

## Executive Board

# (Systemwide Senate Review) Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment

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December 6, 2018

Robert May  
Chair, Academic Council

**RE: Systemwide Senate Review: Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment**

Dear Robert,

The Executive Board of the UCLA Academic Senate discussed the Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment at its meeting on December 5, 2018. The Executive Board solicited comments from standing committees of the Senate, as well as the Faculty Executive Committees, to maximize faculty feedback; the individual responses from our various committees are attached.

Executive Board members acknowledge the importance of this policy and the proposed revisions. However, faculty on the various committees and those on the Executive Board identified critical issues and concerns as follows:

1. The Committee on Privilege and Tenure (P&T) recommends adding the following language under Section II. Definitions. B. Prohibited Conduct. B. Sexual Assault - Contact:

PROPOSED ADDITION:

*The types of contact listed above meet the standard of sexual assault by contact and serve as examples of such contact. Other types of contact, not specifically enumerated above, may nonetheless be considered sexual assault contact if they meet the same standard.*

Several faculty questioned what constitutes “the sexual.” There was much debate around the objections to hugging that have appeared in recent high profile cases with UC. Some colleagues concluded that the list of body parts deemed “sexual” is too limited. P&T expressed that “contact with the mouth, even if it does not involve contact with another intimate body part listed, should be included as sexual contact.”

2. Faculty expressed concern with the Timelines for Making Reports. Providing no time limit for reporting allows a case to be extended almost indefinitely, allowing cases to drag on. Several faculty agreed that this should neither be desired nor permitted. Moreover, the timeframe should reflect instructional days rather than business days. Faculty and students are on an instructional calendar.
3. Under Section III. F. Free Speech and Academic Freedom. The last paragraph in this section cites “However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or State antidiscrimination laws.” Faculty recommend deleting this sentence altogether.

4. *Section V. Procedures*, b. Formal Investigation, iv. Academic Freedom/Merit states "...the Title IX Officer shall consult with the appropriate academic officer for relevant academic judgment." Who is the "appropriate academic officer"? Faculty argued that the relevant officer for Senate faculty should be the Academic Senate instead of someone from the administration. Faculty recommend revising to "consult with academic officer or unit for relevant academic judgement." (e.g. Academic Senate) Similar specificity should be added for non-Senate faculty, students and staff.
5. Conducting the hearing on the campus may be difficult if the case involves faculty who are out in the field.

The Executive Board urges you to read through the individual committee responses.

Please feel free to contact me should you have any questions.

Sincerely,


A handwritten signature in black ink, appearing to read 'JB', with a stylized flourish at the end.

Joseph Bristow  
Chair, UCLA Academic Senate

cc: Hilary Baxter, Executive Director, Systemwide Academic Senate  
Sandra Graham, Immediate Past Chair, UCLA Academic Senate  
Michael Meranze, Vice Chair/Chair-Elect, UCLA Academic Senate  
Michael LaBriola, Principal Policy Analyst, Systemwide Academic Senate  
Linda Mohr, Chief Administrative Officer, UCLA Academic Senate

December 5, 2018

To: Joe Bristow, Academic Senate Chair

From: Jody Kreiman   
Chair, Charges Committee

**Re: Proposed Revisions to Presidential Policy “Sexual Violence and Sexual Harassment”**

Dear Chair Bristow:

This summer UCOP asked for a first round of comments on the proposed revisions to the “SVSH” Presidential Policy.

Charges Committee members participated with Privilege & Tenure Committee members to provide the attached August 2, 2018 letter. The Committee remains concerned that the wording in the Framework on probably cause remains incorrect (see attached letter) and inconsistent with the agreed-on wording in the SVSH policy itself that a finding may establish a violation of the Faculty Code of Conduct.

For the remaining comments, please refer to the attached letter. The Charges Committee has no further comments at this time.

*On behalf of the members of the Charges Committee: Troy Carter, Sherry Ortner, Scott Cummings, Guillaume Chanfreau, Jeff Bronstein, Subramanian Iyer, Jo-Ann Eastwood*

Evelyn Cheng  
UCOP Title IX Coordinator  
By email: Evelyn.Cheng@ucop.edu

August 2, 2018

**Re: Proposed revisions to the Sexual Violence and Sexual Harassment (SVSH) Policies**

The UCLA Privilege & Tenure Committee has compiled the following feedback on the proposed revisions to the UC SVSH policies. Given that the comments were solicited on July 23, 2018 it was not possible to get comments from all members.

First, while the expansions of the definitions of prohibited contact (such as sections II.B; VI, question 4), are helpful, providing specific detail might be interpreted to mean that if an action (such as forcible kissing of any kind) is not mentioned it does not qualify.

Secondly, committee members note that the “framework” needs to align with approved SVSH policy regarding faculty discipline. The framework states (emphasis added) that “a finding that the respondent violated the SVSH Policy will establish probable cause as defined in the Code of Conduct” (B.4) while the SVSH Policy, as agreed following extensive review by campuses leaves that determination to individual Senate processes. The agreed-on wording in the SVSH states (emphasis added) “Because the forms of unacceptable behavior listed in The Faculty Code of Conduct also apply to sexual violence or sexual harassment, a violation of the University’s Policy on Sexual Harassment and Sexual Violence may constitute a violation of the Faculty Code of Conduct.” (Appendix II.A). After Senate review and comment, the 2015 interim policy was revised as follows:

Because the forms of unacceptable behavior listed in *The Faculty Code of Conduct* ~~are~~ *interpreted to also* apply to sexual ~~harassment~~ *violence*, or sexual ~~violence~~ *harassment*, a violation of the University’s *Policy on Sexual Harassment and Sexual Violence* ~~constitutes~~ *may constitute* a violation of the *Faculty Code of Conduct*. The *University Policy on Faculty Conduct and the Administration of Discipline (APM - 016)*, as approved by the Assembly of the Academic Senate and by The Regents, outlines sanctions and disciplinary procedures for faculty.

*As distributed for comment, October 1, 2015*

This distinction is important as it allows each campus, as long as they align with systemwide policy, to implement their own procedures for faculty discipline. The Faculty Code of Conduct is clear throughout of the important role of Senate input into all procedures dealing with both the investigation of allegations of faculty misconduct as well as the conduct of disciplinary proceedings. Few cases reach the formal hearing phase. That makes “faculty advice in the beginning stages of what may become formal disciplinary proceedings” the principal way by which faculty can “meaningfully participate in its own self-discipline.” (APM-015§II.B.2) Several members urged that the “framework” make clear that some campuses have charges processes either by separate committees or by a subcommittee of Privilege & Tenure. The Chancellor or Chancellor’s designee needs to factor the time needed for those committees to function into their 40 business days after receipt of the notice of investigation.

Lastly, while campuses are now expected to be responsive to disciplinary matters year-round, no provisions have been made to support the judicial committees so that they can be available during the summer periods.

Sincerely,



E. Richard Stiehm, Chair

*On behalf of the members of the UCLA Privilege & Tenure Committee*

cc: Nancy Lane, UCPT Chair: nelane@ucdavis.edu  
Jocelyn Banaria, UCPT Analyst: Jocelyn.Banaria@ucop.edu

/mmo

November 30, 2018

**To:** Joseph Bristow  
Chair, UCLA Academic Senate

**From:** Robert Gould  
Chair, Undergraduate Council

**RE: Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment**

Thank you for inviting the Undergraduate Council to opine on the Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment. At its November 9<sup>th</sup>, 2018 meeting, the Council had a lengthy and in-depth conversation of the proposal, which is summarized below.

1. Throughout the document, the term complainant is used. A complainant is defined as “a person, alleged, in a report to the Title IX Officer, to have experienced prohibited conduct.”<sup>1</sup> The policy then goes on to list violations in terms of conduct experienced by the complainant (e.g. “deliberately causing the Complainant to be incapacitated (for example, through drugs or alcohol”).<sup>2</sup>

While understanding that the use of the term complainant is likely an attempt to avoid use of the term victim, which has negative connotations, the policy, as written, says that conduct is **only** prohibited against complainants (a status which is created only after a report has been created). Surely the policy is meant to protect all individuals who have been subject to sexual violence and/or sexual harassment, and not only those mentioned in reports to the Title IX Officer.

2. While understanding the desire to resolve investigations quickly, the revised policy states that

The Alternative Resolution process will be completed promptly, typically within 30 to 60 business days of the date the Title IX Officer sends the written notice of initiation of the process. However, the Title IX Officer may extend the process beyond the 60th day for good cause.<sup>3</sup>

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<sup>1</sup> Page 6, Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment.

<sup>2</sup> Page 4, Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment.

<sup>3</sup> Page 19, Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment.

This timeline may be problematic for a few reasons. First, faculty and students are on an instructional calendar, and are obligated to be present at the university for all business days. For instance, investigations beginning in late spring will likely extend into summer when faculty and students are not present (and cannot be compelled) on campus and are unavailable to participate in investigations. Second, these investigations are serious and should not be rushed. It is, perhaps, better to change business days to instructional days, and to state something to the effect of “Ideally, cases should be resolved within 60-90 instructional days.”

3. A note added to the policy states that “Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.”<sup>4</sup> This note seems to allow for a defense of “the complainant was drunk, but not incapacitated.” This seems to be a backward step in protecting individuals who might have been sexually assaulted or harassed while intoxicated. Furthermore, how is drunkenness defined?
4. The U.S. Secretary of Education, Besty Devos, has released new proposed federal title IX guidance. The proposed guidance moves from the current “preponderance of evidence” model to a “clear and convincing evidence” standard. The new federal policy, as proposed, would have major implications for campuses. How might this policy be altered/invalidated by a revised federal policy? Would it be better to wait on determining the future of this policy until after the future of the federal policy is clear?

Thank you again for the opportunity to comment on this important policy proposal. If you have any additional questions or concerns, please do not hesitate to contact me or Eric Wells, the Undergraduate Council Analyst.

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<sup>4</sup> Page 3, Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment.

November 26, 2018

Professor Joseph Bristow  
Chair, UCLA Academic Senate

**Re:** System-wide Policy on Sexual Violence and Sexual Harassment (SVSH)

Dear Chair Bristow,

The Committee appreciates the opportunity to review and discuss the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment (SVSH). We reviewed the revisions at the November 8th meeting. We support the revisions but we share concerns about timing raised by the P&T committee and request that those be addressed.

Thank you for the opportunity to review and comment. If you have any questions, you are welcome to contact me at [jbower@ucla.edu](mailto:jbower@ucla.edu) or the Faculty Welfare Committee analyst, Annie Speights at [aspeights@senate.ucla.edu](mailto:aspeights@senate.ucla.edu) or ext. 53853.

Sincerely,



Julie Bower  
Chair, Committee on Faculty Welfare

cc: Members of the Committee on Faculty Welfare  
Linda Mohr, CAO, Academic Senate  
Valeria Dimas, Executive Assistant  
Annie Speights, Committee Analyst, Committee on Faculty Welfare

November 26, 2018

Professor Joseph Bristow  
Chair, UCLA Academic Senate

Re: System-wide Policy on Sexual Violence and Sexual Harassment (SVSH)

The Committee on Diversity, Equity, and Inclusion reviewed Presidential Policy on Sexual Violence and Sexual Harassment (SVSH) at its November 19th meeting. We found the proposed revisions to be straightforward and had no additional comments.

Thank you for the opportunity to review and comment. If you have any questions, you are welcome to contact me at [agomes@mednet.ucla.edu](mailto:agomes@mednet.ucla.edu) or the Committee on Diversity, Equity, and Inclusion analyst, Annie Speights at [aspeights@senate.ucla.edu](mailto:aspeights@senate.ucla.edu) or ext. 53853.

Sincerely,

A handwritten signature in black ink that reads "Antoinette Gomes MD". The signature is fluid and cursive, with the "MD" at the end being more distinct.

Antoinette Gomes,  
Chair, Committee on Diversity, Equity and Inclusion

cc: Members of the Committee on Diversity, Equity, and Inclusion  
Linda Mohr, CAO, Academic Senate  
Valeria Dimas, Executive Assistant  
Annie Speights, Committee Analyst, Committee on Diversity, Equity and Inclusion

November 19, 2018

To: Joseph Bristow, Chair  
Academic Senate

From: Andrea Kasko, Vice Chair  
Graduate Council

**Re: Proposed Presidential Policy on Sexual Violence and Sexual Harassment**

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At its meeting on November 16, 2018, the Graduate Council reviewed and discussed the Proposed Presidential Policy on Sexual Violence and Sexual Harassment.

Members offered the following observations for Executive Board's consideration:

Regarding **"b. Formal Investigation**. If the Complainant requests that no Formal Investigation occur, the Title IX Officer will seriously consider the Complainant's request, but must determine whether the allegations nonetheless require an investigation to mitigate a risk to the campus community" (pg. 18):

- Members had questions regarding the criteria used to determine whether the allegations require an investigation. Members thought it would be important to revise the policy to reference such guidelines or criteria. Members found the proposed policy to be unclear on what the decision would be based.

Regarding *"Administrative Closure*. The Title IX Officer may administratively close a Formal Investigation before its completion if the Title IX Officer determines that, due to a significant change in circumstances, its ability to investigate is so substantially impaired that it is unable to gather sufficient evidence to reach a reasonably reliable conclusion about whether Prohibited Conduct occurred" (pg. 20):

- Members found that *substantially impaired* is not clearly defined in the proposed policy, nor are possible examples of substantial impairment articulated.
- Members found that there were no options, remedies, or resolutions for the complainant detailed in the policy document. There should be some language included that protects the interests and rights of both the complainant and respondent.
- Members also wondered what the baseline would be for a change in circumstances. Members agreed that there should be mechanisms in place to ensure investigations continue.

Regarding Alternative Resolution and Formal Investigation. "However, the Title IX Officer may extend the process beyond the 60<sup>th</sup> day for good cause" (pg. 18) and "However, the Title IX Officer may extend the process beyond the 90<sup>th</sup> day for good cause."

- Members requested a definition and examples of good cause.

Thank you for the opportunity to review and comment.

November 27, 2018

To: Joe Bristow, Academic Senate Chair

From: Sheryl Kataoka   
Privilege & Tenure Chair

**Re: Proposed Revisions to Presidential Policy “Sexual Violence and Sexual Harassment”**

Dear Chair Bristow,

The Privilege & Tenure Committee thanks you for the opportunity to comment on the proposed revisions to the “Sexual Violence and Sexual Harassment” Presidential Policy. After a period of review and extensive discussion, P&T offers the following comments on the proposed revisions:

**Timeframe**

The Committee notes that the OCR resolution agreement called for completing the various phases of addressing a Title IX allegation in reasonably prompt manner. Because what the SVSH policy defines as “reasonably prompt” should be comparable to what is defined as “reasonably prompt” for any charges that reach the Senate for a formal disciplinary hearing, **the Committee feels that it is important to point out that the proposed revisions, including the Chancellor/Chancellor’s designee “decision” time in the current framework, allow for 130-190 business days for the administrative handling of Title IX complaints** – before a matter is ever referred to the Senate for disciplinary hearings.

Phases

1. Report of prohibited conduct; preliminary assessment
2. Formal Investigation (and Notice of Outcome)
3. Decision regarding sanctions

1. Preliminary Assessment

The proposed revisions add a timeframe for an “Alternative Resolution” process of **30 to 60 business days** (from the date the Title IX Officer sends the written notice of initiation of the process). The previous version has no specified time period.

2. Formal Investigation

The proposed revisions add 30 business days to the guidelines for a prompt investigation: The investigation shall be completed promptly, typically within 60 **to 90** business days of the date the Title IX Officer notifies . . . (investigation).

3. Decision regarding sanctions

The policy, as before, refers to the “Investigation and Adjudication Framework for Senate and Non-Senate Faculty” (the “Framework”). The Framework divides the time period for “decision regarding sanctions” into two further phases:

- a. Chancellor/Chancellor’s designee’s decision (complainant/respondent opportunity to respond to the investigation report; Peer Review Committee; early resolution). The timeframe for this is currently **40 business days**.
- b. Filing a Senate charge.

**II. DEFINITIONS; B. Prohibited Conduct; 1. Sexual Violence**

**b. Sexual Assault – Contact:** The policy defines behaviors qualifying as sexual contact, including intentional touching of the genitals, groin, breast, or buttocks (including with the mouth). The revised policy adds, *inter alia*, making the complainant touch their own (or a third party’s) intimate body part and (ii) respondent touching complainant with his/her intimate body part (including complainant’s mouth).

The Committee broadly agreed that the body parts listed in the document seem to be under-inclusive. For example, the revisions specify contact with the mouth only in the context of mouth-to-intimate part contact. Many believed this to be too narrow of a definition because a situation involving, for example, a respondent touching a complainant’s lips with a non-intimate body part (e.g., the respondent’s finger) or even forced mouth to mouth kissing would not, by this definition, be considered sexual assault contact. This struck us as odd because the mouth is generally considered to be just as intimate as several (most?) of the other body parts that were expressly listed. There was widespread agreement that contact with the mouth, even if it does not involve contact with another intimate body part listed, should be included as a sexual contact.

More broadly, members feared that this finite list would mean that a respondent could defend similar contact as not being assault by virtue of not being listed. Possible solutions include a “catch-all” that defines sexual contact as contact that a *reasonable* person, under the totality of circumstances, would view as sexual contact. This standard, of course, poses the risk of being over-inclusive. Therefore, the Committee recommends adding language similar to that used in the Faculty Code of Conduct regarding types of unacceptable conduct.

***PROPOSED ADDITION:***

*The types of contact listed above meet the standard of sexual assault by contact and serve as examples of such contact. Other types of contact, not specifically enumerated above, may nonetheless be considered sexual assault contact if they meet the same standard.*

**Aggravated. Duress**

1. The revisions propose that the phrase “power imbalance” be added to the definition of duress. Committee believes that “a power imbalance” should be a stand-alone category distinct from duress:
  - Overcoming the will of Complainant by:
    - *a power imbalance*
2. The policy states that sexual penetration is “aggravated” when it includes, *inter alia*, duress. In a legal context, to prove duress, the complainant must prove that: (i) the fear of the threat was genuine; (ii) the threat was imminent (i.e., would happen almost immediately upon a failure to comply); and (iii) the complainant not did have a reasonable opportunity to escape the threat. None of these requirements are spelled-out in the policy. The policy does mention that the claim of duress would be viewed in light of the totality of circumstances, including age and relationship. Understanding that this is an administrative rather than legal policy, the existing standard nonetheless may be too vague, particularly in light of the fact that the policy states the threat may be either direct or *implied*. Permitting liability for an implied threat without requiring proof of genuineness, imminence, and lack of an opportunity to escape may potentially extend the scope of the rule beyond acceptable (and reasonable) boundaries.

**Additional Comments**

The Committee also offered comments on the following issues, which are not themselves under review, but the feedback has implications for the items that are under review:

**Standard of Proof in Situations Involving a Past/Existing Consensual Dating/Sexual Relationship:**

The current Department of Education guidelines allow schools to choose between the preponderance of evidence and clear and convincing standards when determining responsibility for establishing responsibility for violation of Title IX policy; UC uses preponderance of the evidence.

The Committee is concerned that Title IX investigators be aware that determining ongoing affirmative consent and/or the revocation of consent (in contrast to situations in which consent was never granted) is particularly difficult in these cases. The policy states, “It is the responsibility of each person to ensure they have the affirmative consent of the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence, do not, alone, constitute consent. Affirmative consent must be ongoing and can be revoked at any time during sexual activity. The existence of a dating relationship or past sexual relations between the persons involved should never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of consent to prior conduct).”<sup>1</sup>

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<sup>1</sup> University of California – Policy, Sexual Violence and Sexual Harassment, Definitions: Consent. Section II.A.

The Committee agrees that while a past or current dating and/or sexual relationship does not, by itself constitute consent, the policy and/or practice of Title IX investigators should acknowledge that a past or current dating and/or sexual relationship might contribute to a reasonable belief in ongoing consent barring other evidence that the respondent engaged in a disregard of the facts and circumstances.

**Timeliness for Making Reports:** Previous revisions removed the time limit for reporting, although the policy encourages prompt reporting of prohibited conduct. It seems reasonable that a removal of the statute of limitations needs to be accompanied by additional considerations that relate to the increased probability of impediments to the fair administration of justice caused by the passage of time. A reasonable criterion, for example, is to ascertain that the delay in bringing an incident to light does not unduly impinge on the respondent's ability to defend against the charges. Second, the committee is concerned that all cases, but especially those from long ago, be treated equitably and not overly focus on the reputation of the respondent or complainant.

