and trainees."

Quinn Williams, general counsel for the Wisconsin system, praised Davis's efforts and said he was unaware of other institutions adopting similar policies.

Why? Institutions tend to fear the possible legal repercussions of sharing negative information about job candidates, he said. But Wisconsin's own study of the legal risks of disclosure found that fear to be "oversold." That's largely because the truth is strong defense against defamation claims.

Williams said that "we can't catch everything, and we don't think we can catch everything." But putting applicants "on notice early and often" that questions like this will be asked -- not only of them but of their prior employers -- is an effective and legally sound practice, he said.

What if institutions aren't forthcoming in their references? Williams said that Wisconsin makes clear that candidates who lie in the hiring process and are later found out can be dismissed for cause.

Kass said that academic affairs may consider extending this policy to tenure-track faculty members going forward. It didn't ask for the Academic Senate's approval of the policy, and Kass said that faculty applicants are not yet members of the Senate.

Still, general criminal background checks ^[3] have historically proven controversial among professors. Some raise questions about the implications for rehabilitation, privacy and even academic freedom.

The American Association of University Professors takes the position that "blanket criminal background checks of faculty before appointment are a disproportionate invasion of privacy relative to the potential benefit," Hans-Joerg (Joerg) Tiede, senior program officer for academic freedom, tenure, and governance, said.

The association's relevant policy recommends that institutions should at the very least inform candidates of the proposed background check and get their

written authorization, and give them a full copy of the report. No adverse action may be taken unless and until the employee has had an opportunity to contest or clarify its accuracy, the AAUP also says.

Institutional investigations, of course, are not criminal reports. And academic misconduct proceedings are not always perfectly executed. To that point, Tiede said the AAUP would "certainly be concerned if administrations reported findings of misconduct and impositions of sanctions in which they did not provide adequate academic due process."

Even so, Williams said he thinks this kind of reference check will spread going forward.

Kass does, too. "The concept of doing reference checks at universities is relatively new, and I suspect that some faculty may be concerned about the concept until they better understand it because it does have the capacity to exclude applicants from being considered for faculty positions, or may dissuade individuals from applying," if they don't want their references to be checked, he said.

Nevertheless, he said, "I firmly believe that as universities talk to each other" through professional organizations, "such reference checks will inevitably become institutionalized in their hiring practices."

[Academic Freedom](#) ^[4]
[Faculty](#) ^[5]

Source URL: <https://www.insidehighered.com/news/2019/06/27/uc-davis-latest-institution-adopt-reference-check-policy-stem-faculty-misconduct>

Links

[1] <https://www.insidehighered.com/news/2018/09/25/u-wisconsin-system-proceeds-plan-disclose-misconduct-findings-against-employees>

[2] <https://www.insidehighered.com/news/2016/01/13/politician-proposes-law-prevent-harassers-being-passed-one-institution-another>

[3] <https://www.insidehighered.com/news/2017/04/04/professors-lehigh-object-background-check-and-fingerprinting-policy>

[4] <https://www.insidehighered.com/news/news-sections/academic-freedom>

[5] <https://www.insidehighered.com/news/news-sections/faculty>

EXHIBIT 7

Revised: July 20, 2018

Advisory to Deans #AA2018-01 - REVISED

DEANS, EXECUTIVE ASSOCIATE DEANS, ASSOCIATE DEANS, ASSISTANT DEANS, CHAIRS AND ACADEMIC PERSONNEL ANALYSTS

Re: Pilot Program - Reference Checks for Academic Senate Ladder Rank Faculty Hires with Tenure or Lecturer/Senior Lecturer with Security of Employment, **Effective July 1, 2018**

Dear Colleagues,

The University of California is committed to creating and maintaining a community dedicated to the advancement, application, and transmission of knowledge and creative endeavors through academic excellence, where all individuals who participate in University programs and activities can work and learn together in a safe and secure environment, free of violence, harassment, discrimination, exploitation, or intimidation. To support this commitment, UC Davis will conduct a pilot program for the 2018-19 hiring year to conduct reference checks on final candidates for academic appointments with tenure or security of employment. The current faculty hiring process solicits information regarding candidates' qualifications through outside letters. The pilot reference check program will enable UC Davis to obtain and review information about candidates' conduct in their previous appointments that may be important to the appointment decision. The reference checks do not involve any process for criminal background checks, which are covered by other University policies.

