

**Comments and Changes in Response to Feedback from UIUC Senate:  
Draft Policy on Consideration of Sexual Misconduct in Prior Employment**

**April 25, 2020**

Dear Rob and Senate Colleagues:

Thanks so much for the careful reading of this policy and for the thoughtful feedback you provided. We have made several changes to the proposed policy, as outlined below. In some cases, we did not make changes in accord with your recommendation but we provide a rationale for those decisions. I consulted with our internal legal counsel and with the outside legal firm that specializes in sexual harassment and misconduct matters in making these changes. President Killeen supports the changes as well.

I believe the Senate feedback, the discussions we have had, and the subsequent revisions have all made the policy stronger. Please know that we will continue to fine-tune these policies as we go forward and as we develop implementation procedures in the coming months. I want to thank you and your Senate colleagues for all your hard work, especially under a tight timeline and when we are all challenged by the COVID-19 pandemic. I am very grateful.

Best,  
Barb Wilson, EVP

UIUC Senate Feedback, with responses/changes in blue:

- (1) define “findings” so that that the term excludes any documented findings (as defined in the current draft) that have been invalidated, expunged, or held violative of due process or any other law in a court of law;

We now provide a clearer definition of Findings to reflect the recommendation above:

*“Findings” means a documented conclusion that an individual has engaged in Sexual Misconduct or Sexual Harassment, resulting from an official investigation or adjudicative process not subsequently reversed through a formal review process.*

- (2) include in the consideration of findings some assessment of the impartiality, due process, and finality with which a “finding” was made by another institution;

We do not believe that university officials who will be making the inquiries under this policy will have the time or expertise to evaluate the legal sufficiency or fundamental fairness of the processes at other institutions. They also would not have the jurisdiction to make the appropriate inquiries to try to undertake such an endeavor. We also believe the institutions providing such information will only report

a high-level summary and a final outcome, because anything less than a final disposition would make them extremely vulnerable to legal challenges. Thus, we do not believe this recommendation is workable or feasible.

- (3) possibly limit attention to findings that led to sanctions of a particular severity (e.g., suspension or dismissal);

We believe the current language in the “Considers of Findings” section that includes consideration of the nature and severity of conduct is legally defensible and better accomplishes the expressed goals of this policy. Whether or not another institution’s policies allow severe sanctions for any level of sexual misconduct is beyond the control of the university and may vary widely, thus potentially excluding consideration of very problematic behavior simply because of limited sanctioning authority at those other institutions. Moreover, limiting consideration to conduct based on the severity of the *sanction* imposed increases the likelihood that some documented behaviors (e.g., repeated verbal sexual harassment across multiple victims) will be overlooked even though they can be very damaging, resulting in the very risk to campus climate and safety that this policy is trying to minimize. Thus, we have left the wording as is, focusing more on the conduct involved in the findings than on the sanction.

- (4) make it clear that allegations, however well documented, are not documented “findings” for the purposes of this policy (where the latter must be the result of an investigation that includes sufficient due process protections).

We completely agree and we have added the following to the policy:

*Allegations are not documented “Findings” for purpose of this policy unless and until they are substantiated through an official investigation or adjudicative process, in the absence of an official investigation or adjudicative process.*

We recognize—as did some of our senators—that many actual acts of sexual misconduct are never reported and hence never produce any documented, final findings of fact, responsibility, or violation. For that reason, some senators expressed skepticism that a policy like this would “catch” many cases of employees who have engaged in sexual misconduct. We agree that this policy will not catch all cases and will not completely protect the university. We don’t think there is any policy that can do that! However, an employee background check policy can sometimes serve as a deterrent, dissuading some employees with problematic work histories from applying in the first place. Some senators similarly raised questions about whether other institutions can be relied upon to produce sensitive information about sexual misconduct violations. We will learn a lot as we proceed to implementation and we do know that other institutions such as UC Davis and U of Wisconsin are implementing similar policies. As the culture continues to change, we believe more universities will be willing to share information

about sexual misconduct findings and we will continue to adjust the policy and procedures in accord with what we learn. Ongoing Senate feedback will be crucial in the process.