Both of the above suggestions might impinge upon Section V.A.3, which mentions the information provided the complainant.

*On behalf of Committee members:*

Avanidhar Subrahmanyam; Norweeta Milburn; Vilma Ortiz; Patricia Johnson; Barry O'Neill; Sherod Thaxton

/mmo

October 26, 2018

To: Joseph Bristow, Chair  
Academic Senate

From: Lothar von Falkenhausen, Chair  
Committee on International Education

RE: **Systemwide Senate Review-Proposed Revised Presidential Policy Sexual Violence and Sexual Harassment**

The Committee on International Education received the request for comment on the Proposed Revised Presidential Policy Sexual Violence and Sexual Harassment. Following the review of the proposed revisions, CIE does not feel the review of the policy is in its purview and does not wish to comment.

We thank you for the opportunity to opine.

cc: Joseph Bristow, Chair, Academic Senate  
Sandra Graham, Immediate Past Chair, Academic Senate  
Michael Meranze, Vice Chair/Chair Elect, Academic Senate  
Linda Mohr, Chief Academic Officer  
Members of the Committee on International Education

November 19, 2018

To: Joseph Bristow, Chair  
Academic Senate

**Re: Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment**

Dear Dr. Bristow,

As you requested, the Academic Senate Committee on Teaching discussed the Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment during our November 19, 2018 meeting. We appreciated the work of everyone on the committee who revised the policy as such an endeavor requires much effort and time. The proposed policy led to significant discussion in our meeting. The Committee on Teaching had no edits to make to the policy and felt that it was a step in the right direction. However, the Committee on Teaching believed that more could be done toward educating everyone in the University about the long-standing, serious crisis of sexual harassment and sexual violence on our campus. The committee advises that an explicit goal should be a pedagogical effort to change the culture on campus. Along the lines of item 6 on page 21 of 32 of the clean copy ("Provide mandatory annual training and education, ..."), the Committee on Teaching specifically advocated for in-person workshops versus online courses as such formats would naturally allow questions from the attendees. Another suggestion was to focus in different years on particular topics (e.g., how these types of traumas affect people), and vary the topics to reduce redundancy between training sessions. The Committee on Teaching is also aware that supervisors must currently be trained on these issues, but was not sure if those in non-supervisory roles must also be trained at present. If not, teaching and educating these individuals, and therefore, everyone on campus, including students, is critical.

Thank you for the opportunity to comment on the policy. If you have any questions, please do not hesitate to contact me at [kamei@seas.ucla.edu](mailto:kamei@seas.ucla.edu) or the Committee's analyst, Renee Rouzan-Kay, at [rrouzankay@senate.ucla.edu](mailto:rrouzankay@senate.ucla.edu) or x62070.

Sincerely,



Daniel Kamei, Chair  
Committee on Teaching

Cc: Michael Meranze, Chair- Elect/Vice- Chair Academic Senate  
Sandra Graham, Immediate Past Chair, Academic Senate  
Linda Mohr, Chief Operating Officer, Academic Senate

To: Joseph Bristow, Chair  
Academic Senate

From: Derjung “Mimi” Tarn, Chair  
Committee on Library and Scholarly Communication

Date: October 30, 2018

Re: **Systemwide Senate Review- Proposed Revisions to Presidential Policy on Sexual Violence and Sexual Harassment**

Dear Dr. Bristow,

The Committee on Library and Scholarly Communication reviewed the Proposed Revisions to the Presidential Policy on Sexual Violence and Sexual Harassment during our meeting on October 15, 2018. Overall the committee feels the revised policy is thorough, however much too long and should be abbreviated.

The following questions were raised regarding the definition and meanings of the following words;

1. The definition of “conduct” described in the section on Sexual Harassment and under *Quid Pro Quo* and *Hostile Environment* ( p. 5 of 36), provides specific examples of things that could constitute “conduct”, however in providing such examples, other instances are omitted; like touching that may just be ‘unwanted’ or ‘unwelcome.’ These include things that may not fall under “physical conduct of a sexual nature” – such as hugging or perhaps even unwanted stroking of the arm. We suggest adding broader language to incorporate such activities to the policy.
2. There were concerns that the word “consent” was not adequately defined. The document describes quite clearly what may NOT be construed as consent (silence, lack of resistance, etc.), but not what actually constitutes consent. If *verbal* consent is required, that should be made clear. And if non-verbal consent is permitted, clearer guidelines on what constitutes non-verbal consent should be outlined.
3. With regards to “Relationship Violence” (p. 4 of 36) would the use of Domestic Violence and the terms assault and battery be appropriate for consistency with legal definitions (i.e., verbal assault and physical battery)?  
The question was raised about whether the terminology restrained from acting with their “free will” or on their own behalf would help simplify any of the language.

Questioned is the role of the Academic Senate and governance regarding forms of harassment and sexual harassment. If both parties are amenable, could the conflict be handled informally, by department chairs? The other question, concerns policy related to faculty violations of the faculty code of conduct, shouldn't the formal adjudication of such violations go through the Academic Senate?

The Presidential Policy on Sexual Violence and Sexual Harassment needs to be viewed as a significant carve-out of Senate policy, especially as it relates to faculty members. Should administration need to become involved, the violation would be transferred to the administration? The revised policy gives great power to the Title IX officer, and not much to others (i.e., Deans and Department Chairs) to address more common, and less serious allegations. For serious situations, consulting with the Title IX office is a good idea, however starting in a place that lists all the formal processes, and gives only slight articulation of support for informal processes could be looked upon negatively.

Thank you for the opportunity to review. If you have any questions for us, please do not hesitate to contact me at [dtarn@mednet.ucla.edu](mailto:dtarn@mednet.ucla.edu) or via the Committee on Library and Scholarly Communication analyst, Renee Rouzan-Kay at [rrouzankay@senate.ucla.edu](mailto:rrouzankay@senate.ucla.edu) or ext. 62070.

cc:

Sandra Graham, Immediate Past Chair, Academic Senate  
Michael Meranze, Vice-Chair/ Chair-Elect, Academic Senate  
Linda Mohr, Chief Administrative Officer, Academic Senate  
Renee Rouzan-Kay, Committee Analyst, Committee on Library and Scholarly Communication  
Members of the Committee on Library and Scholarly Communication

November 13, 2018

Joseph Bristow  
Chair, UCLA Academic Senate

**Re: Systemwide Senate Review: Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment**

Dear Professor Bristow,

At its November 7, 2018 meeting, the Council on Research (COR) reviewed the proposed revised Presidential Policy on Sexual Violence and Sexual Harassment. Members had no comments on the revised policy.

If you have any questions for us, please do not hesitate to contact me at [desjardins@ucla.edu](mailto:desjardins@ucla.edu) or via the Council's analyst, Elizabeth Feller, at [efeller@senate.ucla.edu](mailto:efeller@senate.ucla.edu) or x62470.

Sincerely,



Richard Desjardins, Chair  
Council on Research

cc: Joseph Bristow, Chair, Academic Senate  
Elizabeth Feller, Principal Analyst, Council on Research  
Sandra Graham, Immediate Past Chair, Academic Senate  
Michael Meranze, Vice Chair/Chair-Elect, Academic Senate  
Linda Mohr, Chief Administrative Officer, Academic Senate  
Members of the Council on Research

October 18, 2018

Joseph Bristow  
Chair, UCLA Academic Senate

**Re: Systemwide Senate Review: Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment**

Dear Professor Bristow,

At its October 15, 2018 meeting, the Council on Planning and Budget reviewed the Proposed Revised Presidential Policy on Sexual Violence and Sexual Harassment.

Members had no comments on the revised policy.

Thank you for the opportunity to review. If you have any questions for us, please do not hesitate to contact me at [palsberg@ucla.edu](mailto:palsberg@ucla.edu) or via the Council on Planning and Budget's analyst, Elizabeth Feller, at [efeller@senate.ucla.edu](mailto:efeller@senate.ucla.edu) or x62470.

Sincerely,



Jens Palsberg, Chair  
Council on Planning and Budget

cc: Elizabeth Feller, Committee Analyst, Council on Planning and Budget  
Sandra Graham, Immediate Past Chair, Academic Senate  
Michael Meranze, Vice Chair/Chair-Elect, Academic Senate  
Linda Mohr, Chief Administrative Officer, Academic Senate  
Members of the Council on Planning and Budget

# UCLA MEMORANDUM

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FACULTY EXECUTIVE COMMITTEE  
*College of Letters and Science*

A265 Murphy Hall  
Box 951571  
Los Angeles, California 90095

**To:** Joseph Bristow, Chair, Academic Senate

**Fr:** Aaron Tornell, Chair, College Faculty Executive Committee

**Date:** November 20, 2018

**Re:** **College FEC response to Systemwide Review of Revised Presidential Policy on Sexual Violence and Sexual Harassment**

The College FEC appreciates the opportunity to comment on the proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment. We reviewed the draft of the policy at our meeting on November 2, 2018. We were joined by Marian Olivas to highlight the key revisions to the document.

Members raised the following concerns about the document:

- The revised policy does not clearly define a timeline for the informal assessment.
- Although the note in II.B.1 (Definition of Prohibited Conduct) states that “this definition encompasses a broad spectrum of conduct, not all of which constitutes sexual violence,” the definitions within sexual assault – contact seemed too prescriptive. If the goal is to enumerate all possible behaviors, then the list should be more extensive than as currently drafted.
- The revisions recommend that the Alternative Resolution process be completed promptly “typically within 30 to 60 business days.” How are “business days” defined? While some units operate year-round, many do not. For the College, in particular, the summer is a period during which there is a recess and many faculty members and students are away.

As always, our membership appreciates the consultative process and welcomes the opportunity to participate in the discussion of important matters like this. You are welcome to contact me at [tornell@econ.ucla.edu](mailto:tornell@econ.ucla.edu) with questions. Mitsue Yokota, Academic Administrator, is also available to assist you and she can be reached at (310) 794-5665 or [myokota@college.ucla.edu](mailto:myokota@college.ucla.edu).

cc: Lucy Blackmar, Assistant Vice Provost, Undergraduate Education Initiatives  
Valeria Dimas, Executive Assistant, Academic Senate  
Linda Mohr, Chief Administrative Officer, Academic Senate  
Marian Olivas, Senior Committee Analyst, Academic Senate



SYSTEMWIDE TITLE IX OFFICE

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

September 17, 2018

CHANCELLORS  
ACADEMIC COUNCIL CHAIR ROBERT MAY  
LABORATORY DIRECTOR MICHAEL WITHERELL  
ANR VICE PRESIDENT GLENDA HUMISTON

**RE: Systemwide Review of Revised Presidential Policy on Sexual Violence and Sexual Harassment**

Dear Colleagues:

Attached for Systemwide Formal Review are proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment ("SVSH Policy").

Earlier this year, the SVSH Policy was distributed for Management Consultation. In response we received significant feedback – over 500 comments – from faculty, staff, and students from across the system. We greatly appreciated these comments and considered all of them carefully in consultation with our colleagues in the Office of General Counsel. Throughout the review process, we also consulted with the local Title IX officers and their campus partners, colleagues in the Office of the President, and members of the Title IX Student Advisory Board.

We have revised the SVSH Policy to address critical concerns identified through this review process. In addition, we have made changes required by the Department of Education's Office for Civil Rights ("OCR") in its February 2018 resolution agreement with UC Berkeley (available here: <http://compliance.response.berkeley.edu/ocrreport.shtml>), and recommended by the California State Auditor in its June 2018 report on UC's response to SVSH complaints (available here: <https://www.bsa.ca.gov/pdfs/reports/2017-125.pdf>).

I call your attention to the following key revisions:

- A fuller explanation of what the policy covers, such as acts committed by and against third parties, and how the Title IX offices will evaluate reports to decide whether to initiate a resolution process;
- Changes to the definitions of conduct prohibited by the policy, including sexual assault, relationship violence, and retaliation;
- Enumeration of the specific procedures UC will use to investigate and adjudicate reports;
- A more detailed description of the informal (Alternative Resolution) process, and parties' rights in that process;
- Addition of a 30 to 60 day timeframe for Alternative Resolution, and extension of the timeframe for the Formal Investigation process from 60 days to 90 days;
- Provision for the Title IX officer to initiate investigations despite the absence of an identifiable, individual respondent or, alternatively, the lack of a specific complainant;

- Revisions to the Frequently Asked Questions, including the removal of certain questions; and
- References in several places to guidelines developed by the Systemwide Title IX Office. CSA recommended that we better define and codify some of our policy-related practices, and agreed that could be done in separate guidelines, if referenced in the policy.

I am pleased to send you this draft policy, which is now ready for final vetting. We once again request your assistance in disseminating the SVSH Policy to your respective campus representatives for their review. The OCR resolution agreement requires that we submit the revised SVSH Policy to OCR for its approval by February 28, 2019. So that we may meet this timeline, kindly submit any feedback you collect from your campus partners to Evelyn Cheng, Systemwide Title IX Program Coordinator ([evelyn.cheng@ucop.edu](mailto:evelyn.cheng@ucop.edu)) no later than **Monday, December 17, 2018**.

You are welcome to contact me at 510-987-9161 or [suzanne.taylor@ucop.edu](mailto:suzanne.taylor@ucop.edu) with questions. I am grateful for your partnership with this important undertaking.

### **Systemwide Review**

Systemwide Review is a public review distributed to the Chancellors, the Director, Lawrence Berkeley National Laboratory, the Chair of the Academic Council, and the Vice President of Agriculture and Natural Resources requesting that they inform the general University community, affected employees, and union membership about policy proposals. Systemwide Review also includes a mandatory, three-month full Senate review. Employees should be afforded the opportunity to review and comment on the draft policy. Attached is a Model Communication which may be used to inform non-exclusively represented employees about these proposals. The Labor Relations Office at the Office of the President is responsible for informing the bargaining units representing union membership about policy proposals.

Kind Regards,



Suzanne Taylor  
Interim Systemwide Title IX Coordinator

Attachments: Presidential Policy Sexual Violence and Sexual Harassment (redline and clean copy)  
Model Communication

cc: President Napolitano  
Provost and Executive Vice President Brown  
Executive Vice Chancellors/Provosts  
President's Advisory Group  
Vice President Duckett  
Vice President Ellis

Vice President Holmes-Sullivan

Vice Provost Carlson

Vice Provost Gullatt

Deputy General Counsel Woodall

Vice Chancellors/Vice Provosts of Academic Personnel/Academic Affairs

Academic Personnel Directors

Chief of Staff Nava

Deputy Compliance Officer Executive Director Myjer

Executive Director Baxter

Executive Director Peterson

Executive Director Chester

Director Hairston

Director Grant

Manager Smith

Manager Steinhoff

Manager Jordan

Manager Crosson



# Sexual Violence and Sexual Harassment

[Para la traducción en Español, oprima aquí](#)

[中文版本, 請按這裡](#)

[Seksual na Kaharasan at Sekswal na Panliligalig](#)

<b>Responsible Officer:</b>	Systemwide Title IX Coordinator
<b>Responsible Office:</b>	Systemwide Title IX Office
<b>Issuance Date:</b>	1/1/2016
<b>Effective Date:</b>	1/1/2016
<b>Last Review Date:</b>	8/14/2018
<b>Scope:</b>	This Policy applies to all University employees as well as undergraduate, graduate, and professional students (hereafter referred to as “students”), <u>and third parties.</u> The Policy applies at all University campuses, the Lawrence Berkeley National Laboratory, Medical Centers, the Office of the President, Agriculture and Natural Resources, and to all University programs and activities.

***For assistance with incidents of sexual violence, sexual harassment, dating violence, domestic relationship violence, and stalking, please contact your Title IX Officer. If you are a student and desire confidential assistance contact your local CARE Advocate. Local resource information can be found at Sexual Violence Prevention and Response (<http://sexualviolence.universityofcalifornia.edu/get-help/index.html>)***

**FOR QUESTIONS ABOUT THIS POLICY, PLEASE CONTACT:**

<b>Contact:</b>	Suzanne Taylor
<b>Email:</b>	<a href="mailto:suzanne.taylor@ucop.edu">suzanne.taylor@ucop.edu</a>
<b>Phone:</b>	(510) 987-9161

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## I. POLICY SUMMARY

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The University of California ("University") 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 and services can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Every member of the community should be aware that the University prohibits sexual violence ~~and~~ sexual harassment, retaliation, and other prohibited behavior ~~("together, "Prohibited Conduct") that violates law and/or University policy.~~ ("together, "Prohibited Conduct") that violates law and/or University policy. as those terms are defined in Section II of this Policy on Sexual Violence and Sexual Harassment ("Policy"). The University will respond promptly and effectively to reports of Prohibited Conduct and will take appropriate action to stop, prevent, ~~to~~ correct, and when necessary, ~~to~~ discipline behavior that violates this Policy ~~on Sexual Violence and Sexual Harassment (hereafter referred to as Policy).~~

This Policy addresses the ~~University of California's~~ University's responsibilities and procedures related to Prohibited Conduct in order to ensure an equitable and inclusive education and employment environment ~~free of sexual violence and sexual harassment.~~ The Policy defines conduct prohibited by the University ~~of California~~ and explains the general administrative procedures the University uses to resolve reports of Prohibited Conduct.

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## II. DEFINITIONS

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### A. Consent

Consent is *affirmative, conscious, voluntary, and revocable*. Consent to sexual activity requires of ~~both person~~ each person an affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person to ensure they have the affirmative consent of the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence, ~~do not~~ alone, constitute consent. Affirmative consent must be ongoing and can be revoked at any time during sexual activity. The existence of a dating relationship or past sexual relations between the persons involved should never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of consent to prior conduct).

The Respondent's belief that the Complainant consented shall not provide a valid excused defense unless the belief was actual and reasonable, considering all of the facts and circumstances the Respondent knew, or reasonably should have known, at the time. In particular, the Respondent's belief shall not provide a valid defense where:

1. The Respondent's belief arose from the Respondent's own intoxication or recklessness;

2. The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented; or
3. The Respondent knew or a reasonable person should have known that the Complainant was unable to consent because the Complainant was incapacitated, in that the Complainant was:
  - a. asleep or unconscious;
  - b. ~~due to the influence of drugs, alcohol, or medication~~, unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or
  - c. unable to communicate due to a mental or physical condition.

Note: Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.

## B. Prohibited Conduct

### 1. Sexual Violence:

- a. **Sexual Assault - Penetration:** Without the consent of the Complainant, penetration, no matter how slight, of the vagina, anus, or mouth by a penis; or other genitalia, or the vagina or anus by any body part or object.
- b. **Sexual Assault - Contact:** Without the consent of the Complainant, ~~touching an intimate body part (genitals, anus, groin, breast, or buttocks) (i) unclothed or (ii) clothed intentionally:~~
  - touching Complainant's intimate body part (genitals, anus, groin, breast, or buttocks);
  - making the Complainant touch another or themselves on any intimate body part;
  - touching the Complainant with one's intimate body part;
  - placing one's mouth on Complainant's intimate body part; or
  - making contact between one's intimate body part and Complainant's mouth,

whether the intimate body part is clothed or unclothed.

**Note:** ~~As this~~ This definition encompasses a broad spectrum of conduct, not all of which constitutes sexual violence. ~~The~~ Accordingly, when appropriate, the Title IX Officer will determine whether ~~the~~ an allegation should be ~~treated charged~~ as sexual violence or sexual harassment. (See FAQ #4 for more information.) Conduct that meets the definition of both Sexual Assault—Contact and Sexual Assault—Penetration will be charged as Sexual Assault—Penetration.

**Note:** Sexual Assault—Penetration and Sexual Assault—Contact are aggravated when ~~it includes~~they include any of the following:

- Overcoming the will of Complainant by:
  - *force* (the use of physical force or inducing reasonable fear of immediate or future bodily injury);
  - *violence* (the use of physical force to cause harm or injury);
  - *menace* (a threat, statement, or act showing intent to injure); or
  - *duress* (a direct or implied threat of force, violence, danger, hardship, or retribution that is enough to cause a reasonable person of ordinary sensitivity, taking into account all circumstances including age and relationship, (including a power imbalance), to do or submit to something that they would not otherwise do~~);~~);
  - deliberately causing ~~a person~~the Complainant to be incapacitated (for example, through drugs or alcohol);
- ~~Intentionally~~Deliberately taking advantage of the ~~other person's~~Complainant's incapacitation (including incapacitation that results from voluntary intoxication); use of drugs or alcohol); or
- Recording, photographing, transmitting, or distributing intimate or sexual images without the prior knowledge and consent of the ~~parties involved~~Complainant.