The pilot program will follow these steps to conduct reference checks for candidates who are the final choice for hiring into tenured or security of employment positions.

1. The campus shall include the following statement in the posting of Senate ladder rank faculty positions with tenure or lecturer/senior lecturer with security of employment providing notice to applicants that UCD will conduct reference checks on final candidates prior to hiring.

The University of California is committed to creating and maintaining a community dedicated to the advancement, application, and transmission of knowledge and creative endeavors through academic excellence, where all individuals who participate in University programs and activities can work and learn together in a safe and secure environment, free of violence, harassment, discrimination, exploitation, or intimidation. With this commitment, UC Davis conducts a reference check on all finalists for tenured positions. The reference check involves contacting the administration of the applicant's previous institution(s) to ask whether there have been substantiated findings of misconduct that would violate the University's Faculty Code of Conduct. To implement this process, UC Davis requires all applicants for any open search for assistant/associate/full professor to complete, sign, and upload the form entitled "Authorization to Release Information" into RECRUIT as part of their application. If an applicant does not include the signed authorization with the application materials, the application will be considered incomplete, and as with any incomplete application, will not receive further consideration. Although all applicants for faculty recruitments must complete the entire application, only finalists considered for positions with tenure or security of employment will be subject to reference checks.

2. All applicants for these searches will be asked to sign and upload an “Authorization to Release Information” form into UC Recruit (see the attached document Appendix A or [here](#)). If the candidate does not include the signed authorization with the application materials in RECRUIT, the application will be incomplete and, as with any incomplete application, will not receive further consideration.
3. When the selection of the first choice candidate has been made, the Dean and/or Department Chair should contact Academic Affairs, specifically, Danny Gray – Director of Academic Employment and Labor Relations (dgray@ucdavis.edu), to initiate the Reference Check process. Academic Affairs shall contact the academic personnel office (or equivalent) in one or more of the previous institutions where the candidate has been employed. This may occur concurrently with the negotiation of the terms in the Temporary Offer Letter (TOL), or after the TOL has been issued. The candidate shall be notified before the contact is initiated. Academic Affairs will provide the signed release to the previous institution(s) and ask for information about misconduct related to teaching, research, service, and (if applicable) clinical care. Academic Affairs will not contact the candidate’s department or search chair, unless there is no other office of record for faculty misconduct at the institution.
4. Academic Affairs will ask a consistent set of questions to each institution, and may ask follow up questions relevant to the information received. Academic Affairs will limit its inquiry to substantiated findings of misconduct and associated discipline related to teaching, research, service and (if applicable) clinical care. In accordance with the signed authorization, the campus is entitled this information, even if confidential, including any materials that have been sealed or agreed to be withheld pursuant to a prior agreement or court proceeding.
5. Academic Affairs, in consultation with the dean and department chair, will conduct an individualized assessment of any information received including the nature of the conduct, the length of time passed, any corrective action taken, and any explanation offered by the candidate. After reviewing the information, Academic Affairs, in consultation with the dean and department chair will determine whether the candidate is still eligible to be considered for the position. If it is determined that the candidate is not eligible, the candidate shall be notified and a second choice candidate may be considered, subject to the reference check process.
6. This pilot reference check program applies to final candidates selected for appointment with no previous UC appointment as well as candidates with current or prior UC appointments.
7. In order to protect a candidate’s privacy, all information received in connection with the reference check process will be treated as confidential and retained in accordance with UC policy. Should the candidate be offered and accept the position, any information received shall be securely maintained and held in the campus Academic Affairs Office.

Information about this pilot program is available at <http://academicaffairs.ucdavis.edu/policies/reference-checks.html>. Additionally, instructions for completing this process in the UC Davis Recruit system are outlined in the attached document, Appendix B, and available at http://academicaffairs.ucdavis.edu/local_resources/docs/Reference_Check_Information_UC_Recruit_Instructions.pdf.

