



OFFICE OF THE SENATE

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Urbana, IL 61801-3613

Vice President Barbara J. Wilson
Office of the President
377 Henry Administration Building
506 S. Wright St., MC-348
Urbana, IL 61801

April 17, 2020

Dear Vice President Wilson—

Thank you for your vision, your good judgment, and the extraordinary efforts you have been making to develop policies to protect our three campuses from sexual misconduct. It is clear that the system-wide committee, which you chaired, has been working extremely hard—both for a long time and on an expedited basis—to foster a culture and climate where every student and member of our community feels welcome and supported. Thank you for your many efforts to reach out and coordinate with both our Senate and the two Urbana committees that have been working on similar issues in parallel.

This letter provides an **initial** response to your request for input (but not a vote) from the Senate on the draft system-wide Policy on Consideration of Sexual Misconduct in Prior Employment that you asked us to review. We will follow up with a separate letter on the draft Policy on Intimate Relationships.

Because of the COVID-19 pandemic, we were unable to meet as a full Senate on April 6. Our next full meeting is not until April 27. We recognize that you may nevertheless need some input as early as possible if you plan to submit a final version of this policy to the Board of Trustees for possible approval at its May 21 meeting. To help with your planning, we have tried to distinguish input on the system-wide policy from input on its potential implementation. Input of the latter kind could be considered by an implementation team over the summer and beyond.

To gather some early input on an expedited basis, we created a web survey for our senators. The full results of that survey are attached. It is important to remember that this survey **was not a formal Senate vote; further, solicitation of input in this manner cannot replicate the forms**

of deliberation that might have occurred if a formal resolution or some other discussion item had been placed on the full Senate floor. Our next full Senate meeting on April 27 will include a discussion of this policy and allow for further Senate debate. We will follow up with any input that emerges from that discussion.

1. Broad Support for a High-Level Policy Requiring Background Checks for Sexual Misconduct

Though there has been no formal Senate vote on this proposed policy, our Senate consultation and the procedural history of this policy suggest that there is widespread support in the UIUC Senate for a policy requiring employee background checks for sexual misconduct. As an initial matter, the Urbana Committee on Faculty Sexual Misconduct produced a Report on Faculty Sexual Misconduct dated September 20, 2019. That faculty-led committee—which was chaired by the Chair of Senate Executive Committee and had other prominent senate representation in addition to wider faculty representation—produced 65 recommendations, each of which was unanimously supported by a committee with diverse backgrounds and experience. Those recommendations were subsequently presented to the full Senate in October 2019, and the Urbana Senate voted by 113-1-5—after discussion—to call on the administration to begin implementing the 65 recommendations with necessary improvements based on broader stakeholder input. The Illinois Student Government unanimously passed a similar resolution, and the Council of Deans wrote a unanimous letter of support with the same basic content. We all want a policy like this.

Though the Urbana Report covered many topics that are not explicitly addressed in the two system-wide policies that you asked us to review, the Urbana Report contains one recommendation that is directly relevant to your inquiry. The Report recommended adoption of an employee background check program that is wholly consistent with your draft system-wide policy on employee background checks.¹ In our web survey, we received several comments praising the

¹ The full text of the recommendation reads: **“Begin a Pilot Program Designed to Avoid Future Employment Decisions Being Made with Insufficient Knowledge of Risk.** Some institutions of higher education are moving toward a model in which some hiring decisions will only be made if a candidate waives his or her right to confidentiality over disciplinary records relating to sexual misconduct. For a recent example, see the pilot program adopted by UC Davis, found here: <https://academicaffairs.ucdavis.edu/reference-checks>.

The University currently interprets the general confidentiality norms that govern personnel matters to prevent the disclosure of an employee’s disciplinary history relating to sexual misconduct even to other units within the University. This can lead to poor hiring decisions. One way to address this problem, without changing any official rules relating to personnel files, is to adapt UC Davis’s pilot program and consider applications for some positions—including tenured faculty positions—to be incomplete without a waiver of confidentiality relating to disciplinary actions relating to sexual misconduct. The University should begin a similar pilot program here and review its success, usefulness, and/or need for any exceptions one year and then three years out. As part of the pilot program, the University should announce that it will respond to such requests both internally and from other institutions if a University of Illinois employee or faculty

amount of expertise and thought that went into creating the draft system-wide policy and the ways you coordinated with the Urbana Committee.

But we also received some comments indicating that insufficient faculty or other stakeholder input has been obtained on the penultimate draft of the policy and that the timeline for full Senate input was unreasonably short.

This mixed input suggests that it would be wise to create and announce mechanisms to obtain broader Senate and stakeholder input over the implementation phase and to allow for further needed refinements through these processes. It would also help to clarify that there will be enough flexibility at the implementation stage to allow for that wider input to affect the policy and its implementations so that they are well tailored to the local needs and sensitivities of each campus.

2. Some Possible Immediate Suggestions

The results of the Senate web survey indicate that some revisions to the draft policy should probably be considered, if at all possible, before a final policy goes to the Board for approval. Our review of the Senate consultation we received suggests that this policy would likely receive even wider support from the UIUC Senate if it were to:

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

waives such confidentiality. The University should begin requiring such waivers when considering internal transitions between units and external hires, and should prioritize thorough reference checks (including from a direct supervisor), as well.”

“catch” many cases of employees who have engaged in sexual misconduct. I am not sure if there is a way to fix this problem, but we also realize that 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. Be that as it may, we understand that this policy might still serve a useful deterrent and expressive function.

3. Longer Term Implementation Suggestions

Next, we noticed a number of ideas in the web survey that may help your implementation team as it moves forward. Rather than try to characterize those comments exhaustively here or determine their relative weight or priority, we have decided to attach the full web survey results so that you and your implementation team can review the comments yourselves. I note that both Joyce Tolliver and I are on that implementation committee as representatives of the UIUC Senate. We can make sure that the ideas reflected in these comments are well represented during the implementation phase.

In case it helps, we also included a section on our web survey that allowed us to identify and rank those parts of the policy that our senators believe need or deserve the most Senate or faculty input at the implementation phase. (See Web Survey, p. 18.). Here are the responses we received, where each senator was allowed to choose only up to four categories as the top four areas of proposed attention:

1. Findings and Considerations of Findings	45%
2. Implementation Responsibility	37%
3. External Inquiries Made to the University	33%
4. Confidentiality and Retention	31%
5. Duty to Disclose	24%
6. Periodic Review and Assessment	22%
7. Policy Statement, Scope, and Definitions	20%

The implementation committee may want to consider these indications of relative priority when digesting the attached senator comments on each of these sections. Given the comments we received, we believe that it would also be wise to present this policy to a number of Senate committees for study over the first year of implementation. We anticipate that coordination of this kind would produce recommendations that would improve the policy’s implementation on our campus. This process would also help produce wider support for both the policy and its implementation on our campus. We would be happy to help you with this.

4. Questions about the Policy

Finally, we note that a number of the comments raised questions about the policy that you may be able to answer or may want to address in some form. If you would like to present us with any written document to pass by the Senate, or if you would like to have someone present from your office on April 27 (when the full Senate discusses this policy further), please let us know.

Once again, thank you very much for all of the work that you have put into this. And thank you, once again, for soliciting our input. I would be more than happy to discuss any of these issues further with you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robin Bradley Kar', with a large, sweeping flourish above the name.

Robin Bradley Kar
Chair, Senate Executive Committee
Professor of Law and Philosophy