**c. Relationship Violence:**

i. ~~Dating~~Relationship Violence is:

- ~~Conduct~~physical violence toward the Complainant or another person with whom the Complainant has a close relationship (e.g., a current or former spouse or intimate partner, a child or other relative), or
- intentional or reckless physical or non-physical conduct that would put a reasonable person in the Complainant's position in fear of physical violence toward themselves or another person with whom the Complainant has a close relationship (e.g., a current or former spouse or intimate partner, a child or other relative).

that is by a person who is or has been in a spousal, romantic, or intimate relationship with the Complainant, or a person with whom the Complainant shares a child in common, and that is part of a pattern of abusive behavior by the person toward the Complainant.

- ii. Physical violence is physical conduct that intentionally, or recklessly, causes bodily injury to the Complainant or places the Complainant in reasonable fear of serious bodily injury. threatens the health and safety of the recipient of the behavior, including assault.
- iii. Patterns of abusive behavior may consist of or include non-physical tactics (e.g., threats, isolation, property destruction, abuse of pets, economic

control, displaying weapons, degradation, or exploitation of a power imbalance).

~~ii-iv.~~ The nature of the relationship between the Complainant and Respondent is determined by the length, and type of relationship, and the frequency of interaction between them. Relationship violence includes both “dating violence” and “domestic violence.”

~~i. **Domestic Violence:** Conduct by a current or former spouse or intimate partner of the Complainant; or a person with whom the Complainant shares a child in common, that intentionally, or recklessly, causes bodily injury to the Complainant or another, or places the Complainant or another in reasonable fear of serious bodily injury.~~

~~v. Conduct by a party in defense of self or another does not constitute Relationship Violence under this Policy. If either party asserts that they acted in defense of self or another, the Title IX Officer will use all available, relevant evidence to evaluate the assertion, including reasonableness of the defensive actions and which party is the predominant aggressor.~~

**d. Stalking:** Repeated conduct directed at a Complainant (e.g., following, monitoring, observing, surveilling, threatening, communicating or interfering with property), of a sexual or romantic nature or motivation, that would cause a reasonable person to fear for their safety, or the safety of others, or to suffer substantial emotional distress. Stalking of a non-sexual nature is addressed by other University policies including but not limited to the Policy on Student Conduct and Discipline Section 102.10~~Policy on Student Conduct and Discipline Section 102.10.~~

## **2. Sexual Harassment:**

**a.** Sexual Harassment is unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal, or physical conduct of a sexual nature when:

**i.** *Quid Pro Quo*: a person’s submission to such conduct is implicitly or explicitly made the basis for employment decisions, academic evaluation, grades or advancement, or other decisions affecting participation in a University program, activity, or service; or

**ii.** *Hostile Environment*: such conduct is sufficiently severe, persistent or pervasive that it unreasonably denies, adversely limits, or interferes with a person’s participation in or benefit from the education, employment or other programs ~~and, activities or~~ services of the University, and creates an environment that a reasonable person would find to be intimidating or offensive.

**b.** Consideration is given to the totality of the circumstances in which the conduct occurred. ~~Sexual harassment may include incidents:~~

- ~~i. between any members of the University community, including faculty and other academic appointees, staff, student employees, students, coaches, residents, interns, and non-student or non-employee participants in University programs (e.g., vendors, contractors, visitors, and patients);~~
  - ~~ii. in hierarchical relationships and between peers; and~~
  - ~~iii. between individuals of any gender or gender identity.~~
- c. This Policy shall be implemented in a manner that recognizes the importance of the rights to freedom of speech and expression and shall not be interpreted to prohibit expressive conduct that is protected by the free speech and academic freedom principles discussed in Section III.~~EE~~.

### 3. ~~Other Prohibited Behavior:~~

- a. Invasions of Sexual Privacy.
  - i. Without a person's consent, watching or enabling others to watch that person's nudity or sexual acts in a place where that person has a reasonable expectation of privacy;
  - ii. Without a person's consent, making or attempting to make photographs (including videos) or audio recordings, or posting, transmitting or distributing such recorded material, depicting that person's nudity or sexual acts in a place where that person has a reasonable expectation of privacy; or
  - iii. Using depictions of nudity or sexual activity to extort something of value from a person.
- b. Sexual intercourse with a person under the age of 18.
- c. Exposing one's genitals in a public place for the purpose of sexual gratification.
- d. Failing to comply with the terms of a no-contact order, a suspension of any length, or any order of exclusion issued under this Policy.
- e. Retaliation. Retaliation is an adverse action taken against a person based on their report or other disclosure of Prohibited Conduct to a Responsible Employee or their participation in the investigation, reporting, remedial, or disciplinary processes provided for in this Policy. An adverse action is conduct that would discourage a reasonable person from reporting Prohibited Conduct or participating in a process provided for in this Policy, such as threats, intimidation, harassment and coercion. Retaliation does not include good faith actions lawfully pursued in response to a report of Prohibited Conduct.

~~Retaliation includes threats, intimidation, reprisals, and/or adverse employment or educational actions against a person based on their report of Prohibited Conduct or participation in the investigation, report, remedial, or disciplinary processes provided for in this Policy.~~

### C. Other Definitions:

**1. Complainant:** A person alleged, in a report to the Title IX Officer, to have experienced Prohibited Conduct.

**4. Confidential Resources:**

**2. The following employees who receive reports in their confidential capacity include:**

- a.** CARE Advocates,
- b.** Ombuds,
- c.** Licensed counselors in student counseling centers and in employee assistance programs,
- d.** Any persons with a professional license requiring confidentiality (including health center employees but excluding campus legal counsel), or someone who is supervised by such a person.

Designation as a “Confidential Resource” for purposes of this Policy only exempts a person from reporting to the Title IX ~~Officer~~ but not from other mandatory reporting obligations under UC CANRA (Child Abuse and Neglect Reporting Act) Policy, the Clery Act as a Campus Security Authority (CSA), and other policies or laws that require reporting to campus or local law enforcement, or Child Protective Services.

**3. Complainant:** Any person who files a report of sexual violence or sexual harassment or other prohibited behavior or retaliation or any person who has been the alleged subject of such Prohibited Conduct or retaliation.

**3. Interim, Remedial and Supportive Measures.**

- a. Interim Measures:** Services, accommodations, or other measures put in place temporarily after the Title IX Officer receives a report of Prohibited Conduct to assist or protect the Complainant, the Respondent, or the University community. Interim measures may remain in place until the final outcome of an Alternative Resolution, Formal Investigation, Other Inquiry, or a subsequent disciplinary or appeal process; change or terminate depending on the parties’ evolving needs, as assessed by the Title IX Officer; or become permanent as part of the resolution of a report.
- b. Remedial Measures:** Services, accommodations, or other measures put in place as a result of a Resolution Process provided for in Section V.A.5 (i.e., Alternative Resolution, Formal Investigation, or Other Inquiry).
- c. Supportive Measures:** Services, accommodations or other measures put in place to support an individual who reports experiencing Prohibited Conduct but whose report does not result in a Resolution Process provided for in Section V.A.5 (i.e., Alternative Resolution, Formal Investigation, or Other Inquiry).

Examples of services, accommodations, and other measures that may constitute Interim, Remedial, and Supportive Measures are included in Appendix III.

4. **Location:** “Location” is any University ~~of California~~ campus, the Lawrence Berkeley National Laboratory, Medical Centers, the Office of the President, and Agriculture and Natural Resources.
5. **Preponderance of Evidence:** A standard of proof that requires that a fact be found when its occurrence, based on evidence, is more likely than not.
6. **Respondent:** A person alleged , in a report to the Title IX Officer, to have engaged in Prohibited Conduct ~~and about whom a report of sexual violence, sexual harassment, other prohibited behavior, or retaliation is made.~~
7. **Responsible Employee:** Any University employee who is not a Confidential Resource and who receives, in the course of employment, information that a student (undergraduate, graduate, or professional) ~~has suffered sexual violence, sexual harassment or other prohibited behavior~~ may have experienced Prohibited Conduct shall promptly notify the Title IX Officer or designee. This includes ~~Resident Assistants, Graduate Teaching Assistants~~ resident assistants, graduate teaching assistants, and all other student employees, when disclosures are made to any of them in their capacities as employees.

In addition, the following who, in the course of employment, receive ~~a report of Prohibited Conduct from~~ information that any other person affiliated with the University may have experienced Prohibited Conduct shall promptly notify the Title IX Officer or designee:

- Campus Police
- Human Resources ~~Administrators~~, Academic Personnel Administrators, and Title IX Professionals
- Managers and Supervisors including Deans, Department Chairs, and Directors of Organized Research Units (ORU)
- Faculty members

The above notwithstanding, Responsible Employees are not required to report to the Title IX Officer possible Prohibited Conduct they become aware of while attending a public awareness event, such as “Take Back the Night” (see FAQ #9) or disclosed by an individual when participating in human subjects research that has either been approved by an Institutional Review Board (IRB) or certified as exempt from IRB review under one or more of the categories in 45 CFR 46.101(b) (see FAQ #10).

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### III. POLICY TEXT

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#### A. General

The University ~~of California~~ is committed to creating and maintaining a community free of ~~sexual violence and~~ Prohibited Conduct (sexual harassment. ~~Sexual~~

~~violence, sexual violence, retaliation, and other prohibited behavior, as those terms are by this Policy).~~ Prohibited Conduct violates this Policy and sexual harassment may violate both law and University policy. Any member of the University community person may report conduct that may constitute sexual violence, sexual harassment, retaliation, and other prohibited behavior (“Prohibited Conduct”). The University will respond promptly and equitably to such reports, and will take appropriate action to stop, prevent, and remedy the Prohibited Conduct, and when necessary, to discipline the Respondent.

~~In addition to sexual harassment, discrimination~~ Discrimination based on sex, gender, gender identity, gender expression, sex- or gender-stereotyping, and/or sexual orientation that does not constitute Prohibited Conduct nonetheless violates law and other University policies, and the University will respond to notice of such conduct. Such discrimination may also contribute to the creation of a hostile work or academic environment based on sex and thus constitute or contribute to sexual harassment. Harassment that may not be sexual, but still contributes. Accordingly, when determining whether a Complainant was subjected to a hostile work or academic environment, may also violate the University’s other non-discrimination policies.

## **B. Prohibited Conduct**

~~This Sexual Violence and Sexual Harassment as defined in this Policy (“~~the Title IX Officer will consider such discrimination in combination with incidents of sexual harassment.

## **B. Application of this Policy”)**

This Policy covers acts of Prohibited Conduct committed by University students, employees, and third parties such as contractors, vendors, visitors, guests, patients and volunteers (“third parties”), and acts of Prohibited Conduct committed against students, employees and third parties, when:

1. the conduct occurs on University property;
2. the conduct occurs in connection with University employment or in the context of a University employment or education program, activity or service, including, for example, University-sponsored study abroad, research, on-line courses, health services, or internship programs; or
3. the conduct occurs off University property and outside the context of a University employment or education program, activity or service, but has continuing adverse effects on or creates a hostile environment for students, employees or third parties while on University property or in any University program, activity or service.

Consistent with Section 101.00 of the Policy on Student Conduct and Discipline, if and as specified in implementing campus regulations, this Policy may cover additional Prohibited Conduct by students that occurs off campus.

Not every report of Prohibited Conduct covered by this Policy will result in a Resolution Process described in Section V.A.5. Rather, some reports will be closed following initial assessment by the Title IX Officer, as provided for in Section V.A.4.

### **C. Conduct that Violates this Policy**

This Policy prohibits sexual violence, sexual harassment, retaliation and other prohibited behavior as defined in Section II. Incidents that violate this Policy may occur between any members of the University community, including faculty and other academic appointees, staff, student employees, students, coaches, doctors, residents and interns, as well as third parties; individuals in hierarchical relationships and peers; individuals of any gender, gender identity, or sexual orientation; and strangers and non-strangers. Incidents of Prohibited Conduct may occur through electronic media, such as the internet, social networks, cell phones, texts, or other similar devices or forms of contact.

### **C.D. Consensual Relationships**

While romantic and sexual relationships between members of the University community may begin as consensual, instances of Prohibited Conduct may occur within such relationships. Accordingly, a report of Prohibited Conduct that occurs within the context of a consensual relationship will be treated as any other report.

Because consensual romantic and sexual relationships between members of the University community may give rise to conflicts of interest, such relationships between a student and faculty member or other employees or between employees are also subject to other University policies, such as The Faculty Code of Conduct, APM-015.II.A.6 & 7 and local policies.

### **D.E. Protection of Complainants, Respondents, and Witnesses**

1. **ImmunityAmnesty**: To encourage reporting, neither a Complainant nor witness in an investigation of ~~sexual violence~~Prohibited Conduct will be subject to ~~disciplinary sanctions~~discipline for a violation of the relevant University conduct policy at or near the time of the incident; unless the University determines the violation was egregious, including, for example, violations that placed the health or safety of another at risk; or involved plagiarism, cheating, or academic dishonesty; or was otherwise egregious.

Because alcohol, drugs, and other intoxicants are often involved, Complainants may be afraid to report Prohibited Conduct whereen they have also engaged in an activity that violated University policy or State law, such as a person under age 21 drinking alcohol. UC encourages the reporting of Prohibited Conduct and ~~therefore generally does will~~ not hold Complainants and/or witnesses accountable for alcohol or drug-related student violations that may have occurred at or near the time of the Prohibited Conduct, unless – as stated above – the University determines the violation was egregious.

2. **Retaliation**: Retaliation against someone for reporting or participating in an investigation and related processes is prohibited. (See Section II.~~B. Prohibited Conduct in this Policy.~~C.)

- 3. Privacy:** The University ~~will protect~~must balance the privacy interests of individuals involved in a report of Prohibited Conduct ~~against the need to gather information to assess and investigate the report, ensure a fair process, and stop Prohibited Conduct, prevent its recurrence and remedy its effects. Within this context, the University will make reasonable efforts to protect individuals' privacy~~ to the extent permitted by law and by University policyies and procedures. ~~However, it should be recognized that an investigation may involve interviews with a number of persons to inquire if they have relevant evidence, and extremely sensitive information may be gathered. While such personally identifiable records and information is considered confidential, University policy may also require the disclosure of certain information during or following an investigation will be protected in accordance with all applicable state and federal privacy laws, as well as University policies.~~

#### **E.F. Free Speech and Academic Freedom**

The faculty and other academic appointees, staff, and students of the University ~~of California~~ enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section I of the California Constitution. This Policy is intended to protect members of the University community from discrimination, not to regulate protected speech. This Policy shall be implemented in a manner that recognizes the importance of rights to freedom of speech and expression.

The University also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this Policy shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums (See APM-010 and 015.)

However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or State anti-discrimination laws.

### **G. Confidential Resources**

Individuals who have experienced Prohibited Conduct may speak confidentially with a Confidential Resource, as defined in this Policy. Because Confidential Resources are not Responsible Employees who must report to the Title IX Officer, disclosure of Prohibited Conduct to a Confidential Resource while that person is acting in their confidential capacity is not a “report” under this Policy and will not, alone, result in any formal action by the University.

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## **IV. COMPLIANCE / RESPONSIBILITIES**

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### **A. Implementation of the Policy**

Executive Officers (the University President, Chancellor, Lawrence Berkeley National Laboratory Director, or Vice President of Agriculture and Natural Resources) and their designees, have the authority to develop procedures and supplementary information to support the implementation of this Policy. ~~Responsible Officers (Vice Provost Academic Personnel and Programs, the Vice President of Student Affairs and Vice President of Human Resources)~~The Systemwide Title IX Coordinator will apply appropriate and consistent interpretations of this Policy that do not result in substantive changes to the Policy.

The Executive Officer, or their designee, at each location, must establish and implement local procedures consistent with this Policy. Exceptions to local procedures required by the Policy must be approved by the Executive Officer or designee.

### **B. Revisions to the Policy**

The President approves this Policy and any revisions. ~~The Responsible Officers~~The Systemwide Title IX Coordinator may recommend revisions to the Policy consistent with approval authorities and applicable Bylaws, Standing Orders, and Policies of The Regents. ~~The UC Provost and Executive Vice President of Academic Affairs, and the UC Executive Vice President – Chief Operating Officer~~The Systemwide Title IX Coordinator shall ensure that the Policy is reviewed regularly and updated in a manner that is consistent with other University policies.

### **C. Approval of Actions**

Actions within the Policy must be approved according to local procedures.

### **D. Compliance with the Policy**

The Executive Officer at each location will designate the local management office that is responsible for monitoring, enforcing, and reporting policy compliance. The Senior Vice President – Chief Compliance and Audit Officer will periodically audit and monitor compliance with the Policy.

### **E. Additional Enforcement Information**

The U.S. Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH) investigate reports of unlawful

harassment, and sexual violence in employment. The U.S. Department of Education Office for Civil Rights (OCR) investigates reports/complaints of unlawful sexual harassment and, including sexual violence by, of students and employees in educational programs or activities. These agencies may serve as fact finders and attempt to facilitate the voluntary resolution of disputes. For more information, contact the nearest office of the EEOC, DFEH or OCR.

## F. Noncompliance with the Policy

Engaging/Consequences of engaging in Prohibited Conduct, ~~defined in this Policy, is~~ are governed by ~~this~~ Policy on Student Conduct and Discipline; Personnel Policies for Staff Members 61, 62, 63, & 64 pertaining to discipline and separation matters; The Faculty Code of Conduct (APM - 015) and University Policy on Faculty Conduct and the Administration of Discipline (APM - 016); Non-Senate Academic Appointees/Corrective Action and Dismissal (APM-150); and as applicable, collective bargaining agreements, and other policies. See Section VI and Appendices I & II. Non-compliance with this Policy, other than violations of Prohibited Conduct, may result in educational efforts or employment or educational consequences up to and including informal counseling, adverse performance evaluations, corrective actions, and termination.

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## V. PROCEDURES

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### A. Procedures for Reporting and Responding to Reports of Prohibited Conduct

This section provides an overview of the procedures the University uses to respond to reports of Prohibited Conduct. While the Title IX Officer has general responsibility for oversight of the reporting ~~process~~ and ~~investigation of a report/response~~ processes, other offices at each location will be involved and consulted as necessary.

The specific procedures for investigating and adjudicating Prohibited Conduct are based upon the identity of the Respondent and the nature of the Respondent's relationship to the University.

- Where the Respondent is a student, the procedures for responding to reports of Prohibited Conduct are detailed in Appendix E: Sexual Violence and Sexual Harassment Student Adjudication Framework of the Policies Applying to Campus Activities, Organizations, and Students, and local implementing procedures.
- Where the Respondent is a faculty member, the procedures for responding to reports of Prohibited Conduct are detailed in the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty, and local implementing procedures.
- Where the Respondent is a staff member or non-faculty academic employee, the procedures for responding to reports of Prohibited Conduct are detailed in the Sexual Violence and Sexual Harassment Investigation and Adjudication

Framework for Staff and Non-Faculty Academic Personnel, and local implementing procedures.

- If there is a question as to the predominant role of the Respondent, the Title IX Officer will determine which of the procedures applies based on the facts and circumstances (such as which role predominates in the context of the Prohibited Conduct). Further, where a Respondent is both a student and an employee, the Respondent may be subject to discipline applicable to both students and employees.
- Where the Respondent is a third party, the Title IX Officer will determine the appropriate manner of resolution consistent with the University's commitment to a prompt and equitable process consistent with applicable law, federal guidance, and this Policy. The University's ability to take appropriate responsive action will be determined by the nature of the relationship of the third party to the University and the University's level of control over the third party, if any.
- Where there is no identifiable, individual Respondent, such as where the Complainant alleges Prohibited Conduct by an organization or a Respondent whose identity is unknown, or conduct by multiple individuals that rises to the level of Prohibited Conduct only when considered in the aggregate, the Title IX Officer may respond in accordance with Section V.A.5.d.

## **1. Reporting**

Any person may make a report, including anonymously, of Prohibited Conduct to the Title IX Officer, or to any Responsible Employee, or to another appropriate office such as the Academic Personnel Office, Student Affairs, Office of the Provost, or ~~to the Human Resources Office.~~ The person or office that receives the report shall be sent will forward it to the Title IX Officer. If the person to whom a report normally would be made is the Respondent, reports may be made to another Responsible Employee or office.

## **2. Timelines for Making Reports**

While there is no time limit for reporting, reports of Prohibited Conduct should be brought forward as soon as possible; a All incidents should be reported even if significant time has elapsed but prompt reporting will better enable the University to respond, investigate, provide an appropriate remedy, and impose discipline if appropriate.