Any questions regarding this pilot program may be directed to Binnie Singh, Assistant Vice Provost, Academic Affairs (binsingh@ucdavis.edu, 530-752-5726).

Sincerely,

A handwritten signature in blue ink, appearing to read "Philip H. Kass".

Philip H. Kass
Vice Provost—Academic Affairs
Professor of Analytic Epidemiology,
Population Health and Reproduction (Veterinary Medicine),
and Public Health Sciences (Medicine)

AUTHORIZATION TO RELEASE INFORMATION

As an applicant for the position of _____ with the **University of California, Davis** (the University), I am required to furnish information for use in determining my qualifications. For this purpose, I authorize the release of information (described below) requested by the University concerning any misconduct related to teaching, research and service (and clinical care if applicable). I understand the University will not request information authorized by this release unless I am a finalist for an academic appointment with tenure or security of employment.

If I have been found to have violated my current or previous institution's policies governing faculty conduct, in including policies prohibiting sexual harassment, sexual assault, and/or other forms of harassment or discrimination, this signed form allows my current or prior institution(s) to share that information.

The University considers sexual misconduct and other forms of harassment or discrimination¹ with students or trainees to be related to teaching; with staff or colleagues to be related to service; and (if applicable) with patients to be related to clinical care. This authorization includes release of information of a confidential or privileged nature, or any data or materials which have been sealed or agreed to be withheld pursuant to any prior agreement or court proceeding involving disciplinary matters. Should an institution provide information on a finding of misconduct, I will be informed and allowed to provide information in response.

I hereby release, discharge, and exonerate the University, its agents and representatives and any person furnishing information to the University, from any and all liability of every nature and kind arising out of the furnishing and inspection of such documents, records and other information. This release shall be binding on my legal representatives and successors.

This authorization is valid for 365 days from the date of signature. A photocopy of this release is to be considered as valid as an original.

Print Name

Signature

Date

¹ Sexual Misconduct includes conduct prohibited by the [University of California Sexual Violence and Sexual Harassment Policy](#) including sexual assault, domestic violence, dating violence, stalking and sexual harassment. In addition, the [UC Faculty Code of Conduct](#) prohibits entering into a romantic or sexual relationship with any student for whom a faculty member has, or should reasonably expect to have in the future, academic responsibility (instructional, evaluative, or supervisory). The UC Faculty Code of Conduct also prohibits exercising academic responsibility (instructional, evaluative, or supervisory) for any student with whom a faculty member has a romantic or sexual relationship. The UC Faculty Code of Conduct outlines in further detail the types of conduct unacceptable of its faculty and other academic appointees.

Reference Check Information UC Davis Recruit Instructions

These instructions are specific for recruitments in the following Senate series and ranks:

- Professorial series – ladder rank at the Associate and Full ranks
- Security of Employment series – at the Lecturer and Senior Lecturer ranks

When creating a recruitment in UC Davis Recruit for one of the above series at the above-mentioned ranks, information regarding the Reference Check process must be included in the following locations:

- **Description** – this field is located under the “Basic Information” section right below the “Recruitment name” field. Generally, this field is used to provide as much information about the position and the University. The wording should be the same or similar to that used in all advertisements. This field is locked once the Search Plan is approved. This field appears to applicants on the apply page once the posting is published.

****Refer to Academic Affairs [Advisory to Deans #AA2018-01](#) for the required language.****

Basic Information

* Recruitment name:

Description:

Displayed to applicants when viewing the details of this recruitment

- **Documents** – *this section changed recently. Staff must complete the recruitment setup process in order to access the “Document requirements” field:*

Documents

Document requirements will be configured later, before submitting your plan for approval.

There are two ways to access the “Document requirements” section:

1. One way is to click on the “See checklist” link located at the top of the Details page:

DRAFT Fill out the remaining required fields before submitting the search plan for approval. [See checklist \(0/2\)](#)

SEARCH INFO


Details

Details

- a. Click on the “See checklist” link and a window opens identifying outstanding items that need to be addressed. Click on an “Add now” link:

Search plan approval checklist (0/2) ×

Before submitting the search plan for approval, please complete the following:


- Document requirements must be entered • [Add now](#) 
- Planned Search Efforts must be entered • [Add now](#)






[Yes, submit for approval](#) [Cancel](#)


- b. A window opens for the item (we are illustrating the “Document requirements” item for these instructions). This is where staff are able to adjust the default list of document requirements for a recruitment.

