



SYSTEMWIDE TITLE IX OFFICE

OFFICE OF THE PRESIDENT
1111 Franklin Street,
Oakland, California 94607-5200

March 15, 2021

Dear Colleagues,

Last year, the U.S. Department of Education (“DOE”) issued new Title IX regulations detailing how schools across the country must respond to certain sexual harassment complaints. UC issued revised interim policies to comply with the regulations on August 14, 2020, the date they went into effect. We did this despite serious concerns with some of the regulatory requirements, because UC’s federal funding is conditioned on compliance.

On March 8, 2021, President Biden signed an Executive Order directing the DOE to review the regulations for consistency with the policies of the Biden-Harris Administration. I am optimistic that this review will eventually result in significant improvements to the regulations, and UC has offered the DOE its support with this undertaking. However, we do not know when the improvements will go into effect, or what they will be. In the meantime, we must continue working to mitigate harm from the regulations whenever possible.

To that end, the University is proposing limited additional revisions to two policies, to implement a specific provision in the regulations. I write to seek your review of these revisions, which are explained below. The policies revised are the *Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty* (“Faculty Framework”) and the *Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel* (“Staff and NFAP Framework”).

Regulatory Requirement. Among other things, the regulations require that UC follow a specific grievance process (“DOE Grievance Process”) in response to complaints of conduct covered by the regulations (“DOE-Covered Conduct”). The regulations are prescriptive about the grievance process. Most notably, it must include live hearings and appeals for cases with faculty and staff respondents. Because faculty and many staff already had the right to a hearing at the disciplinary stage under other policies, these additional requirements mean it will now be more difficult and take longer to hold employees accountable for DOE-Covered Conduct than other types of misconduct. Concern that this will deter complainants from participating in the grievance process is exacerbated by some other components of the live hearing, such as a requirement that parties be allowed to cross-examine each other through their advisors.

Hearing Carve-Out; Proposed Revisions. Fortunately the regulations also allow us to carve the live hearing out of the DOE Grievance Process when allegations of DOE-Covered Conduct arise from programs that are not “postsecondary educational institutions,” as defined in the regulations, even if they are part of the University. After careful consideration, we have determined that this provision allows UC to resolve limited categories of allegations against employees without a Title IX hearing. Specifically, this includes allegations that arise from: the provision of patient care to the complainant or a person in complainant’s charge; a program or activity for the benefit of minors, including elementary and secondary schools, if the complainant is such a beneficiary; a program or activity for the benefit of individuals with intellectual disabilities (such as the UC Davis [SEED Scholar](#)

[Program](#)), if the complainant is such a beneficiary; a program or activity of Lawrence Berkeley National Laboratory or of Agriculture and Natural Resources; or a service or function of the UC Police Department. Note that the University must still provide all other components of the DOE Grievance Process, such as rights to: written notices at key stages of the process, identify witnesses and present evidence, submit questions for the investigator to ask the other party and witnesses, review and respond to evidence before conclusion of the investigation, and appeal the outcome.

Revisions to carve the hearing out of the DOE Grievance Process in the limited circumstances identified are tracked in the Faculty Framework and the Staff and NFAP Framework provided with this letter.

Other Efforts to Address Impacts on Faculty Process. I wish to both distinguish and highlight other efforts by the Academic Senate to address impacts of the Title IX regulations on procedures for Senate faculty. I greatly appreciate the partnership of Senate leadership, and their care for these issues and work to resolve them.

First, the Title IX regulations require that schools use the same evidentiary standard in all sexual harassment cases they cover, regardless of the respondent's identity. This was an issue because the University uses the preponderance of the evidence standard in the Title IX process, while the Senate typically applies the clear and convincing standard in privilege and tenure hearings. Last month, the Academic Senate approved revisions to its Bylaws to specify that the preponderance standard will be applied in privilege and tenure hearings for all alleged violations of the SVSH Policy, thereby resolving this conflict. These revisions passed both the Academic Council and Assembly of the Academic Senate with overwhelming support.

Also, as noted above, compliance with the Title IX regulations currently means the University may have to convene two hearings in DOE-Covered Conduct cases with employee respondents—one at the Title IX stage, and one at the disciplinary stage. Recognizing the concerns raised by two hearings in what is an already long and difficult process, the University Committee on Privilege and Tenure (UCPT) has been working toward a possible solution. I expect the solution UCPT ultimately puts forward will apply only to cases where a Title IX hearing is convened, and not to cases where the hearing is carved out of the DOE Grievance Process. To be clear, the goal is to address the possibility of dual hearings in DOE-Covered Conduct cases, not eliminate the right to a hearing altogether. I look forward to ongoing partnership with UCPT on this effort.

Thank you for your willingness to review these policies once again. Please submit any feedback to me by April 16, 2021. After that, the frameworks will be submitted for Presidential review, approval and issuance.

Yours Very Truly,



Suzanne Taylor

Systemwide Title IX Director