## **3. Initial Assessment of a Report / Immediate Health and Safety**

As soon as practicable after receiving a report, the Title IX Officer will make an initial assessment of the report, including a limited factual inquiry, if appropriate, to determine whether (i) the report, on its face, alleges an act of Prohibited Conduct as defined in Section II; and (ii) ~~such conduct has a sufficient nexus with the University for it to intervene. The Title IX Officer may consult with appropriate academic officers for faculty and other academic appointees' complaints, with Student Affairs Offices for student complaints, and with Human Resources, or~~

Employee and Labor Relations Offices for staff complaints the Prohibited Conduct is covered by this Policy, as described in Section III.B.

**a. Immediate Health and Safety**

The Title IX Officer may consult with Academic Personnel Offices for complaints involving faculty and other academic appointees, with Student Affairs Offices for complaints involving students, and with Human Resources or Employee and Labor Relations Offices for complaints involving staff.

The Title IX Officer, in coordination with the Case Management Team (see Section V.B.5.), shall make an immediate assessment concerning the health and safety of the individual Complainant and the campus community, implement temporary remedies determine and oversee interim measures immediately necessary (including no contact orders), and provide to the Complainant a written explanation of rights and reporting options (including the right to make reports to the police), and available campus and community resources. Also see Location Responsibilities in Section V.B.11 and Appendix III.

**b. Jurisdiction over Reports of Prohibited Conduct**

The University has jurisdiction over alleged violations of this Policy that occur on University property (such as offices and residence halls) or in connection with University activities, programs, or events. In addition, the University may exercise jurisdiction over conduct that occurs off-campus (i) but affects the learning or working environment; or (ii) that would violate other University Policies had it occurred on campus, (see Section 101.00 of the Policy on Student Conduct and Discipline).

**4. Required Notifications**

**a. Individuals making reports shall** Complainants will also be informed about:

- confidentiality of reports, including when reports cannot be kept confidential.

of the range of possible outcomes of the report, including Health interim, remedial, and Safety supportive measures, remedies, and disciplinary actions that may be taken against the Respondent, and provided information about the procedures leading to such outcomes.

**4. If the report results in Closure Following Initial Assessment**

Not all reports the Title IX Officer receives constitute reports of Prohibited Conduct that can be resolved through a Resolution Process described below. This includes reports for which the Title IX Officer determines that:

- the alleged conduct, even if true, does not constitute or does not rise to the level of Prohibited Conduct;
- the conduct is not covered by this Policy (see Section III.B);
- there is insufficient information to implement a Resolution Process (e.g., the identities of the individuals involved);

- a Complainant's request that no Formal Investigation occur can be honored (see Section VIV.A.45.b., after the conclusion of the investigation, the Complainant and Respondent will be simultaneously informed in writing of:); or
  - ~~the outcome of the investigation and its rationale;~~
  - ~~any available appeal rights and procedures; and~~
  - ~~how to obtain a copy of the Investigation Report, which may be redacted as necessary to protect privacy rights. (See APM-160 and other University policies governing privacy.)~~
- ~~b. If the matter results in a disciplinary proceeding, at the conclusion of that proceeding the Complainant and the Respondent will be simultaneously informed in writing of:~~
  - ~~the outcome of the disciplinary proceeding, including the final determination with respect to the alleged offense, any sanction that is imposed, and the rationale for the results;~~
  - ~~any available appeal rights and procedures; and~~
  - ~~any subsequent change to the results and when results will become final.~~

~~The Complainant will be sent a notice documenting any individual remedies offered to the Complainant, and other steps taken to eliminate the effects of the violation. The Respondent will be informed of no contact orders affecting them, but should not be notified of other individual remedies offered or provided to the Complainant.~~

- there is an insufficient nexus between the conduct and the University to implement a Resolution Process (e.g., the conduct did not occur in the context of a University program, activity, or service, and involved only third parties).

The Title IX Officer will close such matters in accordance with written guidelines issued by the Systemwide Title IX Office, but will still, when appropriate, take steps to stop the reported conduct, prevent its escalation or recurrence, and address its effects. Such steps may include, for example, offering resources and supportive measures to the Complainant and providing targeted preventive education (including to the individual alleged to have engaged in the behavior) and training programs. When the reported conduct does not constitute Prohibited Conduct (e.g., stalking or harassment of a non-sexual nature), the Title IX Officer will, if appropriate, refer the matter to another office for review and resolution.

When determining whether there is a sufficient nexus between the conduct and the University to implement a Resolution Process, the Title IX Officer will consider factors such as where and in what context the Prohibited Conduct allegedly occurred (i.e., whether there is a connection between the conduct and

University property or a University program, activity or service), whether the Complainant or Respondent were University community members when the Prohibited Conduct allegedly occurred, whether the Complainant or Respondent were University community members at the time of the report, and whether there is information indicating an ongoing threat to the University community.

## 5. Overview of Resolution Processes

Reports of Prohibited Conduct that are not closed following the Title IX Officer's initial assessment may be addressed through Alternative Resolution, Formal Investigation ~~or~~, a separate employee grievance or complaint process, or Other Inquiry, each of which is described below.

### a. Alternative Resolution

After a preliminary assessment of the alleged facts, ~~and the Title IX Officer may initiate an Alternative Resolution process. The Title IX Officer will, if useful, appropriate, initiate the process~~ in consultation with other offices depending on whether the Complainant and Respondent are faculty, other academic appointees, staff, student employees, or students, ~~the Title IX Officer may initiate an~~ Alternative Resolution process, ~~which may include, among other responses:~~

- mediation (except in cases of sexual violence);
- separating the parties;
- providing for safety;
- referring the parties to counseling;
- referral for disciplinary action;
- a settlement agreement;
- conducting targeted preventive educational and training programs; and
- conducting a follow-up review to ensure that the resolution has been implemented effectively.

Alternative Resolution may be especially useful when: ~~a report is made by a third party or anonymously; a Formal Investigation is not likely to lead to a resolution; both parties prefer an informal process; or a case involves less serious~~ via allegations. ~~The Complainant has the right to request a Formal Investigation at any time, but the Title IX Officer has final authority for determining discretion to determine whether the reported conduct is appropriate for Alternative Resolution, to initiate a Formal Investigation. Both determine the type of Alternative Resolution to pursue, and to stop the Complainant and Respondent may be accompanied by an advisor throughout the Alternative Resolution process at any time before its conclusion and move to a Formal Investigation.~~

### b. Formal Investigation

Participation in Alternative Resolution is voluntary and will occur only if both the Complainant and the Respondent agree to participate. If Alternative Resolution is inappropriate or unsuccessful, the Title IX Officer will inform both parties in writing that: the Title IX Officer has initiated the process, the process is voluntary and will terminate upon either party's request, termination may result in Formal Investigation (see Section V.A.4.b), both the Complainant and Respondent may be accompanied by an advisor throughout the process, and the Title IX Officer will notify both parties of the process's outcome at its conclusion.

The Title IX Officer will oversee the Alternative Resolution process and, if other campus officials are involved in the process, maintain an appropriate level of involvement. The Alternative Resolution process will be completed promptly, typically within 30 to 60 business days of the date the Title IX Officer sends the written notice of initiation of the process. However, the Title IX Officer may extend the process beyond the 60<sup>th</sup> day for good cause. The Complainant and Respondent will receive written notice of the reason for any extension and the projected new timeline. The actual time required will depend on the specific circumstances, including the complexity of the allegations and the nature of the alleged conduct. The Title IX Officer will consider, approve, and communicate extensions in accordance with written guidelines from the Systemwide Title IX Office.

Once the parties have agreed to the terms of an Alternative Resolution, the University will not pursue a Formal Investigation unless the Title IX Officer determines that the Respondent failed to satisfy the terms of the Alternative Resolution, or that the Alternative Resolution was unsuccessful in stopping the Prohibited Conduct or preventing its recurrence. The Title IX Officer will maintain records of all reports and conduct addressed through Alternative Resolution.

#### **b. Formal Investigation**

When a report is not closed following initial assessment and is not appropriate for Alternative Resolution or Other Inquiry, or when Alternative Resolution is not agreed to by the parties or is terminated before the parties agree on terms, the Title IX Officer will initiate a Formal Investigation—(“The Title IX Officer will, if appropriate, initiate the investigation”) in coordination with other offices, depending on whether the Complainant and Respondent are faculty, other academic appointees, staff, or students.—A Complainant's request for an investigation will be considered but is not determinative.

If the Complainant requests that no investigation Formal Investigation occur, the Title IX Officer shall will seriously consider the Complainant's request, but must determine whether the allegations nonetheless require an investigation to mitigate a potential risk to the campus community. If proceeding with an investigation without the participation of a Complainant, the Title IX Officer shall attempt to maintain the identity of decides to proceed with a Formal Investigation despite the Complainant's request, the Title IX Officer will provide the

Complainant with all notifications and information required by this Policy unless the Complainant confidential from the Respondent or inform the Complainant informs the Title IX Officer in writing that they do not wish to receive such confidentiality cannot be maintained. notifications and information. If determining the Title IX Officer decides not to proceed with an investigation a Formal Investigation, the Title IX Officer shall inform the Complainant that the ability to provide remedies may be limited, but the Title IX Officer shall nonetheless afford such remedies as are consistent with maintaining confidentiality privacy and the absence of an administrative finding.

When the Title IX Officer ~~determines to conduct~~initiates a Formal Investigation, the Complainant and Respondent will be provided with a written summary of the allegations, the procedures that will be followed, resources available to them, and a copy of the Policy.

- i. Timeframe. The investigation shall be completed promptly, typically within 60 to 90 business days of ~~its initiation, unless extended by the date~~ the Title IX Officer ~~for good cause followed by written notice to~~notifies the Complainant and Respondent in writing of the charges to be investigated. However, the Title IX Officer may extend the process beyond the 90<sup>th</sup> day for good cause. The Complainant and Respondent will receive written notice of the reason for the any extension and the projected new timeline. The actual time required will depend on the specific circumstances, including the complexity of the matter and the severity and extent of the alleged conduct. The Title IX Officer will consider, approve, and communicate extensions in accordance with written guidelines from the Systemwide Title IX Office. If the alleged conduct is also the subject of a criminal investigation, the Title IX Officer~~r~~ will coordinate its investigation with the police but must nonetheless act promptly without delaying its investigation until the conclusion of the criminal investigation.
- ii. Disclosure of Information. The investigation generally includes interviews with the Complainant, the Respondent, and witnesses, if available, and a review of documents as appropriate. Disclosure of facts to persons interviewed shall be limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation may be advised to maintain confidentiality when essential counseled about the importance of keeping information learned through the investigation private to protect both the individuals involved and the integrity of the investigation. Witnesses will be notified that the information they provide and their identities are typically disclosed to the Complainant and Respondent.
- iii. Right to an Advisor. The Complainant ~~or~~and Respondent may have an advisor present when personally interviewed and at any related meeting. Other support persons may be allowed under other policies. Other witnesses may have an advisor present at the discretion of the investigator Title IX Officer or as required by University policy or a collective bargaining agreement.

- iv. Academic Freedom/Merit. In cases where the investigation contemplates issues of academic merit or academic freedom, the ~~investigator~~Title IX Officer shall consult with the appropriate academic officer for relevant academic judgment.
- v. Initiation of Investigation by University. The Title IX Officer may choose to initiate and conduct a Formal Investigation despite the lack of a Complainant when there is, for example:
  - information indicating an ongoing threat to the University community;
  - a pattern of alleged sexually harassing conduct toward multiple people by the same Respondent that would, in the aggregate, create a hostile environment (as defined in this Policy) for a reasonable person; or
  - allegations of Prohibited Conduct covered by this Policy in the public realm (such as reports in the news or social media).
- vi. Administrative Closure. The Title IX Officer may administratively close a Formal Investigation before its completion if the Title IX Officer determines that, due to a significant change in circumstances, its ability to investigate is so substantially impaired that it is unable to gather sufficient evidence to reach a reasonably reliable conclusion about whether Prohibited Conduct occurred.

#### **c. Grievance/Complaint Procedures for Employees**

Instead of, or in addition to, reporting to the Title IX Officer or other Responsible Employee, a University employee who believes they have been subjected to Prohibited Conduct may file a grievance or complaint. That grievance or complaint must meet all of the requirements, including time limits for filing, under the applicable complaint resolution or grievance procedure listed in *Appendix I: University Complaint Resolution and Grievance Procedures*. Any such grievance or complaint will be forwarded to the Title IX Officer for processing under this Policy, and the grievance or complaint procedure will be held in abeyance pending resolution under this Policy, unless the applicable collective bargaining agreement provides otherwise. After completion of the process under this Policy, the grievance or complaint may be reactivated ~~but only as a means of appeal~~ in accordance with the applicable grievance or complaint procedure.

#### **d. Other Inquiry**

When a report is not closed following initial assessment and is not appropriate for Alternative Resolution or Formal Investigation because there is no individual identifiable Respondent over whom the Title IX Officer can assert jurisdiction, the Title IX Officer will conduct an inquiry to try to determine what occurred, and then take prompt steps reasonably calculated to stop any substantiated conduct, prevent its recurrence, and, as appropriate, remedy its effects. Such an inquiry may be appropriate when, for example, the Complainant alleges Prohibited Conduct by an organization, an individual whose identity is unknown,

or a third party with minimal relationship to the University, or alleges conduct by multiple individuals that rises to the level of Prohibited Conduct only when considered in the aggregate.

The extent of the inquiry and responsive steps will depend on the specific circumstances, including, for example, the nature and location of the alleged conduct, the University's relationship to the Complainant, and the University's relationship to and level of control over the organization or individual(s) alleged to have engaged in the conduct. However, the inquiry will provide the Complainant an opportunity to identify witnesses and present other evidence, be completed promptly (typically within 60 days, unless extended for good cause by the Title IX Officer), and result in notice to the Complainant of the outcome.

#### **e. Notifications and Documentation**

When engaging in a Resolution Process provided for in this Section V.A.5, the Title IX Officer will provide written notifications to the parties, and maintain records of resolution processes, in accordance with guidelines issued by the Systemwide Title IX Office. The guidelines will address, for example:

- information to be provided to parties about their rights and options in a Resolution Process;
- notifications to be provided to parties upon the initiation and conclusion of a Resolution Process;
- documentation of the parties' agreement to engage in an Alternative Resolution Process;
- documentation of any resolution reached through an Alternative Resolution process, including documentation to be obtained from other campus officials involved in the resolution, if any; and
- the types of documentation to be retained upon completion of a Resolution Process.

#### **6. The Investigation Report and Outcome**

In the event that a Formal Investigation is conducted, the investigator will prepare a written report that includes a statement of the allegations and issues, the positions of the Complainant and Respondent, a summary of the evidence, an explanation of why any proffered evidence was not investigated, and considered, credibility determinations when appropriate, findings of fact, and an analysis of whether a violation has occurred this Policy was violated. When ~~both parties are students~~ the Respondent is a student, the report will include a recommendation to the Student Conduct Officer regarding whether there are any policy violations. (See Appendix E: Sexual Violence and Sexual Harassment Student Adjudication Framework.) For all other matters the report will include an analysis and determination by the investigator of whether this Policy has been violated. The In determining whether this Policy was violated, the investigator will apply the preponderance of evidence standard.

At the conclusion of the investigation, the Complainant and Respondent will be simultaneously provided a copy of the Investigation Report, which may be redacted to protect privacy (see APM-160 and other University policies governing privacy), and informed in writing of the outcome of the investigation and its rationale, and of any available appeal rights and procedures.

## 7. Remedy

- a. If the ~~Report~~University finds Prohibited Conduct in violation of this Policy, the University shall take prompt and effective steps reasonably calculated to stop the violation, prevent its recurrence, and, as appropriate, remedy its effects. For ~~a list~~examples of available ~~remedies~~remedial measures, see Appendix III.
- b. To the extent that the remedy has not already been provided, the Title IX Officer, in consultation with appropriate administrators, will oversee the implementation of ~~this~~se remedy.

## 8. Discipline

- a. The Title IX Officer shall forward the Investigation Report (with attachments ~~and any necessary redactions~~) to the appropriate administrator responsible for discipline. ~~The specific procedures for imposing discipline depend upon the nature of the Respondent's relationship to the University (student, faculty, other academic appointee, staff, or third party). If there is a question about the Respondent's relationship to the University, the Title IX Officer should indicate which role predominated when the Respondent engaged in the Prohibited Conduct. When a Respondent is both a student and an employee (such as a Teaching Assistant or Graduate Student Researcher), the Respondent may be subject to both the sanctions applicable to students and to employees.~~
- b. Any member of the University community who is found to have engaged in Prohibited Conduct (~~Section II~~) may be subject to disciplinary action, up to and including dismissal in accordance with the applicable University disciplinary procedure (Appendix II: University Disciplinary Procedures) or other policy.
- c. If the matter results in a disciplinary proceeding, at the conclusion of that proceeding the Complainant and the Respondent will be contemporaneously informed in writing of:
  - the outcome of the disciplinary proceeding, including the final determination with respect to the alleged offense, any discipline that is imposed, and the rationale for the results;
  - any available appeal rights and procedures; and
  - any subsequent change to the results and when results will become final.

The University will seek to finalize decisions regarding discipline in a reasonably prompt manner in accordance with applicable procedures.

depending on the severity and extent of the Prohibited Conduct and the complexity of the matter.

## B. Location Responsibilities

Each location must do the following:

1. Designate and provide adequate resources and independence to a Title IX Officer. The responsibilities of the Title IX Officer include, but may not be limited to, the following duties:
  - a. Coordinate compliance with Title IX, including investigations, reports and remedies.
  - ~~b.~~ Coordinate with other responsible units to ensure that interim, remedial, and supportive measures determined necessary by the Title IX Officer are provided.
  - ~~b.c.~~ Coordinate with other responsible units to ensure that local sexual violence and sexual harassment prevention education and training programs are offered and provided, as required by the Policy.
  - ~~c.d.~~ Provide educational materials to promote compliance with the Policy and familiarity with local reporting procedures.
  - ~~d.e.~~ Provide training for University employees who are responsible for reporting or responding to reports of Prohibited Conduct. Provide and track training for investigators and other key members of the Title IX Officer's staff in accordance with guidelines issued by the Systemwide Title IX Office.
  - ~~e.f.~~ Provide prompt and equitable responses to reports of Prohibited Conduct according to the Policy.
  - ~~f.g.~~ Maintain records of reports of Prohibited Conduct at the location, as well as any actions taken in response to reports, including records of investigations, resolutions, and disciplinary action, in accordance with University records management policies.
  - ~~g.h.~~ Identify and address any patterns or systemic problems that arise during the review of Prohibited Conduct reports.
  - ~~h.i.~~ Post on the sexual violence website the names and contact information of the Title IX Officer and of additional designated, trained, sexual harassment or sexual violence advisors.
2. Designate persons who can offer confidential consultations, without reporting the incident to the Title IX Officer, to any member of the University community seeking information, or advice about making a report of Prohibited Conduct. Each location will post information about how and where to contact confidential resources on its web site.

Individuals who consult with such confidential resources will be advised that their discussions in these settings are not considered actual reports of Prohibited Conduct and that without additional action by the individual, these discussions will not result in any formal action by the University to resolve their concerns.

3. Establish an independent, confidential Advocacy Office for addressing sexual assault, dating violence, domestic violence, and stalking called *CARE: Advocacy Office for Sexual and Gender-Based Violence and Misconduct*.
4. Provide a “Respondent Services Coordinator” that facilitates fair and equitable services for the Respondent.
5. Establish a response team model consisting of two teams:
  - a. A Case Management Team (CMT) which maintains consistent coordination of reported sexual violence cases, ensures all cases are addressed promptly and equitably, and ensures the response is trauma-informed; and
  - b. A Coordinated Community Review Team (CCRT) responsible for a campus collaborative approach to preventing and addressing sexual violence. The CCRT serves in an advisory capacity to campus leadership and community members about best practices in policies, education, prevention and response to sexual violence.

**Note:** The requirements of #3, 4, and 5 above are for locations with students only. However, ANR, UCOP, and LBNL should coordinate delivery of these services with associated campuses or affiliated organizations.