Click the “+Add another document” link at the bottom of the window:

Document requirements 👤 FIRST APPLICANT ×

 To get you started, a recommended set of documents has been provided

-  Curriculum Vitae
Your most recently updated C.V.
Required Optional [Remove](#)
-  Cover Letter
Required Optional [Add description...](#) [Remove](#)
-  Statement of Research
Required Optional [Add description...](#) [Remove](#)
-  Statement of Teaching
Required Optional [Add description...](#) [Remove](#)
-  Statement of Contributions to Diversity
Diversity contributions documented in the application file will be used to evaluate applicants. Visit http://academicaffairs.ucdavis.edu/diversity/equity_inclusion/index.html for guidelines about writing
Required Optional [Remove](#)

[+ Add another document](#) 

[Save changes](#) [Cancel](#)

- c. A blank, editable text box is added to the bottom of the list. Proceed with the following:
- Enter the file name “Authorization Release Form” in the text box
 - Click on the “Add description” link under the text box:

Statement of Contributions to Diversity

Diversity contributions documented in the application file will be used to evaluate applicants. Visit http://academicaffairs.ucdavis.edu/diversity/equity_inclusion/index.html for guidelines about writing

Required Optional Remove

Authorization to Release Information Form

Required Optional Add description... Remove

+ Add another document

Save changes Cancel

- d. Enter the description “A reference check will be completed only if you are selected as the final candidate. Download, complete, sign, and upload the form: http://academicaffairs.ucdavis.edu/local_resources/docs/forms_and_checklists/Authorization-Release-Form-July-1-2018.pdf”

When the applicant is completing their application, the link to the website in the description field will appear as an active hyperlink so they can quickly/easily download the form.

Authorization to Release Information Form

A reference check will be completed only if you are selected as the final candidate. Download, complete, sign, and upload the form: http://academicaffairs.ucdavis.edu/local_resources/docs/forms_and_checklists/Authorization-Release-Form-July-1-2018.pdf

Required Optional Remove

+ Add another document

Save changes Cancel

- e. Currently, the document is defaulted to “Optional” (grayed out text). Set the document as required by clicking on the “Required” button located under the description text box:

Authorization to Release Information Form

A reference check will be completed only if you are selected as the final candidate. Download, complete, sign, and upload the form: http://academicaffairs.ucdavis.edu/local_resources/docs/forms_and_checklists/Authorization-Release-Form-July-1-2018.pdf

Required Optional Remove

+ Add another document

Save changes Cancel

The “Required” button is now grayed out, and reflects that this document will be “Required”:

Authorization to Release Information Form

A reference check will be completed only if you are selected as the final candidate. Download, complete, sign, and upload the form:
http://academicaffairs.ucdavis.edu/local_resources/docs/forms_and_checklists/Authorization-Release-Form-July-1-2018.pdf

Required Optional Remove

+ Add another document

Save changes Cancel

f. Once all “Document requirements” have been set, make sure to click the “Save changes” button at the bottom of the window:

Save changes Cancel

g. The “Details” page will now reflect the changes made in both the “See checklist” area:

DRAFT Fill out the remaining required fields before submitting the search plan for approval. See checklist (1/2)

SEARCH INFO Details

Details

h. Additionally, the Authorization to Release Information Form and description information will show in the “Document requirements” section located on the same page:

Document requirements FIRST APPLICANT Edit

Curriculum Vitae Required
Your most recently updated C.V.

Cover Letter



Statement of Research

Statement of Teaching

Statement of Contributions to Diversity Required
Diversity contributions documented in the application file will be used to evaluate applicants. Visit http://academicaffairs.ucdavis.edu/diversity/equity_inclusion/index.html for guidelines about writing a diversity statement and why one is requested.

Authorization to Release Information Form Required
A reference check will be completed only if you are selected as the final candidate. Download, complete, sign, and upload the form:
http://academicaffairs.ucdavis.edu/local_resources/docs/forms_and_checklists/Authorization-Release-Form-July-1-2018.pdf

2. The second way to is to click on the “Edit” button located next to the “Document requirements” section on the “Details” page:

Document requirements **FIRST APPLICANT**  

Curriculum Vitae **Required**
Your most recently updated C.V.

Cover Letter

Statement of Research

Statement of Teaching

Statement of Contributions to Diversity **Required**
Diversity contributions documented in the application file will be used to evaluate applicants. Visit http://academicaffairs.ucdavis.edu/diversity/equity_inclusion/index.html for guidelines about writing a diversity statement and why one is requested.

Once the “Edit” button is clicked, follow the same process outlined in number 1 items b-h listed above.

EXHIBIT 8



CAMPUS NOTICE

OFFICE OF THE EXECUTIVE VICE CHANCELLOR

October 11, 2019

ALL ACADEMICS AND STAFF AT UC SAN DIEGO

SUBJECT: Pilot Program – Institutional Reference Checks for Appointments Conferring Tenure or Security of Employment

After considerable consultation with the Academic Senate, I am pleased to announce the commencement of the Institutional Reference Check pilot program first announced in December 2018. The three-year pilot program is effective November 1, 2019 and will allow Academic Personnel Services to conduct Institutional Reference Checks (IRCs) on the final candidate in a given search for academic appointments conferring tenure or security of employment. At the end of the second pilot year, I will convene a Senate-Administration workgroup to examine the results of the program and consider converting the pilot program into policy.

The pilot program will enable UC San Diego to gather information about candidates' conduct in their previous appointments that may be important to appointment decisions. Specifically, the purpose of the IRC is to ascertain whether the candidate has engaged in any substantiated misconduct at their previous institution. For the purposes of this pilot, "substantiated misconduct" is defined as:

- 1) Formal findings by the Title IX office (based on a completed investigation and written report) of violations of the institution's Sexual Violence/Sexual Harassment Policy (SVSH) or Consensual Relationship policy;
- 2) Formal findings by the Research Integrity Office (based on a completed investigation and written report) of violations of the institution's policy on research integrity or misconduct (or equivalent);
- 3) Other formal findings (based on a completed investigation and written report) of violations of institutional policy related to clinical activity or violations of the Faculty Code of Conduct (or equivalent).

Institutional reference checks do not include criminal background checks.

The pilot program will follow these steps for all recruitments posted on or after November 1, 2019, for appointments conferring tenure or security of employment at UC San Diego:

1. The campus shall include a statement in the job ad posting for all academic positions conferring tenure or security of employment, providing notice to

applicants that UC San Diego will conduct institutional reference checks on the final candidate in a given search prior to hiring.

2. Applicants for faculty appointments conferring tenure or security of employment will be required to upload a signed “Authorization to Release Information” form into UC Recruit. If the candidate does not include the signed authorization in UC Recruit, the application will be incomplete, and, as with any incomplete application, will not receive further consideration.

3. When the decision of the first-choice candidate has been made by the department, the department chair will notify the candidate of the selection and shall inform the candidate that the IRC will be initiated. The candidate will communicate whether they wish to proceed, or may choose to withdraw their application, in which case no further action will be taken. If the candidate wishes to proceed, the department chair will submit the AP Recruit search report with the candidate identified as the selected applicant.

4. APS shall contact the academic personnel office (or equivalent) in the candidate’s current institution and/or one or more of the previous institutions where the candidate has been employed. This may occur concurrently with department negotiations with the candidate or after initial appointment terms have been determined. When the institutional reference check is initiated, Academic Personnel will provide the signed release to the previous institution(s) and ask for information regarding any substantiated misconduct related to teaching, research, service, and (if applicable) clinical care. Academic Personnel will not contact the candidate’s current or previous academic department unless there is no other office of record for faculty misconduct at the institution and only after notifying the (UC San Diego) department chair.

5. Academic Personnel may ask follow-up questions (of the same office(s) originally contacted) relevant to information received. Academic Personnel will limit its inquiry to substantiated findings of misconduct (see definition above) and associated discipline related to teaching, research, service and (if applicable) clinical care. In accordance with the signed authorization, UC San Diego is entitled to request and receive this information, even if previously classified as confidential, including any materials that have been sealed or agreed to be withheld pursuant to a prior agreement or court proceeding.