6. Provide mandatory annual training and education, about Prohibited Conduct and how such conduct can be reported, to all students, faculty, other academic appointees, and staff in accordance with applicable State and federal law, and University policies.
7. Offer primary prevention programs and awareness campaigns to the University community to promote ongoing awareness of sexual violence, including preventing dating violence, domestic violence, sexual assault, and stalking. These campaigns will include, but are not limited to, education about the definition of consent, consensual relationships, options for bystander intervention, trauma-informed approaches, and risk reduction awareness information. These programs are to promote behaviors that foster healthy and respectful relationships while also encouraging a safe environment for bystanders to intervene in a potential case of dating violence, domestic violence, sexual assault, or stalking.
8. Follow University established and approved processes for investigation, adjudication, and sanctioning discipline.
9. Provide comprehensive, regular training with a trauma-informed perspective for individuals responsible for responding to reports of Prohibited Conduct, including Advocacy and Respondent services, Alternative Resolution and Formal Investigation processes, and the hearing, remedy, discipline and appeal processes.

10. Publicize a location-specific process for reporting incidents of Prohibited Conduct.
11. Provide written explanation of rights and available options as outlined in this Policy including:
  - a. How and to whom to report alleged violations.
  - b. Options for reporting to and/or notifying law enforcement and campus authorities; the right to be assisted by campus authorities in notifying law enforcement authorities, if the Complainant so chooses; and the right to decline to notify such authorities.
  - c. The rights of Complainants regarding orders of protection, no contact orders, restraining orders, or similar orders issued by criminal or civil courts, as well as the University's responsibilities to comply with such orders.
  - d. The importance of preserving evidence that may assist in proving that a criminal offense occurred or in obtaining a protection order.
  - e. Counseling, health assistance, mental health assistance, victim advocacy, legal assistance, visa and immigration assistance, and other services available within both the University and the community.
  - f. Options for, and available assistance to change academic, living, transportation, and working situations, if the Complainant requests and if such options are reasonably available—regardless of whether the Complainant chooses to report the crime to campus police or local law enforcement.
  - g. Applicable procedures for institutional disciplinary action.
12. Distribute and post this Policy. Each location is required to distribute this Policy to students, faculty, other academic appointees and staff, by such means as websites, student information boards, student handbook, faculty handbook and staff websites and information boards and during training and student orientation.

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## VI. RELATED INFORMATION

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- A. University of California Standards of Ethical Conduct
- B. University of California Statement of Ethical ValuesUniversity of California Statement of Ethical Values

### Academic Personnel Manual

- A. Academic Personnel Manual (APM) Section 015, The Faculty Code of Conduct
- ~~B. Academic Personnel Manual (APM) Section 016, University Policy on Faculty Conduct and the Administration of Discipline~~
- ~~C. Academic Personnel Manual (APM) Section 016, University Policy on Faculty Conduct and the Administration of Discipline~~
- ~~C.D. Academic Personnel Manual (APM) Section 035, Affirmative Action and Nondiscrimination in Employment~~

- ~~D.E.~~ Academic Personnel Manual (APM) Section 140, Non-Senate Academic Appointees/Grievances
- E. Academic Personnel Manual (APM) Section 150, Non-Senate Academic Appointees/Corrective Action and Dismissal
- F. Academic Personnel Manual (APM) Section 160, Academic Personnel Records/Maintenance of, Access to, and Opportunity to Request Amendment of

## **Presidential Policies and Guidelines**

- ~~A. Nondiscrimination Policy Statement for University of California Publications Regarding Student-Related Matters~~
- ~~B. Personnel Policies for Staff Members 12 (Nondiscrimination in Employment)~~
- ~~C. Business and Finance Bulletin RMP-2: Records Retention and Disposition: Principles, Processes, and Guidelines~~
- ~~D. Policy on Student Conduct and Discipline~~
- ~~E. Student-Related Policy Applying to Nondiscrimination on the Basis of Sex~~
- ~~F. University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment~~
- ~~G. UC Business and Finance Bulletin RMP-8, Legal Requirements on Privacy of and Access to Information~~
- ~~H. University of California Policies Applying to Campus Activities, Organizations, and Students~~
- ~~I. University of California Non-Discrimination Policy~~
- ~~A. University of California Corrective Action PPSM 62~~
- ~~B. University of California Investigatory Leave PPSM 63~~
- ~~C. University of California Termination and Job Abandonment PPSM 64~~
- ~~D. University of California Termination Appointment PPSM II-64~~
- ~~E. University of California Complaint Resolution (Senior Managers) PPSM II-70~~
- ~~F. University of California Complaint Resolution (Staff Personnel) PPSM 70~~
- ~~G. Personnel Policies for Staff Members 12 (Nondiscrimination in Employment)~~
- ~~H. University of California Discrimination, Harassment, and Affirmative Action in the Workplace~~
- ~~I. Policy on Student Conduct and Discipline~~
- ~~J. University of California Policies Applying to Campus Activities, Organizations, and Students~~
- ~~K. Student-Related Policy Applying to Nondiscrimination on the Basis of Sex~~
- ~~L. Nondiscrimination Policy Statement for University of California Publications Regarding Student-Related Matters~~

M. Business and Finance Bulletin RMP-2: Records Retention and Disposition: Principles, Processes, and Guidelines

N. University of California Reporting Child Abuse and Neglect

O. University of California Clery Act Policy – Campus Safety and Security Reporting

## Federal and State Regulations

A. Government Code 12950.1

A. Fair Employment and Housing Act, Gov't Code section 12952

B. Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e

C. Title IX of the Education Amendments Act of 1972, 20 U.S.C. section 1681

B.D. Violence Against Women Reauthorization Act (VAWA) of 2013

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## VII. FREQUENTLY ASKED QUESTIONS

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### 1. Who can be considered an advisor as described in this Policy?

An advisor ~~includes~~may be any individual except a potential witness who provides the Complainant or Respondent with support, guidance, or advice (including attorneys). The institution cannot limit the choice of an advisor, but may restrict the extent to which the advisor can participate in the proceedings as long as the restrictions apply equally to Complainants and Respondents.

### 2. What is a “result” or “outcome” of a disciplinary proceeding?

A result or outcome includes a written description of any initial, temporary, and final decision made by any authorized person, which aims to resolve a disciplinary matter. The result must disclose any ~~sanctions~~discipline imposed and the rationale for the result and the ~~sanctions~~discipline.

### 3. How is “nudity” defined for the purposes of this Policy?

“Nudity” means the absence of an opaque covering which covers the genitals, pubic hair, buttocks, perineum, anus or anal region of any person or any portion of the breasts at or below the areola ~~thereof of any female person.~~

### 4. Why might ~~Sexual Contact~~some conduct prohibited by this Policy constitute sexual ~~violence~~harassment in some cases but sexual ~~harassment in violence~~or other prohibited behavior in others?

~~Sexual contact encompasses a broad spectrum of conduct, some of which constitutes sexual assault, but some of which is treated as sexual harassment. One example of sexual contact that could be considered as sexual assault is when a Respondent is accused of groping the Complainant's breast under the Complainant's clothing and without consent. By contrast, an allegation that the Respondent patted the Complainant's buttocks over the Complainant's clothing could be considered under the sexual harassment definition. While the example of groping might be resolved through a Formal Investigation, the patting example would generally be handled through Alternative Resolution. The Title IX Officer will review~~

~~all sexual contact allegations to determine the best procedure for resolving the report based on the totality of the circumstances.~~

This Policy prohibits a broad spectrum of conduct which may, depending on the circumstances, be appropriately charged as Sexual Harassment, Sexual Violence, or Other Prohibited Behavior, as those terms are defined in Section II. In deciding whether alleged conduct rises to the level of a Policy violation, and which Policy provision to charge, the Title IX Officer may consider both the specific behavior alleged and the surrounding circumstances, such as the severity of the conduct, where the conduct occurred (e.g., a confined space or a public one), duration of the conduct, any contemporaneous statements or other behavior by the Respondent (e.g., lewd or threatening language or gestures, gender-based nonsexual conduct), whether contact occurred over or under clothing, the relationship between the parties (e.g., whether there is a power imbalance), and other relevant factors.

For example, whether a Respondent's alleged touching of a Complainant's buttocks would be charged as either Sexual Harassment or Sexual Assault – Contact will depend on the specific nature of the touching, as well as the context in which it occurred. Similarly, a Respondent's alleged publication of sexually explicit photos of a Complainant that does not constitute an Invasion of Sexual Privacy as defined in this Policy might still, depending on the circumstances, be charged as Sexual Harassment.

**5. Does Sexual Assault ~~also~~ include “rape” and “sexual battery” as those terms are used in the criminal law context?**

Yes. The types of conduct prohibited by this Policy include “rape” and “sexual battery” as defined in the Penal Code. ~~This Policy also prohibits additional types of nonconsensual sexual contact.~~ California Penal Code. For additional assistance with any questions about whether a specific type of conduct violates this Policy, or the law, please contact your local CARE Advocate, UC Police, or Title IX Officer.

~~**6. If an incident of sexual harassment or sexual violence is reported to the Title IX Officer by a third party who was not the subject of the alleged conduct, must that party be notified of the outcome of an investigation or disciplinary proceeding?**~~

~~No. The disclosure of the outcome should be given to the Respondent and the individual who was the subject of the alleged conduct.~~

~~**7.6. Once the outcome of an investigation or disciplinary proceeding under this Policy is disclosed to the Complainant, can the Complainant be asked to keep this information confidential?**~~

The Complainant can be advised of the confidential and sensitive nature of personnel and student disciplinary matters that arise under this Policy, ~~and in appropriate circumstances, such as in connection with a settlement of a matter, may be asked not to further disclose it.~~ but should not be restricted from further disclosing the information.

**8.7. Does the University need to conduct a Title IX investigation if a criminal investigation is taking place?**

A criminal investigation is intended to determine whether an individual violated criminal law; ~~and, if at~~. At the conclusion of the investigation, the individual is tried and found guilty, criminal process the individual may be imprisoned or subject to criminal penalties. The University has a duty under Title IX to resolve complaints promptly and equitably and to provide a safe and nondiscriminatory environment for all students, free from sexual harassment ~~and~~ sexual violence, and other prohibited behavior. Because the purposes and the standards for pursuing and completing criminal investigations are different from those used for Title IX investigations, the termination of a criminal investigation without an arrest or conviction does not affect the location's Title IX obligations. Even if a criminal investigation is ongoing, the University must still conduct its own Title IX investigation. The University should notify Complainants of the right to file a criminal complaint and should not dissuade a Complainant from doing so either during or after the location's internal Title IX investigation. Title IX does not require a location to report alleged incidents of sexual violence to law enforcement, but the University has reporting obligations under federal, State, or local laws, such as the Clery Act and the California Child Abuse and Neglect Reporting Act (CANRA), and may report alleged incidents of sexual violence to law enforcement pursuant to memoranda of understandings between the University and the police.

**9.8. How should the University proceed when campus or local law enforcement agencies ("police") are conducting a criminal investigation while the University is conducting a parallel Title IX investigation?**

If the alleged conduct by the Respondent is also the subject of a criminal investigation, the Title IX Officer will coordinate its investigation with the police. The fact-finding portion of a Title IX investigation may be delayed temporarily while the police ~~are~~ conduct the evidence gathering evidence-stage of the criminal investigation. During this delay in the Title IX investigation, appropriate interim measures may be put in place to protect the Complainant. The length of time for evidence gathering by criminal investigators will vary depending on the specific circumstances of each case.

**10.9. Is the University required to investigate information regarding sexual violence incidents shared by survivors during public awareness events, such as "Take Back the Night"?**

Responsible employees are not required to report incidents that they become aware of while attending a public awareness event, such as "Take Back the Night" and statements made about incidents during such events will not require an investigation unless the survivor initiates a complaint.

**11. Why is the University mandating annual training and education in the areas of sexual violence and sexual harassment?**

~~One of the seven recommendations from the President's Task Force on Preventing and Responding to Sexual Violence and Sexual Assault was to develop a~~

~~comprehensive training and education plan for students, faculty, other academic appointees, and staff in order to encourage behavioral change to help reduce violence, build a culture of trust, and increase the safety of all populations on campus. In addition, there have been changes to this Policy, as well as local procedures, for responding to complaints of Prohibited Conduct that all members of our community need to be aware of. Based on the advice and experience of prevention education staff on each campus, the Task Force recommended training at regular intervals. The University intends to implement annual training and education for a five-year period, then evaluate its effectiveness and whether the training interval should be adjusted.~~

~~**12. I am covered by a collective bargaining agreement. Does this Policy apply to me?**~~

~~Yes. However, please note that consequences of non-compliance with this Policy, and relevant complaint resolution, investigation, grievance and disciplinary procedures, for employees who are covered by a Memorandum of Understanding with an exclusive bargaining agent are governed by the appropriate collective bargaining agreement.~~

**13.10. Are Responsible Employees required to report disclosures about Prohibited Conduct received in the course of conducting Institutional Review Board (“IRB”)–approved or certified exempt human subjects research?**

Responsible Employees are not required to report disclosures of Prohibited Conduct made by an individual when participating in human subjects research that has either been approved by an Institutional Review Board (IRB) or certified as exempt from IRB review under one or more of the categories in 45 CFR 46.104. When conducting research that is designed, or likely, to elicit information about sexual violence or sexual harassment, researchers are strongly encouraged to provide information about University and community resources to research participants.

Disclosures of incidents of alleged Prohibited Conduct made during an individual's participation as a subject in an IRB–approved or certified exempt human subjects research protocol will not be considered notice to the University for purposes of triggering its obligation to investigate. The reporting exemption that this section describes (for disclosures made by an individual when participating in IRB-approved or certified exempt human subjects research) does NOT apply to disclosures made to research personnel outside of the course of the research protocol (e.g., to faculty during office hours or while providing academic advising).

This reporting exemption does not affect mandatory reporting obligations under federal, state, or local laws, such as the Clery Act and the California Child Abuse and Neglect Reporting Act (CANRA), and other policies or laws that require reporting to campus or local law enforcement, or Child Protective Services.

**11. I am covered by a collective bargaining agreement. Does this Policy apply to me?**

Yes. However, please note that consequences of non-compliance with this Policy, and relevant complaint resolution, grievance and disciplinary procedures, for employees who are covered by a Memorandum of Understanding with an exclusive bargaining agent are governed by the appropriate collective bargaining agreement.

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## VIII. REVISION HISTORY

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**August 14, 2018:** -Addition of FAQ #~~13~~10 regarding the obligations of Responsible Employees when conducting Institutional Review Board—approved or certified exempt human subject research.

**June 5, 2018:** technical revision – updated contact information.

~~technical revision—updated contact information~~

**September 1, 2017:** Technical revisions:

- updated the Policy responsible office and contact information
- added links of the Staff and Faculty Adjudication Frameworks to Appendix II: University Disciplinary Procedures.

This Policy was also remediated to meet Web Accessibility Content Guidelines (WCAG) 2.0.

**November 7, 2016:**

Deleted the rescinded PPSMs #65, #67 and #71 from the Policy document and updated the FAQs and the links on Appendix I under Academic and Staff Personnel.

Future revisions to this Policy will be circulated under standard procedures for Presidential Policies; in the case of this Policy, the review will include circulation under the standard Academic Personnel Manual (APM) process, with final authority resting with the President.

**June 17, 2015:**

The Policy was updated on an Interim basis effective until December 31, 2015. The interim issuance brings the Policy into compliance with federal and state regulations, while the Policy undergoes full review and vetting. Once the review process is complete, the Policy will be reissued at the start of 2016.

**February 25, 2014:**

This Policy was reformatted into the standard University of California policy template effective.

As a result of the issuance of this Policy, the following documents are rescinded as of the effective date of this Policy and are no longer applicable:

- *University of California Policy on Sexual Harassment*, dated February 10, 2006
- *University of California Procedures for Responding to Reports of Sexual Harassment*, dated December 14, 2004

- *University of California Policy on Sexual Harassment and Complaint Resolution Procedures*, dated April 23, 1992
- *University of California Policy on Sexual Harassment and complaint Resolution Procedures*, dated March 10, 1986

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## IX. APPENDICES

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### Appendix I: Applicable Complaint Resolution and Grievance Policies

#### Academic Personnel:

Members of the Academic Senate	<u>Senate Bylaw 335</u>
Non-Senate Academic Appointees	<u>APM - 140</u>
Exclusively Represented Academic Appointees	<u>Bargaining Units &amp; Contracts</u>

#### Students:

Policies Applying to Campus Activities, Organizations and Students, Section 110.00

#### Staff Personnel:

<u>Complaint Resolution (Senior Managers)</u>	<u>PPSM II-70</u>
Complaint Resolution <u>(Staff Personnel)</u>	<u>PPSM 70</u>
Exclusively Represented Staff Personnel	<u>Bargaining Units &amp; Contracts</u>
Lawrence Berkeley National Laboratory Employees	<u>Applicable Laboratory policy</u>

#### All members of the University community:

The University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (Whistleblower Policy) governsprotects the reporting and investigation of violations of state or federal laws or regulations, including sexual harassment.

#### All University employees and applicants for employment:

The University's Whistleblower Protection Policy provides a complaint resolution process for employees and applicants for employment who have been subjected to retaliation as a result of having made a protected disclosure under the Whistleblower Policy or refused to obey an illegal order.

## Appendix II: University Disciplinary Procedures

The following are the University's disciplinary procedures:

- A. The Faculty Code of Conduct (APM - 015) (as approved by the Assembly of the Academic Senate and by The Regents) ~~e~~Establishes the ethical and professional standards which University faculty are expected to observe.

Because the forms of unacceptable behavior listed in The Faculty Code of Conduct also apply to sexual violence or sexual harassment, a violation of the University's Policy on Sexual Harassment and Sexual Violence may constitute a violation of the Faculty Code of Conduct. The University Policy on Faculty Conduct and the Administration of Discipline (APM - 016), as approved by the Assembly of the Academic Senate and by The Regents, outlines sanctions and disciplinary procedures for faculty.

The Sexual Violence and Sexual Harassment ~~Senate and Non-Senate~~ Faculty Adjudication Framework sets forth the University's procedures for resolving complaints of sexual violence and sexual harassment where the ~~r~~Respondent is a member of the University faculty.

- B. Provisions of the policy on Non-Senate Academic Appointees/Corrective Action and Dismissal (APM - 150) (non-exclusively represented academic appointees) and collective bargaining agreements (exclusively represented academic appointees) allow for corrective action, investigatory leave, or dismissal for conduct which violates University policy.

The Sexual Violence and Sexual Harassment Staff and Non-Faculty Academic Personnel Adjudication Framework sets forth the University's procedures for resolving complaints against non-Senate academic appointees subject to APM-150.

- C. Appendix E: Sexual Violence and Sexual Harassment Student Adjudication Framework of the Policies Applying to Campus Activities, Organizations, and Students sets forth the University's procedures for resolving complaints of sexual violence and sexual harassment where the parties are both students, including the discipline of students found in violation of University policy. See also, the policy on Student Conduct and Discipline.

- D. Provisions of the Personnel Policies for Staff Members, and the Lawrence Berkeley National Laboratory personnel policies (applicable to non-exclusively represented staff employees), and collective bargaining agreements (applicable to exclusively represented staff employees) prohibit conduct that violates ~~University~~ policy for sexual violence or sexual harassment and provide for disciplinary action for violating University policy.

- PPSM-62: Corrective Action
- PPSM-63: Investigatory Leave
- PPSM-64: Termination and Job Abandonment
- PPSM II-64: Termination of Appointment

The Sexual Violence and Sexual Harassment Staff and Non-Faculty Academic Personnel Adjudication Framework sets forth the University's procedures for resolving complaints where the Respondent is University personnel other than faculty.

### **Appendix III: Interim, Remedial, and Supportive Measures and Remedies**

Remedies include:

When determining interim, remedial, and supportive measures, the Title IX Officer will assess the extent to which the University is able to maintain the parties' privacy while also ensuring the measures are effective. The Title IX Officer will explain to the parties any limitations on its ability to maintain their privacy.

In determining interim measures specifically, the Title IX Officer will tailor the measures to the circumstances of each case, reevaluate the effectiveness and need for the measures as circumstances change, take care to minimize burdens on the parties, and avoid depriving either party of educational and employment opportunities to the extent practicable.

In addition to interim, remedial and supportive measures, the Title IX Officer may take other actions to stop reported conduct, prevent its escalation or recurrence, and address its effects.

Examples of services, accommodations, and other available measures include:

#### **i. *Campus Services Generally:***

Academic, employment, and other support including tutoring, counseling, disability services, health and mental health services, family planning services, survivor advocacy, housing assistance, legal assistance, referral to employee assistance program, information about the right to report a crime to campus or local law enforcement, and written materials prepared by the Title IX Officer pursuant to V.B of the Policy.

#### **ii. *Measures Available to Employees, Including Academic, Staff and Student Employees:***

Change to a different workstation, schedule, work location, unit, department, or position for which the employee is qualified provided that, in the case of a Complainant the change is voluntary and equitable.

#### **iii. *Training and Education of the Respondent:***

The Respondent may be required to undergo training, including sexual harassment prevention training, anger management training, and periodic refresher classes.

#### **ii-iv. *Campus Services Modified ~~For~~ Students:***

- If a campus service is not generally available or a fee is imposed, access may be arranged or fees waived when appropriate.
- Comprehensive, holistic survivor services including additional medical, counseling and academic support services.

- Any other accommodations or interim measures that are reasonably available once a Complainant has requested them.

~~iii.v.~~ Additional Educational Remedies/Measures for Students:

- Change advisors, composition of dissertation committee, class sections and similar schedule adjustments.
- Arrange extra time to complete academic requirements of a class or program, to re-take a class or withdraw from a class and to do without an academic or financial penalty if the University delayed such accommodations after it reasonably should have known of the violation.
- Review any disciplinary actions taken against the Complainant subsequent to the alleged violation to determine whether there is a causal connection between the violation and the Complainant's misconduct.

~~iv.~~ Remedies Available to Employees, Including Student Employees:

~~Change to a different workstation, schedule, work location, unit, department, or position for which the employee is qualified provided that, in the case of a Complainant the change is voluntary and equitable.~~

~~v.~~ Training and Education of the Respondent:

~~The Respondent may be required to undergo training, including sexual harassment prevention training, anger management training, and periodic refresher classes.~~

~~vi.~~ No Contact Remedies/Options:

- Complainant and Respondent Options:
  - a. The Title IX Officer will ensure the Complainant and Respondent have been notified of options to avoid contact and assist the Complainant and Respondent to change ~~academic and extracurricular activities or, as appropriate,~~ living, transportation, dining, and working situations ~~as appropriate, or academic and extracurricular activities;~~
  - b. Assist the Complainant and Respondent to apply for no contact orders; and,
  - c. When appropriate, arrange for effective escort services to ensure that the Complainant and Respondent can move safely ~~between to work,~~ classes, and activities.
- ~~Respondent's Restrictions (some of which may be recommended by Title IX Officer, all of which may be implemented by agreement, and the more serious of which may be imposed only pursuant to Discipline):~~
- Respondent's Restrictions:
  - a. Allow the Complainant to take the regular sections of courses while arranging for the Respondent to take the same courses online or through independent study;

- b. Moving the Respondent to a different residence hall or work space;
  - c. Forbidding the Respondent to participate in specific athletic or extracurricular events or social clubs (including fraternities or sororities);
  - d. Requiring that the Respondent observe no contact orders from the Complainant for a period of time (up to the Complainant's graduation or other departure from the campus) via work scheduling or class changes;
  - e. Prohibiting the Respondent from attending classes for a period of time, ~~or~~ transferring the Respondent to another campus, or putting the Respondent on investigatory leave; and
  - f. ~~If a Respondent presents an ongoing safety risk, excluding~~ Excluding the Respondent from the campus or workplace.
- vii. Other ~~Remedies~~ Measures devised by the Title IX Officer or Other Administrator.



# Sexual Violence and Sexual Harassment

Para la traducción en Español, oprima [aquí](#)

中文版本, 請按這裡

Sekswal na Kaharasan at Sekswal na Panliligalig

<b>Responsible Officer:</b>	Systemwide Title IX Coordinator
<b>Responsible Office:</b>	Systemwide Title IX Office
<b>Issuance Date:</b>	1/1/2016
<b>Effective Date:</b>	1/1/2016
<b>Last Review Date:</b>	
<b>Scope:</b>	This Policy applies to all University employees as well as undergraduate, graduate, and professional students (hereafter referred to as “students”), and third parties. The Policy applies at all University campuses, the Lawrence Berkeley National Laboratory, Medical Centers, the Office of the President, Agriculture and Natural Resources, and to all University programs and activities.

***For assistance with incidents of sexual violence, sexual harassment, relationship violence, and stalking, please contact your Title IX Officer. If you desire confidential assistance contact your local CARE Advocate. Local resource information can be found at [Sexual Violence Prevention and Response](http://sexualviolence.universityofcalifornia.edu/get-help/index.html) (<http://sexualviolence.universityofcalifornia.edu/get-help/index.html>)***

**FOR QUESTIONS ABOUT THIS POLICY, PLEASE CONTACT:**

<b>Contact:</b>	Suzanne Taylor
<b>Email:</b>	<a href="mailto:suzanne.taylor@ucop.edu">suzanne.taylor@ucop.edu</a>
<b>Phone:</b>	(510) 987-9161

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## **I. POLICY SUMMARY**

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The University of California (“University”) 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, activities and services can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Every member of the community should be aware that the University prohibits sexual violence, sexual harassment, retaliation, and other prohibited behavior (together, “Prohibited Conduct”), as those terms are defined in Section II of this Policy on Sexual Violence and Sexual Harassment (“Policy”). The University will respond promptly and effectively to reports of Prohibited Conduct and will take appropriate action to stop, prevent, correct, and when necessary, discipline behavior that violates this Policy.

This Policy addresses the University’s responsibilities and procedures related to Prohibited Conduct in order to ensure an equitable and inclusive education and employment environment. The Policy defines conduct prohibited by the University and explains the general administrative procedures the University uses to resolve reports of Prohibited Conduct.

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## **II. DEFINITIONS**

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### **A. Consent**

Consent is *affirmative, conscious, voluntary, and revocable*. Consent to sexual activity requires of each person an affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person to ensure they have the affirmative consent of the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence do not, alone, constitute consent. Affirmative consent must be ongoing and can be revoked at any time during sexual activity. The existence of a dating relationship or past sexual relations between the persons involved should never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of consent to prior conduct).

The Respondent’s belief that the Complainant consented shall not provide a valid defense unless the belief was actual and reasonable, considering all of the facts and circumstances the Respondent knew, or reasonably should have known, at the time. In particular, the Respondent’s belief shall not provide a valid defense where:

1. The Respondent’s belief arose from the Respondent’s own intoxication or recklessness;
2. The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented; or
3. The Respondent knew or a reasonable person should have known that the Complainant was unable to consent because the Complainant was incapacitated, in that the Complainant was:

- a. asleep or unconscious;
- b. unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or
- c. unable to communicate due to a mental or physical condition.

Note: Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.

## B. Prohibited Conduct

### 1. Sexual Violence:

- a. **Sexual Assault - Penetration:** Without the consent of the Complainant, penetration, no matter how slight, of the vagina, anus, or mouth by a penis or other genitalia, or the vagina or anus by any body part or object.
- b. **Sexual Assault - Contact:** Without the consent of the Complainant, intentionally:
  - touching Complainant's intimate body part (genitals, anus, groin, breast, or buttocks);
  - making the Complainant touch another or themselves on any intimate body part;
  - touching the Complainant with one's intimate body part;
  - placing one's mouth on Complainant's intimate body part; or
  - making contact between one's intimate body part and Complainant's mouth,

whether the intimate body part is clothed or unclothed.

**Note:** This definition encompasses a broad spectrum of conduct, not all of which constitutes sexual violence. Accordingly, when appropriate, the Title IX Officer will determine whether an allegation should be charged as sexual violence or sexual harassment. (See FAQ #4 for more information.) Conduct that meets the definition of both Sexual Assault—Contact and Sexual Assault—Penetration will be charged as Sexual Assault—Penetration.

**Note:** Sexual Assault—Penetration and Sexual Assault—Contact are aggravated when they include any of the following:

- Overcoming the will of Complainant by:
  - *force* (the use of physical force or inducing reasonable fear of immediate or future bodily injury);
  - *violence* (the use of physical force to cause harm or injury);
  - *menace* (a threat, statement, or act showing intent to injure); or

- *duress* (a direct or implied threat of force, violence, danger, hardship, or retribution that is enough to cause a reasonable person of ordinary sensitivity, taking into account all circumstances including age and relationship (including a power imbalance), to do or submit to something that they would not otherwise do);
- deliberately causing the Complainant to be incapacitated (for example, through drugs or alcohol);
- Deliberately taking advantage of the Complainant's incapacitation (including incapacitation that results from voluntary use of drugs or alcohol); or
- Recording, photographing, transmitting, or distributing intimate or sexual images without the prior knowledge and consent of the Complainant.

**c. Relationship Violence:**

i. Relationship Violence is:

- physical violence toward the Complainant or another person with whom the Complainant has a close relationship (e.g., a current or former spouse or intimate partner, a child or other relative), or
- intentional or reckless physical or non-physical conduct that would put a reasonable person in the Complainant's position in fear of physical violence toward themselves or another person with whom the Complainant has a close relationship (e.g., a current or former spouse or intimate partner, a child or other relative),

that is by a person who is or has been in a spousal, romantic, or intimate relationship with the Complainant, or a person with whom the Complainant shares a child in common, and that is part of a pattern of abusive behavior by the person toward the Complainant.

- ii. Physical violence is physical conduct that intentionally or recklessly threatens the health and safety of the recipient of the behavior, including assault.
- iii. Patterns of abusive behavior may consist of or include non-physical tactics (e.g., threats, isolation, property destruction, abuse of pets, economic control, displaying weapons, degradation, or exploitation of a power imbalance).
- iv. The nature of the relationship between the Complainant and Respondent is determined by the length and type of relationship, and the frequency of interaction between them. Relationship violence includes both "dating violence" and "domestic violence."
- v. Conduct by a party in defense of self or another does not constitute Relationship Violence under this Policy. If either party asserts that they acted in defense of self or another, the Title IX Officer will use all

available, relevant evidence to evaluate the assertion, including reasonableness of the defensive actions and which party is the predominant aggressor.

- d. **Stalking:** Repeated conduct directed at a Complainant (e.g., following, monitoring, observing, surveilling, threatening, communicating or interfering with property), of a sexual or romantic nature or motivation, that would cause a reasonable person to fear for their safety, or the safety of others, or to suffer substantial emotional distress. Stalking of a non-sexual nature is addressed by other University policies including but not limited to the Policy on Student Conduct and Discipline Section 102.10.

## 2. Sexual Harassment:

- a. Sexual Harassment is unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal, or physical conduct of a sexual nature when:
  - i. *Quid Pro Quo*: a person's submission to such conduct is implicitly or explicitly made the basis for employment decisions, academic evaluation, grades or advancement, or other decisions affecting participation in a University program, activity, or service; or
  - ii. *Hostile Environment*: such conduct is sufficiently severe, persistent or pervasive that it unreasonably denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment or other programs, activities or services of the University, and creates an environment that a reasonable person would find to be intimidating or offensive.
- b. Consideration is given to the totality of the circumstances in which the conduct occurred.
- c. This Policy shall be implemented in a manner that recognizes the importance of the rights to freedom of speech and expression and shall not be interpreted to prohibit expressive conduct that is protected by the free speech and academic freedom principles discussed in Section III.F.

## 3. Other Prohibited Behavior:

- a. Invasions of Sexual Privacy.
  - i. Without a person's consent, watching or enabling others to watch that person's nudity or sexual acts in a place where that person has a reasonable expectation of privacy;
  - ii. Without a person's consent, making or attempting to make photographs (including videos) or audio recordings, or posting, transmitting or distributing such recorded material, depicting that person's nudity or sexual acts in a place where that person has a reasonable expectation of privacy; or

- iii. Using depictions of nudity or sexual activity to extort something of value from a person.
- b. Sexual intercourse with a person under the age of 18.
- c. Exposing one's genitals in a public place for the purpose of sexual gratification.
- d. Failing to comply with the terms of a no-contact order, a suspension of any length, or any order of exclusion issued under this Policy.
- e. Retaliation. Retaliation is an adverse action taken against a person based on their report or other disclosure of Prohibited Conduct to a Responsible Employee or their participation in the investigation, reporting, remedial, or disciplinary processes provided for in this Policy. An adverse action is conduct that would discourage a reasonable person from reporting Prohibited Conduct or participating in a process provided for in this Policy, such as threats, intimidation, harassment and coercion. Retaliation does not include good faith actions lawfully pursued in response to a report of Prohibited Conduct.

**C. Other Definitions:**

1. **Complainant:** A person alleged, in a report to the Title IX Officer, to have experienced Prohibited Conduct.
2. **Confidential Resources:** The following employees who receive reports in their confidential capacity:
  - a. CARE Advocates,
  - b. Ombuds,
  - c. Licensed counselors in student counseling centers and in employee assistance programs,
  - d. Any persons with a professional license requiring confidentiality (including health center employees but excluding campus legal counsel), or someone who is supervised by such a person.

Designation as a "Confidential Resource" for purposes of this Policy only exempts a person from reporting to the Title IX Officer but not from other mandatory reporting obligations under UC CANRA (Child Abuse and Neglect Reporting Act) Policy, the Clery Act as a Campus Security Authority (CSA), and other policies or laws that require reporting to campus or local law enforcement, or Child Protective Services.

**3. Interim, Remedial and Supportive Measures.**

- a. **Interim Measures:** Services, accommodations, or other measures put in place temporarily after the Title IX Officer receives a report of Prohibited Conduct to assist or protect the Complainant, the Respondent, or the University community. Interim measures may remain in place until the final outcome of an Alternative Resolution, Formal Investigation, Other Inquiry, or

a subsequent disciplinary or appeal process; change or terminate depending on the parties' evolving needs, as assessed by the Title IX Officer; or become permanent as part of the resolution of a report.

- b. **Remedial Measures:** Services, accommodations, or other measures put in place as a result of a Resolution Process provided for in Section V.A.5 (i.e., Alternative Resolution, Formal Investigation, or Other Inquiry).
- c. **Supportive Measures:** Services, accommodations or other measures put in place to support an individual who reports experiencing Prohibited Conduct but whose report does not result in a Resolution Process provided for in Section V.A.5 (i.e., Alternative Resolution, Formal Investigation, or Other Inquiry).

Examples of services, accommodations, and other measures that may constitute Interim, Remedial, and Supportive Measures are included in Appendix III.

- 4. **Location:** "Location" is any University campus, the Lawrence Berkeley National Laboratory, Medical Centers, the Office of the President, and Agriculture and Natural Resources.
- 5. **Preponderance of Evidence:** A standard of proof that requires that a fact be found when its occurrence, based on evidence, is more likely than not.
- 6. **Respondent:** A person alleged, in a report to the Title IX Officer, to have engaged in Prohibited Conduct.
- 7. **Responsible Employee:** Any University employee who is not a Confidential Resource and who receives, in the course of employment, information that a student (undergraduate, graduate, or professional) may have experienced Prohibited Conduct shall promptly notify the Title IX Officer or designee. This includes resident assistants, graduate teaching assistants, and all other student employees, when disclosures are made to any of them in their capacities as employees.

In addition, the following who, in the course of employment, receive information that any other person affiliated with the University may have experienced Prohibited Conduct shall promptly notify the Title IX Officer or designee:

- Campus Police
- Human Resources Administrators, Academic Personnel Administrators, and Title IX Professionals
- Managers and Supervisors including Deans, Department Chairs, and Directors of Organized Research Units (ORU)
- Faculty members

The above notwithstanding, Responsible Employees are not required to report to the Title IX Officer possible Prohibited Conduct they become aware of while attending a public awareness event, such as "Take Back the Night" (see FAQ #9) or disclosed by an individual when participating in human subjects research that

has either been approved by an Institutional Review Board (IRB) or certified as exempt from IRB review under one or more of the categories in 45 CFR 46.101(b) (see FAQ #10).

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### **III. POLICY TEXT**

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#### **A. General**

The University is committed to creating and maintaining a community free of Prohibited Conduct (sexual harassment, sexual violence, retaliation, and other prohibited behavior, as those terms are by this Policy). Prohibited Conduct violates this Policy and may violate law. Any person may report conduct that may constitute Prohibited Conduct. The University will respond promptly and equitably to such reports, and will take appropriate action to stop, prevent, and remedy the Prohibited Conduct, and when necessary, to discipline the Respondent.

Discrimination based on sex, gender, gender identity, gender expression, sex- or gender-stereotyping, or sexual orientation that does not constitute Prohibited Conduct nonetheless violates law and other University policies, and the University will respond to notice of such conduct. Such discrimination may contribute to the creation of a hostile work or academic environment based on sex. Accordingly, when determining whether a Complainant was subjected to a hostile environment as defined in this Policy, the Title IX Officer will consider such discrimination in combination with incidents of sexual harassment.

#### **B. Application of this Policy**

This Policy covers acts of Prohibited Conduct committed by University students, employees, and third parties such as contractors, vendors, visitors, guests, patients and volunteers (“third parties”), and acts of Prohibited Conduct committed against students, employees and third parties, when:

1. the conduct occurs on University property;
2. the conduct occurs in connection with University employment or in the context of a University employment or education program, activity or service, including, for example, University-sponsored study abroad, research, on-line courses, health services, or internship programs; or
3. the conduct occurs off University property and outside the context of a University employment or education program, activity or service, but has continuing adverse effects on or creates a hostile environment for students, employees or third parties while on University property or in any University program, activity or service.

Consistent with Section 101.00 of the Policy on Student Conduct and Discipline, if and as specified in implementing campus regulations, this Policy may cover additional Prohibited Conduct by students that occurs off campus.

Not every report of Prohibited Conduct covered by this Policy will result in a Resolution Process described in Section V.A.5. Rather, some reports will be closed following initial assessment by the Title IX Officer, as provided for in Section V.A.4.

### **C. Conduct that Violates this Policy**

This Policy prohibits sexual violence, sexual harassment, retaliation and other prohibited behavior as defined in Section II. Incidents that violate this Policy may occur between any members of the University community, including faculty and other academic appointees, staff, student employees, students, coaches, doctors, residents and interns, as well as third parties; individuals in hierarchical relationships and peers; individuals of any gender, gender identity, or sexual orientation; and strangers and non-strangers. Incidents of Prohibited Conduct may occur through electronic media, such as the internet, social networks, cell phones, texts, or other similar devices or forms of contact.

### **D. Consensual Relationships**

While romantic and sexual relationships between members of the University community may begin as consensual, instances of Prohibited Conduct may occur within such relationships. Accordingly, a report of Prohibited Conduct that occurs within the context of a consensual relationship will be treated as any other report.

Because consensual romantic and sexual relationships between members of the University community may give rise to conflicts of interest, such relationships between a student and faculty member or other employees or between employees are also subject to other University policies, such as The Faculty Code of Conduct, APM-015.II.A.6 & 7 and local policies.

### **E. Protection of Complainants, Respondents, and Witnesses**

- 1. Amnesty:** To encourage reporting, neither a Complainant nor witness in an investigation of Prohibited Conduct will be subject to discipline for a violation of the relevant University conduct policy at or near the time of the incident unless the University determines the violation was egregious, including, for example, violations that placed the health or safety of another at risk, or involved plagiarism, cheating, or academic dishonesty.

Because alcohol, drugs, and other intoxicants are often involved, Complainants may be afraid to report Prohibited Conduct when they have also engaged in an activity that violated University policy or State law, such as a person under age 21 drinking alcohol. UC encourages the reporting of Prohibited Conduct and will not hold Complainants and/or witnesses accountable for alcohol or drug-related student violations that may have occurred at or near the time of the Prohibited Conduct, unless – as stated above – the University determines the violation was egregious.

- 2. Retaliation:** Retaliation against someone for reporting or participating in an investigation and related processes is prohibited. (See Section II.C.)

- 3. Privacy:** The University must balance the privacy interests of individuals involved in a report of Prohibited Conduct against the need to gather information to assess and investigate the report, ensure a fair process, and stop Prohibited Conduct, prevent its recurrence and remedy its effects. Within this context, the University will make reasonable efforts to protect individuals' privacy to the extent permitted by law and by University policies and procedures. The privacy of personally identifiable records and information will be protected in accordance with all applicable state and federal privacy laws, as well as University policies.

## **F. Free Speech and Academic Freedom**

The faculty and other academic appointees, staff, and students of the University enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section I of the California Constitution. This Policy is intended to protect members of the University community from discrimination, not to regulate protected speech. This Policy shall be implemented in a manner that recognizes the importance of rights to freedom of speech and expression.

The University also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this Policy shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums (See APM-010 and 015.)

However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or State anti-discrimination laws.

## **G. Confidential Resources**

Individuals who have experienced Prohibited Conduct may speak confidentially with a Confidential Resource, as defined in this Policy. Because Confidential Resources are not Responsible Employees who must report to the Title IX Officer, disclosure of Prohibited Conduct to a Confidential Resource while that person is acting in their confidential capacity is not a "report" under this Policy and will not, alone, result in any formal action by the University.