6. Academic Personnel will assemble an individualized IRC dossier of all information received, including the nature and duration of the conduct, the length of time passed since the conduct occurred, and any corrective action taken. APS will share the information with the candidate and allow the candidate the opportunity to respond to the material. Alternatively, the candidate may choose to withdraw their application, in which case no further action will be taken. The full IRC dossier, including any explanation/s offered by the candidate will be forwarded to the Sr. Associate Vice Chancellor, Academic Affairs (Sr. AVC-AA). The Sr. AVC-AA will consult with the EVC, dean, department chair and others as appropriate, to determine whether the candidate is still eligible for consideration for the position.

7. If it is determined that the candidate is still eligible, the department will proceed to assemble an appointment file for consideration by campus reviewers, including CAP. The IRC dossier information will not be added to the appointment file or shared with campus reviewers.

8. If it is determined that the candidate is not eligible, the department chair will notify the candidate and a second choice candidate may be considered, subject to the institutional reference check process.

9. This pilot program applies to final candidates selected for appointment, regardless of current or prior UC appointments. This program includes candidates for any appointment conferring tenure or security of employment, whether the candidate is being considered for appointment following an open recruitment or as the result of a search waiver.

10. In order to protect a candidate's privacy, all information received in connection with the institutional reference check process will be treated as confidential and retained in accordance with UC policy. Should the candidate be offered and accept a position, any information received shall be securely maintained and held in the campus Academic Personnel Office.

Academic Personnel Services will host a number of training seminars on this pilot program in the fall quarter as part of its continuing Learn at Lunch series. Recruitment instructions are also available on the Recruitment Services webpage: <https://go.ucsd.edu/2M5g3vE>

In addition to the central Institutional Reference Checks, Divisions are expected to make use of identified Best Practices:

<https://blink.ucsd.edu/HR/supervising/hiring/background/conduct.html> and

University Policy: <https://policy.ucop.edu/doc/4010394/PPSM-21> in hiring. For instance, if the candidate recommended for hire is a current or former employee of the University, the hiring manager should review the employee's personnel file.

Any questions regarding this pilot program may be directed to Cindy Palmer, Assistant Vice Chancellor, Academic Personnel (c5palmer@ucsd.edu - 858-534-3133).

Elizabeth H. Simmons
Executive Vice Chancellor

EXHIBIT 9

Board Meeting
November 14, 2019

RESOLUTION CONCERNING SEXUAL MISCONDUCT, FACULTY/STUDENT
RELATIONSHIPS AND RELATED MATTERS

WHEREAS, on October 29, 2018, President Killeen commissioned a System-wide Task Force comprised of faculty, staff, and students to “examine [the University’s] respective and collective efforts regarding education, prevention, and response to sexual harassment, sexual assault, and other categories of sexual misconduct”; and

WHEREAS, members of the Task Force have met regularly since December 13, 2018, and have focused their review primarily on three related areas:

- Education and Training;
- Responsiveness to Incidents;
- Investigations and Outcomes; and

WHEREAS, the Task Force has produced and sent to the President a set of Recommendations, which are attached hereto and incorporated by reference and which have been shared and vetted with various stakeholder groups; and

WHEREAS, the Task Force makes a number of recommendations, including:

- Adopting a system-wide set of definitions for various forms of sexual misconduct and reviewing policies to ensure consistency with those definitions; and

- Instituting a system-wide policy that prohibits faculty from engaging in sexual or amorous relationships with any undergraduate student; with any graduate or professional student who is in the same academic unit or department; or with any other UI student over whom the faculty member has or may reasonably be expected to have any supervisory or evaluative authority; and
- Instituting a system-wide policy that prohibits any staff member in a role of academic, extracurricular, or work place authority over a student from engaging in a sexual or amorous relationship with that student; and
- Requiring each university and system office to review and update their sexual misconduct policies to ensure they are consistent with the system-wide definitions, are robust and enforceable, and allow for early intervention and progressive responses to complaints of sexual misconduct, up to and including dismissal; and
- Adopting a system-wide policy that requires all candidates in employment searches to allow the release of any findings of sexual misconduct or harassment from current or previous employer(s), should they become a finalist in a search; and
- Instituting a system-wide policy pertaining to separation, resignation, and/or settlement agreements that generally prohibits the inclusion of confidentiality or non-disclosure provisions that would limit the release of findings of sexual misconduct; and
- Establishing a system-wide council to provide ongoing coordination of education, intervention, and response efforts across the three universities and in the system offices.