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# **IV. COMPLIANCE / RESPONSIBILITIES**

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## **A. Implementation of the Policy**

Executive Officers (the University President, Chancellor, Lawrence Berkeley National Laboratory Director, or Vice President of Agriculture and Natural Resources) and their designees have the authority to develop procedures and supplementary information to support the implementation of this Policy. The Systemwide Title IX Coordinator will apply appropriate and consistent interpretations of this Policy that do not result in substantive changes to the Policy.

The Executive Officer, or their designee, at each location, must establish and implement local procedures consistent with this Policy. Exceptions to local procedures required by the Policy must be approved by the Executive Officer or designee.

## **B. Revisions to the Policy**

The President approves this Policy and any revisions. The Systemwide Title IX Coordinator may recommend revisions to the Policy consistent with approval authorities and applicable Bylaws, Standing Orders, and Policies of The Regents. The Systemwide Title IX Coordinator shall ensure that the Policy is reviewed regularly and updated in a manner that is consistent with other University policies.

## **C. Approval of Actions**

Actions within the Policy must be approved according to local procedures.

## **D. Compliance with the Policy**

The Executive Officer at each location will designate the local management office that is responsible for monitoring, enforcing, and reporting policy compliance. The Senior Vice President – Chief Compliance and Audit Officer will periodically audit and monitor compliance with the Policy.

## **E. Additional Enforcement Information**

The U.S. Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH) investigate reports of unlawful harassment, and sexual violence in employment. The U.S. Department of Education Office for Civil Rights (OCR) investigates complaints of sexual harassment, including sexual violence, of students and employees in educational programs or activities. These agencies may serve as fact finders and attempt to facilitate the voluntary resolution of disputes. For more information, contact the nearest office of the EEOC, DFEH or OCR.

## **F. Noncompliance with the Policy**

Consequences of engaging in Prohibited Conduct are governed by the Policy on Student Conduct and Discipline; Personnel Policies for Staff Members 62, 63, & 64 pertaining to discipline and separation matters; The Faculty Code of Conduct (APM - 015) and University Policy on Faculty Conduct and the Administration of Discipline (APM - 016); Non-Senate Academic Appointees/Corrective Action and Dismissal (APM-150); and as applicable, collective bargaining agreements, and other policies. See Section VI and Appendices I & II. Non-compliance with this Policy, other than violations of Prohibited Conduct, may result in educational efforts or employment or educational consequences up to and including informal counseling, adverse performance evaluations, corrective actions, and termination.

## **V. PROCEDURES**

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### **A. Procedures for Reporting and Responding to Reports of Prohibited Conduct**

This section provides an overview of the procedures the University uses to respond to reports of Prohibited Conduct. While the Title IX Officer has responsibility for oversight of the reporting and response processes, other offices at each location will be involved and consulted as necessary.

The specific procedures for investigating and adjudicating Prohibited Conduct are based upon the identity of the Respondent and the nature of the Respondent's relationship to the University.

- Where the Respondent is a student, the procedures for responding to reports of Prohibited Conduct are detailed in Appendix E: Sexual Violence and Sexual Harassment Student Adjudication Framework of the Policies Applying to Campus Activities, Organizations, and Students, and local implementing procedures.
- Where the Respondent is a faculty member, the procedures for responding to reports of Prohibited Conduct are detailed in the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty, and local implementing procedures.
- Where the Respondent is a staff member or non-faculty academic employee, the procedures for responding to reports of Prohibited Conduct are detailed in the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel, and local implementing procedures.
- If there is a question as to the predominant role of the Respondent, the Title IX Officer will determine which of the procedures applies based on the facts and circumstances (such as which role predominates in the context of the Prohibited Conduct). Further, where a Respondent is both a student and an employee, the Respondent may be subject to discipline applicable to both students and employees.
- Where the Respondent is a third party, the Title IX Officer will determine the appropriate manner of resolution consistent with the University's commitment to a prompt and equitable process consistent with applicable law, federal guidance, and this Policy. The University's ability to take appropriate responsive action will be determined by the nature of the relationship of the third party to the University and the University's level of control over the third party, if any.
- Where there is no identifiable, individual Respondent, such as where the Complainant alleges Prohibited Conduct by an organization or a Respondent whose identity is unknown, or conduct by multiple individuals that rises to the level of Prohibited Conduct only when considered in the aggregate, the Title IX Officer may respond in accordance with Section V.A.5.d.

## **1. Reporting**

Any person may make a report, including anonymously, of Prohibited Conduct to the Title IX Officer, or to any Responsible Employee, or to another appropriate office such as the Academic Personnel Office, Student Affairs, Office of the Provost, or Human Resources Office. The person or office that receives the report will forward it to the Title IX Officer. If the person to whom a report normally would be made is the Respondent, reports may be made to another Responsible Employee or office.

## **2. Timelines for Making Reports**

While there is no time limit for reporting, reports of Prohibited Conduct should be brought forward as soon as possible. All incidents should be reported even if significant time has elapsed but prompt reporting will better enable the University to respond, investigate, provide an appropriate remedy, and impose discipline if appropriate.

## **3. Initial Assessment of a Report / Immediate Health and Safety**

As soon as practicable after receiving a report, the Title IX Officer will make an initial assessment of the report, including a limited factual inquiry, if appropriate, to determine whether (i) the report, on its face, alleges an act of Prohibited Conduct as defined in Section II; and (ii) the Prohibited Conduct is covered by this Policy, as described in Section III.B.

The Title IX Officer may consult with Academic Personnel Offices for complaints involving faculty and other academic appointees, with Student Affairs Offices for complaints involving students, and with Human Resources or Employee and Labor Relations Offices for complaints involving staff.

The Title IX Officer, in coordination with the Case Management Team (see Section V.B.5.), shall make an immediate assessment concerning the health and safety of the Complainant and the campus community, determine and oversee interim measures immediately necessary (including no contact orders), and provide to the Complainant a written explanation of rights and reporting options (including the right to make reports to the police), and available campus and community resources. Also see Location Responsibilities in Section V.B.11 and Appendix III.

Complainants will also be informed of the range of possible outcomes of the report, including interim, remedial, and supportive measures and disciplinary actions that may be taken against the Respondent, and provided information about the procedures leading to such outcomes.

## **4. Closure Following Initial Assessment**

Not all reports the Title IX Officer receives constitute reports of Prohibited Conduct that can be resolved through a Resolution Process described below. This includes reports for which the Title IX Officer determines that:

- the alleged conduct, even if true, does not constitute or does not rise to the level of Prohibited Conduct;

- the conduct is not covered by this Policy (see Section III.B);
- there is insufficient information to implement a Resolution Process (e.g., the identities of the individuals involved);
- a Complainant's request that no Formal Investigation occur can be honored (see Section IV.A.5.b); or
- there is an insufficient nexus between the conduct and the University to implement a Resolution Process (e.g., the conduct did not occur in the context of a University program, activity, or service, and involved only third parties).

The Title IX Officer will close such matters in accordance with written guidelines issued by the Systemwide Title IX Office, but will still, when appropriate, take steps to stop the reported conduct, prevent its escalation or recurrence, and address its effects. Such steps may include, for example, offering resources and supportive measures to the Complainant and providing targeted preventive education (including to the individual alleged to have engaged in the behavior) and training programs. When the reported conduct does not constitute Prohibited Conduct (e.g., stalking or harassment of a non-sexual nature), the Title IX Officer will, if appropriate, refer the matter to another office for review and resolution.

When determining whether there is a sufficient nexus between the conduct and the University to implement a Resolution Process, the Title IX Officer will consider factors such as where and in what context the Prohibited Conduct allegedly occurred (i.e., whether there is a connection between the conduct and University property or a University program, activity or service), whether the Complainant or Respondent were University community members when the Prohibited Conduct allegedly occurred, whether the Complainant or Respondent were University community members at the time of the report, and whether there is information indicating an ongoing threat to the University community.

## **5. Overview of Resolution Processes**

Reports of Prohibited Conduct that are not closed following the Title IX Officer's initial assessment may be addressed through Alternative Resolution, Formal Investigation, a separate employee grievance or complaint process, or Other Inquiry, each of which is described below.

### **a. Alternative Resolution**

After a preliminary assessment of the alleged facts, the Title IX Officer may initiate an Alternative Resolution process. The Title IX Officer will, if appropriate, initiate the process in consultation with other offices depending on whether the Complainant and Respondent are faculty, other academic appointees, staff, student employees, or students. Alternative Resolution may include, among other responses:

- mediation (except in cases of sexual violence);

- separating the parties;
- providing for safety;
- referring the parties to counseling;
- referral for disciplinary action;
- a settlement agreement;
- conducting targeted preventive educational and training programs; and
- conducting a follow-up review to ensure that the resolution has been implemented effectively.

Alternative Resolution may be especially useful when: a Formal Investigation is not likely to lead to a resolution; both parties prefer an informal process; or a case involves less serious allegations. The Title IX Officer has discretion to determine whether the reported conduct is appropriate for Alternative Resolution, to determine the type of Alternative Resolution to pursue, and to stop the Alternative Resolution process at any time before its conclusion and move to a Formal Investigation.

Participation in Alternative Resolution is voluntary and will occur only if both the Complainant and the Respondent agree to participate. If Alternative Resolution is selected, the Title IX Officer will inform both parties in writing that: the Title IX Officer has initiated the process, the process is voluntary and will terminate upon either party's request, termination may result in Formal Investigation (see Section V.A.4.b), both the Complainant and Respondent may be accompanied by an advisor throughout the process, and the Title IX Officer will notify both parties of the process's outcome at its conclusion.

The Title IX Officer will oversee the Alternative Resolution process and, if other campus officials are involved in the process, maintain an appropriate level of involvement. The Alternative Resolution process will be completed promptly, typically within 30 to 60 business days of the date the Title IX Officer sends the written notice of initiation of the process. However, the Title IX Officer may extend the process beyond the 60<sup>th</sup> day for good cause. The Complainant and Respondent will receive written notice of the reason for any extension and the projected new timeline. The actual time required will depend on the specific circumstances, including the complexity of the allegations and the nature of the alleged conduct. The Title IX Officer will consider, approve, and communicate extensions in accordance with written guidelines from the Systemwide Title IX Office.

Once the parties have agreed to the terms of an Alternative Resolution, the University will not pursue a Formal Investigation unless the Title IX Officer determines that the Respondent failed to satisfy the terms of the Alternative Resolution, or that the Alternative Resolution was unsuccessful in stopping the Prohibited Conduct or preventing its recurrence. The Title IX Officer will maintain records of all reports and conduct addressed through Alternative Resolution.

## **b. Formal Investigation**

When a report is not closed following initial assessment and is not appropriate for Alternative Resolution or Other Inquiry, or when Alternative Resolution is not agreed to by the parties or is terminated before the parties agree on terms, the Title IX Officer will initiate a Formal Investigation. The Title IX Officer will, if appropriate, initiate the investigation in coordination with other offices, depending on whether the Complainant and Respondent are faculty, other academic appointees, staff, or students.

If the Complainant requests that no Formal Investigation occur, the Title IX Officer will seriously consider the Complainant's request, but must determine whether the allegations nonetheless require an investigation to mitigate a risk to the campus community. If the Title IX Officer decides to proceed with a Formal Investigation despite the Complainant's request, the Title IX Officer will provide the Complainant with all notifications and information required by this Policy unless the Complainant informs the Title IX Officer in writing that they do not wish to receive such notifications and information. If the Title IX Officer decides not to proceed with a Formal Investigation, the Title IX Officer shall inform the Complainant that the ability to provide remedies may be limited, but the Title IX Officer shall nonetheless afford such remedies as are consistent with maintaining privacy and the absence of an administrative finding.

When the Title IX Officer initiates a Formal Investigation, the Complainant and Respondent will be provided with a written summary of the allegations, the procedures that will be followed, resources available to them, and a copy of the Policy.

- i. *Timeframe.* The investigation shall be completed promptly, typically within 60 to 90 business days of the date the Title IX Officer notifies the Complainant and Respondent in writing of the charges to be investigated. However, the Title IX Officer may extend the process beyond the 90<sup>th</sup> day for good cause. The Complainant and Respondent will receive written notice of the reason for any extension and the projected new timeline. The actual time required will depend on the specific circumstances, including the complexity of the matter and the severity and extent of the alleged conduct. The Title IX Officer will consider, approve, and communicate extensions in accordance with written guidelines from the Systemwide Title IX Office. If the alleged conduct is also the subject of a criminal investigation, the Title IX Officer will coordinate its investigation with the police but must nonetheless act promptly without delaying its investigation until the conclusion of the criminal investigation.
- ii. *Disclosure of Information.* The investigation generally includes interviews with the Complainant, the Respondent, and witnesses, if available, and a review of documents as appropriate. Disclosure of facts to persons interviewed shall be limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation may be counseled about the importance of keeping information learned through the

investigation private to protect both the individuals involved and the integrity of the investigation. Witnesses will be notified that the information they provide and their identities are typically disclosed to the Complainant and Respondent.

- iii. *Right to an Advisor.* The Complainant and Respondent may have an advisor present when personally interviewed and at any related meeting. Other support persons may be allowed under other policies. Other witnesses may have an advisor present at the discretion of the Title IX Officer or as required by University policy or a collective bargaining agreement.
- iv. *Academic Freedom/Merit.* In cases where the investigation contemplates issues of academic merit or academic freedom, the Title IX Officer shall consult with the appropriate academic officer for relevant academic judgment.
- v. *Initiation of Investigation by University.* The Title IX Officer may choose to initiate and conduct a Formal Investigation despite the lack of a Complainant when there is, for example:
  - information indicating an ongoing threat to the University community;
  - a pattern of alleged sexually harassing conduct toward multiple people by the same Respondent that would, in the aggregate, create a hostile environment (as defined in this Policy) for a reasonable person; or
  - allegations of Prohibited Conduct covered by this Policy in the public realm (such as reports in the news or social media).
- vi. *Administrative Closure.* The Title IX Officer may administratively close a Formal Investigation before its completion if the Title IX Officer determines that, due to a significant change in circumstances, its ability to investigate is so substantially impaired that it is unable to gather sufficient evidence to reach a reasonably reliable conclusion about whether Prohibited Conduct occurred.

**c. Grievance/Complaint Procedures for Employees**

Instead of, or in addition to, reporting to the Title IX Officer or other Responsible Employee, a University employee who believes they have been subjected to Prohibited Conduct may file a grievance or complaint. That grievance or complaint must meet all of the requirements, including time limits for filing, under the applicable complaint resolution or grievance procedure listed in *Appendix I: University Complaint Resolution and Grievance Procedures*. Any such grievance or complaint will be forwarded to the Title IX Officer for processing under this Policy, and the grievance or complaint procedure will be held in abeyance pending resolution under this Policy, unless the applicable collective bargaining agreement provides otherwise. After completion of the process under this Policy, the grievance or complaint may be reactivated in accordance with the applicable grievance or complaint procedure.

**d. Other Inquiry**

When a report is not closed following initial assessment and is not appropriate for Alternative Resolution or Formal Investigation because there is no individual identifiable Respondent over whom the Title IX Officer can assert jurisdiction, the Title IX Officer will conduct an inquiry to try to determine what occurred, and then take prompt steps reasonably calculated to stop any substantiated conduct, prevent its recurrence, and, as appropriate, remedy its effects. Such an inquiry may be appropriate when, for example, the Complainant alleges Prohibited Conduct by an organization, an individual whose identity is unknown, or a third party with minimal relationship to the University, or alleges conduct by multiple individuals that rises to the level of Prohibited Conduct only when considered in the aggregate.

The extent of the inquiry and responsive steps will depend on the specific circumstances, including, for example, the nature and location of the alleged conduct, the University's relationship to the Complainant, and the University's relationship to and level of control over the organization or individual(s) alleged to have engaged in the conduct. However, the inquiry will provide the Complainant an opportunity to identify witnesses and present other evidence, be completed promptly (typically within 60 days, unless extended for good cause by the Title IX Officer), and result in notice to the Complainant of the outcome.

**e. Notifications and Documentation**

When engaging in a Resolution Process provided for in this Section V.A.5, the Title IX Officer will provide written notifications to the parties, and maintain records of resolution processes, in accordance with guidelines issued by the Systemwide Title IX Office. The guidelines will address, for example:

- information to be provided to parties about their rights and options in a Resolution Process;
- notifications to be provided to parties upon the initiation and conclusion of a Resolution Process;
- documentation of the parties' agreement to engage in an Alternative Resolution Process;
- documentation of any resolution reached through an Alternative Resolution process, including documentation to be obtained from other campus officials involved in the resolution, if any; and
- the types of documentation to be retained upon completion of a Resolution Process.

**6. The Investigation Report and Outcome**

In the event that a Formal Investigation is conducted, the investigator will prepare a written report that includes a statement of the allegations and issues, the positions of the Complainant and Respondent, a summary of the evidence, an

explanation of why any proffered evidence was not considered, credibility determinations when appropriate, findings of fact, and an analysis of whether this Policy was violated. When the Respondent is a student, the report will include a recommendation to the Student Conduct Officer regarding whether there are any policy violations. (See Appendix E: Sexual Violence and Sexual Harassment Student Adjudication Framework.) For all other matters the report will include an analysis and determination by the investigator of whether this Policy has been violated. In determining whether this Policy was violated, the investigator will apply the preponderance of evidence standard.

At the conclusion of the investigation, the Complainant and Respondent will be simultaneously provided a copy of the Investigation Report, which may be redacted to protect privacy (see APM-160 and other University policies governing privacy), and informed in writing of the outcome of the investigation and its rationale, and of any available appeal rights and procedures.

## **7. Remedy**

- a.** If the University finds Prohibited Conduct in violation of this Policy, the University shall take prompt and effective steps reasonably calculated to stop the violation, prevent its recurrence, and, as appropriate, remedy its effects. For examples of available remedial measures, see Appendix III.
- b.** To the extent that the remedy has not already been provided, the Title IX Officer, in consultation with appropriate administrators, will oversee the implementation of the remedy.

## **8. Discipline**

- a.** The Title IX Officer shall forward the Investigation Report (with attachments) to the appropriate administrator responsible for discipline.
- b.** Any member of the University community who is found to have engaged in Prohibited Conduct may be subject to disciplinary action, up to and including dismissal in accordance with the applicable University disciplinary procedure (Appendix II: University Disciplinary Procedures) or other policy.
- c.** If the matter results in a disciplinary proceeding, at the conclusion of that proceeding the Complainant and the Respondent will be contemporaneously informed in writing of:
  - the outcome of the disciplinary proceeding, including the final determination with respect to the alleged offense, any discipline that is imposed, and the rationale for the results;
  - any available appeal rights and procedures; and
  - any subsequent change to the results and when results will become final.

The University will seek to finalize decisions regarding discipline in a reasonably prompt manner in accordance with applicable procedures,

depending on the severity and extent of the Prohibited Conduct and the complexity of the matter.

## **B. Location Responsibilities**

Each location must do the following:

- 1.** Designate and provide adequate resources and independence to a Title IX Officer. The responsibilities of the Title IX Officer include, but may not be limited to, the following duties:
  - a.** Coordinate compliance with Title IX, including investigations, reports and remedies.
  - b.** Coordinate with other responsible units to ensure that interim, remedial, and supportive measures determined necessary by the Title IX Officer are provided.
  - c.** Coordinate with other responsible units to ensure that local sexual violence and sexual harassment prevention education and training programs are offered and provided, as required by the Policy.
  - d.** Provide educational materials to promote compliance with the Policy and familiarity with local reporting procedures.
  - e.** Provide training for University employees who are responsible for reporting or responding to reports of Prohibited Conduct. Provide and track training for investigators and other key members of the Title IX Officer's staff in accordance with guidelines issued by the Systemwide Title IX Office.
  - f.** Provide prompt and equitable responses to reports of Prohibited Conduct according to the Policy.
  - g.** Maintain records of reports of Prohibited Conduct at the location, as well as any actions taken in response to reports, including records of investigations, resolutions, and disciplinary action, in accordance with University records management policies.
  - h.** Identify and address any patterns or systemic problems that arise during the review of Prohibited Conduct reports.
  - i.** Post on the sexual violence website the names and contact information of the Title IX Officer and of additional designated, trained, sexual harassment or sexual violence advisors.
- 2.** Designate persons who can offer confidential consultations, without reporting the incident to the Title IX Officer, to any member of the University community seeking information, or advice about making a report of Prohibited Conduct. Each location will post information about how and where to contact confidential resources on its web site.