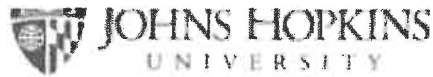
THEREFORE, BE IT RESOLVED:

1. THAT the Board accepts the preceding recommendations by the Task Force; and
2. THAT the Board hereby (“Board”) deems the issue of faculty/staff/student relationships to be of sufficient importance and urgency that the proposed policies identified above should be created and implemented expediently and as soon as possible; and
3. THAT any violation of any of the above-referenced policies shall constitute grounds for appropriate restorative and/or disciplinary action in accordance with established

university policies and procedures, which include shared governance processes as well as collective bargaining agreements; and

4. THAT the Board further requests that the Task Force complete its work promptly; and
5. THAT the Board directs each of the three universities in the UI System to work collaboratively and independently to support the Recommendations of the Task Force, including reviewing and updating their sexual misconduct policies, adopting comprehensive education and training that is consistent with empirical research, implementing investigatory procedures that are consistent with the Task Force's Recommendations; and instituting continual evaluation of these efforts; and
6. THAT the Board requests that it be updated regularly on the progress of the Task Force and universities in the UI System concerning their progress in this area vital to students' safety and well-being.

EXHIBIT 10



Dear Johns Hopkins University Community:

We write today to share with you recent developments regarding two faculty members who, as a consequence of violations of the university's sexual misconduct policy, will no longer be employed by Johns Hopkins University.

We are profoundly disappointed by the actions—in unrelated situations in the School of Medicine and the Krieger School of Arts and Sciences—that led to these departures. Yet we are also confident in the rigorous processes and procedures that brought us to each necessary outcome.

Sexual misconduct is a serious and destructive reality in our society, and academia is no exception. Abuses can occur anywhere, and it is essential for us as an institution to ensure that every member of our community—regardless of position, seniority, or responsibility—can work and learn in an environment that is free of sexual harassment, discrimination, misconduct, and retaliation.

Johns Hopkins' policies and practices aim to foster a safe environment, outline clear professional codes of conduct, inform our community of applicable laws and regulations, identify avenues to file reports, and respond promptly to allegations of sexual misconduct. Handling reports of sexual misconduct requires fairness, objectivity, and a careful balancing of confidentiality and transparency, but we are unequivocal in our conviction that faculty or others who are found to engage in sexual misconduct will face consequences.

With respect to the two faculty departures referenced above, each faculty member was investigated by the Office of Institutional Equity and found to have engaged in sexual misconduct. One was a full professor in the School of Medicine who resigned of his own accord following a recommendation of termination by the advisory board of the medical faculty, the dean of the School of Medicine, and the provost. The faculty member was found to have engaged in sexual harassment of a student, abusive and bullying behavior toward trainees, and other inappropriate behaviors that violated the university's Sexual Misconduct Policy and the School of Medicine Guidelines for Conduct in Teacher/Learner Relationships. The other faculty member was terminated by a vote of the university's board of trustees after recommendations of the dean of the Krieger School of Arts and Sciences, the Homewood Academic Council, the provost, and the president. He was found to have engaged in sexual harassment and physical assault of a visiting student in violation of university and school policies.

The conclusions of these cases happened to coincide, but each is sobering in its own right. Both cases call upon all of us to redouble our efforts to ensure a safe and healthy working and learning environment.

We are fully committed to preventing and addressing sexual misconduct and continually looking for ways to improve our mechanisms for reporting and responding to complaints or concerns. We invite you to review the resources listed below, so you will know where you, a colleague, or a classmate can turn for help, and we welcome your feedback on this critically important issue.

Sincerely,