Individuals who consult with such confidential resources will be advised that their discussions in these settings are not considered actual reports of Prohibited Conduct and that without additional action by the individual, these discussions will not result in any formal action by the University to resolve their concerns.

3. Establish an independent, confidential Advocacy Office for addressing sexual assault, dating violence, domestic violence, and stalking called *CARE: Advocacy Office for Sexual and Gender-Based Violence and Misconduct*.
4. Provide a “Respondent Services Coordinator” that facilitates fair and equitable services for the Respondent.
5. Establish a response team model consisting of two teams:
  - a. A Case Management Team (CMT) which maintains consistent coordination of reported sexual violence cases, ensures all cases are addressed promptly and equitably, and ensures the response is trauma-informed; and
  - b. A Coordinated Community Review Team (CCRT) responsible for a campus collaborative approach to preventing and addressing sexual violence. The CCRT serves in an advisory capacity to campus leadership and community members about best practices in policies, education, prevention and response to sexual violence.

**Note:** The requirements of #3, 4, and 5 above are for locations with students only. However, ANR, UCOP, and LBNL should coordinate delivery of these services with associated campuses or affiliated organizations.

6. Provide mandatory annual training and education, about Prohibited Conduct and how such conduct can be reported, to all students, faculty, other academic appointees, and staff in accordance with applicable State and federal law, and University policies.
7. Offer primary prevention programs and awareness campaigns to the University community to promote ongoing awareness of sexual violence, including preventing dating violence, domestic violence, sexual assault, and stalking. These campaigns will include, but are not limited to, education about the definition of consent, consensual relationships, options for bystander intervention, trauma-informed approaches, and risk reduction awareness information. These programs are to promote behaviors that foster healthy and respectful relationships while also encouraging a safe environment for bystanders to intervene in a potential case of dating violence, domestic violence, sexual assault, or stalking.
8. Follow University established and approved processes for investigation, adjudication, and discipline.
9. Provide comprehensive, regular training with a trauma-informed perspective for individuals responsible for responding to reports of Prohibited Conduct, including Advocacy and Respondent services, Alternative Resolution and Formal Investigation processes, and the hearing, remedy, discipline and appeal processes.

10. Publicize a location-specific process for reporting incidents of Prohibited Conduct.
11. Provide written explanation of rights and available options as outlined in this Policy including:
  - a. How and to whom to report alleged violations.
  - b. Options for reporting to and/or notifying law enforcement and campus authorities; the right to be assisted by campus authorities in notifying law enforcement authorities, if the Complainant so chooses; and the right to decline to notify such authorities.
  - c. The rights of Complainants regarding orders of protection, no contact orders, restraining orders, or similar orders issued by criminal or civil courts, as well as the University's responsibilities to comply with such orders.
  - d. The importance of preserving evidence that may assist in proving that a criminal offense occurred or in obtaining a protection order.
  - e. Counseling, health assistance, mental health assistance, victim advocacy, legal assistance, visa and immigration assistance, and other services available within both the University and the community.
  - f. Options for, and available assistance to change academic, living, transportation, and working situations, if the Complainant requests and if such options are reasonably available—regardless of whether the Complainant chooses to report the crime to campus police or local law enforcement.
  - g. Applicable procedures for institutional disciplinary action.
12. Distribute and post this Policy. Each location is required to distribute this Policy to students, faculty, other academic appointees and staff, by such means as websites, student information boards, student handbook, faculty handbook and staff websites and information boards and during training and student orientation.

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## **VI. RELATED INFORMATION**

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- A. University of California Standards of Ethical Conduct
- B. [University of California Statement of Ethical Values](#)

### **Academic Personnel Manual**

- A. Academic Personnel Manual (APM) Section 015, The Faculty Code of Conduct
- B. [Academic Personnel Manual \(APM\) Section 016, University Policy on Faculty Conduct and the Administration of Discipline](#)
- C. Academic Personnel Manual (APM) Section 035, Affirmative Action and Nondiscrimination in Employment
- D. Academic Personnel Manual (APM) Section 140, Non-Senate Academic Appointees/Grievances

- E. Academic Personnel Manual (APM) Section 150, Non-Senate Academic Appointees/Corrective Action and Dismissal
- F. Academic Personnel Manual (APM) Section 160, Academic Personnel Records/Maintenance of, Access to, and Opportunity to Request Amendment of

### **Presidential Policies and Guidelines**

- A. University of California Corrective Action PPSM 62
- B. University of California Investigatory Leave PPSM 63
- C. University of California Termination and Job Abandonment PPSM 64
- D. University of California Termination Appointment PPSM II-64
- E. University of California Complaint Resolution (Senior Managers) PPSM II-70
- F. University of California Complaint Resolution (Staff Personnel) PPSM 70
- G. Personnel Policies for Staff Members 12 (Nondiscrimination in Employment)
- H. University of California Discrimination, Harassment, and Affirmative Action in the Workplace
- I. Policy on Student Conduct and Discipline
- J. University of California Policies Applying to Campus Activities, Organizations, and Students
- K. Student-Related Policy Applying to Nondiscrimination on the Basis of Sex
- L. Nondiscrimination Policy Statement for University of California Publications Regarding Student-Related Matters
- M. Business and Finance Bulletin RMP-2: Records Retention and Disposition: Principles, Processes, and Guidelines
- N. University of California Reporting Child Abuse and Neglect
- O. University of California Clery Act Policy – Campus Safety and Security Reporting

### **Federal and State Regulations**

- A. Fair Employment and Housing Act, Gov't Code section 12952
- B. Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e
- C. Title IX of the Education Amendments Act of 1972, 20 U.S.C. section 1681
- D. Violence Against Women Reauthorization Act (VAWA) of 2013

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## **VII. FREQUENTLY ASKED QUESTIONS**

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### **1. Who can be considered an advisor as described in this Policy?**

An advisor may be any individual except a potential witness who provides the Complainant or Respondent with support, guidance, or advice (including attorneys). The institution cannot limit the choice of an advisor, but may restrict the extent to

which the advisor can participate in the proceedings as long as the restrictions apply equally to Complainants and Respondents.

**2. What is a “result” or “outcome” of a disciplinary proceeding?**

A result or outcome includes a written description of any initial, temporary, and final decision made by any authorized person, which aims to resolve a disciplinary matter. The result must disclose any discipline imposed and the rationale for the result and the discipline.

**3. How is “nudity” defined for the purposes of this Policy?**

“Nudity” means the absence of an opaque covering which covers the genitals, pubic hair, buttocks, perineum, anus or anal region of any person or any portion of the breasts at or below the areola.

**4. Why might some conduct prohibited by this Policy constitute sexual harassment in some cases but sexual violence or other prohibited behavior in others?**

This Policy prohibits a broad spectrum of conduct which may, depending on the circumstances, be appropriately charged as Sexual Harassment, Sexual Violence, or Other Prohibited Behavior, as those terms are defined in Section II. In deciding whether alleged conduct rises to the level of a Policy violation, and which Policy provision to charge, the Title IX Officer may consider both the specific behavior alleged and the surrounding circumstances, such as the severity of the conduct, where the conduct occurred (e.g., a confined space or a public one), duration of the conduct, any contemporaneous statements or other behavior by the Respondent (e.g., lewd or threatening language or gestures, gender-based nonsexual conduct), whether contact occurred over or under clothing, the relationship between the parties (e.g., whether there is a power imbalance), and other relevant factors.

For example, whether a Respondent’s alleged touching of a Complainant’s buttocks would be charged as either Sexual Harassment or Sexual Assault – Contact will depend on the specific nature of the touching, as well as the context in which it occurred. Similarly, a Respondent’s alleged publication of sexually explicit photos of a Complainant that does not constitute an Invasion of Sexual Privacy as defined in this Policy might still, depending on the circumstances, be charged as Sexual Harassment.

**5. Does Sexual Assault include “rape” and “sexual battery” as those terms are used in the criminal law context?**

Yes. The types of conduct prohibited by this Policy include “rape” and “sexual battery” as defined in the California Penal Code. For additional assistance with any questions about whether a specific type of conduct violates this Policy, or the law, please contact your local CARE Advocate, UC Police, or Title IX Officer.

**6. Once the outcome of an investigation or disciplinary proceeding under this Policy is disclosed to the Complainant, can the Complainant be asked to keep this information confidential?**

The Complainant can be advised of the confidential and sensitive nature of personnel and student disciplinary matters that arise under this Policy but should not be restricted from further disclosing the information.

**7. Does the University need to conduct a Title IX investigation if a criminal investigation is taking place?**

A criminal investigation is intended to determine whether an individual violated criminal law. At the conclusion of the criminal process the individual may be imprisoned or subject to criminal penalties. The University has a duty under Title IX to resolve complaints promptly and equitably and to provide a safe and nondiscriminatory environment for all students, free from sexual harassment, sexual violence and other prohibited behavior. Because the purposes and the standards for pursuing and completing criminal investigations are different from those used for Title IX investigations, the termination of a criminal investigation without an arrest or conviction does not affect the location's Title IX obligations. Even if a criminal investigation is ongoing, the University must still conduct its own Title IX investigation. The University should notify Complainants of the right to file a criminal complaint and should not dissuade a Complainant from doing so either during or after the location's internal Title IX investigation. Title IX does not require a location to report alleged incidents of sexual violence to law enforcement, but the University has reporting obligations under federal, State, or local laws, such as the Clery Act and the California Child Abuse and Neglect Reporting Act (CANRA), and may report alleged incidents of sexual violence to law enforcement pursuant to memoranda of understandings between the University and the police.

**8. How should the University proceed when campus or local law enforcement agencies (“police”) are conducting a criminal investigation while the University is conducting a parallel Title IX investigation?**

If the alleged conduct by the Respondent is also the subject of a criminal investigation, the Title IX Officer will coordinate its investigation with the police. The fact-finding portion of a Title IX investigation may be delayed temporarily while the police conduct the evidence gathering stage of the criminal investigation. During this delay in the Title IX investigation, appropriate interim measures may be put in place to protect the Complainant. The length of time for evidence gathering by criminal investigators will vary depending on the specific circumstances of each case.

**9. Is the University required to investigate information regarding sexual violence incidents shared by survivors during public awareness events, such as “Take Back the Night”?**

Responsible employees are not required to report incidents that they become aware of while attending a public awareness event, such as “Take Back the Night” and statements made about incidents during such events will not require an investigation unless the survivor initiates a complaint.

**10. Are Responsible Employees required to report disclosures about Prohibited Conduct received in the course of conducting Institutional Review Board (“IRB”)–approved or certified exempt human subjects research?**

Responsible Employees are not required to report disclosures of Prohibited Conduct made by an individual when participating in human subjects research that has either been approved by an Institutional Review Board (IRB) or certified as exempt from IRB review under one or more of the categories in 45 CFR 46.104. When conducting research that is designed, or likely, to elicit information about sexual violence or sexual harassment, researchers are strongly encouraged to provide information about University and community resources to research participants.

Disclosures of incidents of alleged Prohibited Conduct made during an individual's participation as a subject in an IRB-approved or certified exempt human subjects research protocol will not be considered notice to the University for purposes of triggering its obligation to investigate. The reporting exemption that this section describes (for disclosures made by an individual when participating in IRB-approved or certified exempt human subjects research) does NOT apply to disclosures made to research personnel outside of the course of the research protocol (e.g., to faculty during office hours or while providing academic advising).

This reporting exemption does not affect mandatory reporting obligations under federal, state, or local laws, such as the Clery Act and the California Child Abuse and Neglect Reporting Act (CANRA), and other policies or laws that require reporting to campus or local law enforcement, or Child Protective Services.

**11. I am covered by a collective bargaining agreement. Does this Policy apply to me?**

Yes. However, please note that consequences of non-compliance with this Policy, and relevant complaint resolution, grievance and disciplinary procedures, for employees who are covered by a Memorandum of Understanding with an exclusive bargaining agent are governed by the appropriate collective bargaining agreement.

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## **VIII. REVISION HISTORY**

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**August 14, 2018:** Addition of FAQ #10 regarding the obligations of Responsible Employees when conducting Institutional Review Board—approved or certified exempt human subject research.

**June 5, 2018:** technical revision – updated contact information.

**September 1, 2017:** Technical revisions:

- updated the Policy responsible office and contact information
- added links of the Staff and Faculty Adjudication Frameworks to Appendix II: University Disciplinary Procedures.

This Policy was also remediated to meet Web Accessibility Content Guidelines (WCAG) 2.0.

**November 7, 2016:**

Deleted the rescinded PPSMs #65, #67 and #71 from the Policy document and updated the FAQs and the links on Appendix I under Academic and Staff Personnel.

Future revisions to this Policy will be circulated under standard procedures for Presidential Policies; in the case of this Policy, the review will include circulation under the standard Academic Personnel Manual (APM) process, with final authority resting with the President.

**June 17, 2015:**

The Policy was updated on an Interim basis effective until December 31, 2015. The interim issuance brings the Policy into compliance with federal and state regulations, while the Policy undergoes full review and vetting. Once the review process is complete, the Policy will be reissued at the start of 2016.

**February 25, 2014:**

This Policy was reformatted into the standard University of California policy template effective.

As a result of the issuance of this Policy, the following documents are rescinded as of the effective date of this Policy and are no longer applicable:

- *University of California Policy on Sexual Harassment*, dated February 10, 2006
- *University of California Procedures for Responding to Reports of Sexual Harassment*, dated December 14, 2004
- *University of California Policy on Sexual Harassment and Complaint Resolution Procedures*, dated April 23, 1992
- *University of California Policy on Sexual Harassment and complaint Resolution Procedures*, dated March 10, 1986

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## IX. APPENDICES

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### Appendix I: Applicable Complaint Resolution and Grievance Policies

#### Academic Personnel:

Members of the Academic Senate	<u>Senate Bylaw 335</u>
Non-Senate Academic Appointees	<u>APM - 140</u>
Exclusively Represented Academic Appointees	<u>Bargaining Units &amp; Contracts</u>

#### Students:

Policies Applying to Campus Activities, Organizations and Students, Section 110.00

#### Staff Personnel:

Complaint Resolution (Senior Managers)	<u>PPSM II-70</u>
Complaint Resolution (Staff Personnel)	<u>PPSM 70</u>
Exclusively Represented Staff Personnel	<u>Bargaining Units &amp; Contracts</u>
Lawrence Berkeley National Laboratory Employees	<u>Applicable Laboratory policy</u>

#### All members of the University community:

The University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (Whistleblower Policy) protects the reporting and investigation of violations of state or federal laws or regulations, including sexual harassment.

#### All University employees and applicants for employment:

The University's Whistleblower Protection Policy provides a complaint resolution process for employees and applicants for employment who have been subjected to retaliation as a result of having made a protected disclosure under the Whistleblower Policy or refused to obey an illegal order.

## Appendix II: University Disciplinary Procedures

The following are the University's disciplinary procedures:

- A. The Faculty Code of Conduct (APM - 015) (as approved by the Assembly of the Academic Senate and by The Regents) Establishes the ethical and professional standards which University faculty are expected to observe.

Because the forms of unacceptable behavior listed in The Faculty Code of Conduct also apply to sexual violence or sexual harassment, a violation of the University's Policy on Sexual Harassment and Sexual Violence may constitute a violation of the Faculty Code of Conduct. The University Policy on Faculty Conduct and the Administration of Discipline (APM - 016), as approved by the Assembly of the Academic Senate and by The Regents, outlines sanctions and disciplinary procedures for faculty.

The Sexual Violence and Sexual Harassment Senate and Non-Senate Faculty Adjudication Framework sets forth the University's procedures for resolving complaints of sexual violence and sexual harassment where the Respondent is a member of the University faculty.

- B. Provisions of the policy on Non-Senate Academic Appointees/Corrective Action and Dismissal (APM - 150) (non-exclusively represented academic appointees) and collective bargaining agreements (exclusively represented academic appointees) allow for corrective action, investigatory leave, or dismissal for conduct which violates University policy.

The Sexual Violence and Sexual Harassment Staff and Non-Faculty Academic Personnel Adjudication Framework sets forth the University's procedures for resolving complaints against non-Senate academic appointees subject to APM-150.

- C. Appendix E: Sexual Violence and Sexual Harassment Student Adjudication Framework of the Policies Applying to Campus Activities, Organizations, and Students sets forth the University's procedures for resolving complaints of sexual violence and sexual harassment where the parties are both students, including the discipline of students found in violation of University policy. See also, the policy on Student Conduct and Discipline.

- D. Provisions of the Personnel Policies for Staff Members, and the Lawrence Berkeley National Laboratory personnel policies (applicable to non-exclusively represented staff employees), and collective bargaining agreements (applicable to exclusively represented staff employees) prohibit conduct that violates University policy for sexual violence or sexual harassment and provide for disciplinary action for violating University policy.

- PPSM-62: Corrective Action
- PPSM-63: Investigatory Leave
- PPSM-64: Termination and Job Abandonment
- PPSM II-64: Termination of Appointment

The Sexual Violence and Sexual Harassment Staff and Non-Faculty Academic Personnel Adjudication Framework sets forth the University's procedures for resolving complaints where the Respondent is University personnel other than faculty.

### **Appendix III: Interim, Remedial, and Supportive Measures**

When determining interim, remedial, and supportive measures, the Title IX Officer will assess the extent to which the University is able to maintain the parties' privacy while also ensuring the measures are effective. The Title IX Officer will explain to the parties any limitations on its ability to maintain their privacy.

In determining interim measures specifically, the Title IX Officer will tailor the measures to the circumstances of each case, reevaluate the effectiveness and need for the measures as circumstances change, take care to minimize burdens on the parties, and avoid depriving either party of educational and employment opportunities to the extent practicable.

In addition to interim, remedial and supportive measures, the Title IX Officer may take other actions to stop reported conduct, prevent its escalation or recurrence, and address its effects.

Examples of services, accommodations, and other available measures include:

**i. *Campus Services Generally:***

Academic, employment, and other support including tutoring, counseling, disability services, health and mental health services, family planning services, survivor advocacy, housing assistance, legal assistance, referral to employee assistance program, information about the right to report a crime to campus or local law enforcement, and written materials prepared by the Title IX Officer pursuant to V.B of the Policy.

**ii. *Measures Available to Employees, Including Academic, Staff and Student Employees:***

Change to a different workstation, schedule, work location, unit, department, or position for which the employee is qualified provided that, in the case of a Complainant the change is voluntary and equitable.

**iii. *Training and Education of the Respondent:***

The Respondent may be required to undergo training, including sexual harassment prevention training, anger management training, and periodic refresher classes.

**iv. *Campus Services Modified:***

- If a campus service is not generally available or a fee is imposed, access may be arranged or fees waived when appropriate.
- Comprehensive, holistic survivor services including additional medical, counseling and academic support services.

- Any other accommodations or interim measures that are reasonably available once a Complainant has requested them.

**v. *Additional Educational Measures for Students:***

- Change advisors, composition of dissertation committee, class sections and similar schedule adjustments.
- Arrange extra time to complete academic requirements of a class or program, to re-take a class or withdraw from a class and to do without an academic or financial penalty if the University delayed such accommodations after it reasonably should have known of the violation.
- Review any disciplinary actions taken against the Complainant subsequent to the alleged violation to determine whether there is a causal connection between the violation and the Complainant's misconduct.

**vi. *No Contact Options:***

- Complainant and Respondent Options:
  - a. The Title IX Officer will ensure the Complainant and Respondent have been notified of options to avoid contact and assist the Complainant and Respondent to change, as appropriate, living, transportation, dining, and working situations, or academic and extracurricular activities;
  - b. Assist the Complainant and Respondent to apply for no contact orders; and
  - c. When appropriate, arrange for effective escort services to ensure that the Complainant and Respondent can move safely to work, classes, and activities.
- Respondent's Restrictions:
  - a. Allow the Complainant to take the regular sections of courses while arranging for the Respondent to take the same courses online or through independent study;
  - b. Moving the Respondent to a different residence hall or work space;
  - c. Forbidding the Respondent to participate in specific athletic or extracurricular events or social clubs (including fraternities or sororities);
  - d. Requiring that the Respondent observe no contact orders from the Complainant for a period of time (up to the Complainant's graduation or other departure from the campus) via work scheduling or class changes;
  - e. Prohibiting the Respondent from attending classes for a period of time, transferring the Respondent to another campus, or putting the Respondent on investigatory leave; and

- f.** Excluding the Respondent from the campus or workplace.
- vii.** *Other Measures devised by the Title IX Officer or Other Administrator.*