

# Executive Board

## (Systemwide Senate Review) Proposed Revisions to SVSH Academic Frameworks

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Mary Gauvain  
Telephone: (510) 987-0887  
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*Chair of the Assembly of the Academic Senate  
Faculty Representative to the Regents  
University of California  
1111 Franklin Street, 12th Floor  
Oakland, California 94607-5200*

May 5, 2021

**SUZANNE TAYLOR, SYSTEMWIDE TITLE IX COORDINATOR  
UNIVERSITY OF CALIFORNIA**

**Re: Revised SVSH Frameworks for Faculty and Staff**

Dear Suzanne,

As requested, I distributed for systemwide Senate review proposed revisions to the University's Sexual Violence and Sexual Harassment (SVSH) Investigation and Adjudication Framework for Senate and Non-Senate Faculty, and the corresponding Framework for Staff. Nine Academic Senate divisions submitted comments. These comments were discussed and endorsed at Academic Council's April 28 meeting and are attached for your reference.

We understand that the systemwide Title IX office proposed the revisions to comply with federal regulatory changes that took effect in August 2020. They consist of additional changes to interim policies issued last summer, including a requirement that the University include live hearings and appeals for cases with faculty and staff respondents. The revised frameworks also permit the University to exclude or "carve out" particular groups from the live hearing process in specific instances based on their formal relationship with UC

The Academic Council supports the revisions. In the committee letters, there is some concern that the language of the Frameworks is, in places, overly technical and inaccessible to a lay audience. We encourage you to consider clarifying terms and definitions and, if possible, using more succinct wording where appropriate.

As you know, the Academic Senate has been addressing the impact of the federal regulations on its own Privilege and Tenure procedures. That work includes a revision to Senate Bylaw 336.F.8, approved by the Assembly of the Academic Senate in February, that changes the evidentiary standard to be used in P&T hearings for alleged violations of the SVSH Policy. The Senate is also reviewing a proposed change to Senate Bylaw 336.F.3 that will eliminate unnecessary duplication in hearings at the Title IX and P&T phases. We look forward to working with you on these and other matters.

Please do not hesitate to contact me if you have additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Mary Gauvain". The signature is written in dark ink on a light-colored background.

Mary Gauvain, Chair  
Academic Council

Cc: Academic Council  
Senate Directors  
Systemwide Senate Director Baxter

Encl.



320 STEPHENS HALL  
UNIVERSITY OF CALIFORNIA  
April 23, 2021

MARY GAUVAIN  
Chair, Academic Council

*Subject: Systemwide Review of Proposed Revisions to SVSH Frameworks for Faculty and Staff –  
Stakeholder Input*

Dear Chair Gauvain;

On April 19, 2021, the Council of the Berkeley Division (DIVCO) discussed the proposed revisions to the sexual violence and sexual harassment (SVSH) frameworks for faculty and staff, called the “Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty” and the “Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel.” DIVCO’s discussion was informed by written comments from the Committee on Faculty Welfare (FWEL); Committee on Privilege and Tenure (P&T); and the verbal comments from the Chair of the Committee on Diversity, Equity, and Campus Climate (DECC). DIVCO endorses both letters and includes DECC’s letter.

DIVCO agrees that the recommendation to “carve out” particular groups based on their formal relationship with UC is reasonable course of action, given the challenging and shifting circumstances, and find the related edits to the two documents to be well conceived. DIVCO also discussed that these changes are based on federal requirements, and should therefore be revisited if and when the federal requirements again change.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads 'Jennifer Johnson-Hanks'.

Jennifer Johnson-Hanks  
Professor of Demography and Sociology  
Chair, Berkeley Division of the Academic Senate

Enclosures

cc: Ronald Cohen, Vice Chair, Berkeley Division of the Academic Senate  
Lok Siu, Chair, Committee on Diversity, Equity, and Campus Climate  
David Hollinger, Co-chair, Committee on Faculty Welfare  
Terrance Odean, Co-chair, Committee on Faculty Welfare  
Samuel Otter, Chair, Committee on Privilege and Tenure  
Jocelyn Surla Banaria, Executive Director, Berkeley Division of the Academic Senate  
Linda Corley, Senate Analyst, Committee on Diversity, Equity, and Campus Climate  
Sumali Tuchrello, Senate Analyst, Committee on Faculty Welfare and Privilege & Tenure



320 STEPHENS HALL  
UNIVERSITY OF CALIFORNIA

March 31, 2021

CHAIR JENNIFER JOHNSON-HANKS  
Academic Senate

*Re: Proposed Revisions to SVSH Frameworks*

Dear Jenna,

At our meeting on March 29, 2021, the Faculty Welfare Committee reviewed the proposed revisions to the *Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty* and the *Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel*. Overall, we agree that the recommendation to “carve out” particular groups based on their formal relationship with UC is an acceptable course of action under the shifting circumstances and find the related edits to the two documents to be reasonable.

We appreciate the opportunity to weigh in on these matters.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David Hollinger'.

David Hollinger, Co-Chair

A handwritten signature in blue ink, appearing to read 'Terrance Odean'.

Terrance Odean, Co-Chair

DH/TO/st



320 STEPHENS HALL  
UNIVERSITY OF CALIFORNIA

April 12, 2021

CHAIR JENNIFER JOHNSON-HANKS  
Divisional Council

*RE: Proposed Revisions to SVSH Frameworks*

Dear Chair Johnson-Hanks,

The Committee on Privilege and Tenure reviewed the proposed revisions to the “Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty” and the “Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel.” The Committee discussed the proposal to “carve out” the live hearing from the Department of Education Grievance Process when allegations of DOE-Covered Conduct arise from programs that are not “postsecondary institutions,” as defined in the new regulations, even if they are part of the University. The Committee agrees that such “carve-outs” are an acceptable course of action under the shifting regulatory circumstances and finds the related edits in the two documents to be reasonable.

We appreciate the opportunity to weigh in on these matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel Otter', with a long horizontal flourish extending to the right.

Samuel Otter, Chair  
Committee on Privilege and Tenure

SO/st



April 20, 2021

PROFESSOR JENNIFER JOHNSON-HANKS  
Chair, 2020-2021 Berkeley Division of the Academic Senate

*Re: DECC's Comments on the Revisions to SVSH Frameworks for Faculty and Staff*

The Committee on Diversity, Equity, and Campus Climate (DECC) reviewed the revisions to SVSH Frameworks for Faculty and Staff. DECC unanimously endorsed the proposal without comment.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Lok Siu'.

Lok Siu  
Chair, Committee on Diversity, Equity, and Campus Climate

LS/lc



DAVIS DIVISION OF THE ACADEMIC SENATE  
ONE SHIELDS AVENUE  
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April 26, 2021

**Mary Gauvain**  
Chair, Academic Council

**RE:** Proposed Revisions to SVSH Frameworks for Faculty and Staff

Dear Mary,

Given the condensed timeline, the proposed revisions to the SVSH frameworks were forwarded for review only to the Committee on Privilege and Tenure (P&T), Investigative Subcommittee. Enclosed, P&T provides a list of sections and language needing clarity.

The Davis Division appreciates the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Tucker", is written over a light gray rectangular background.

Richard P. Tucker, Ph.D.  
Chair, Davis Division of the Academic Senate  
University of California, Davis

Enclosed: Committee on Privilege and Tenure, Investigative Subcommittee Response

c: Hilary Baxter, Executive Director, Systemwide Academic Senate  
Michael LaBriola, Assistant Director, Systemwide Academic Senate  
Edwin M. Arevalo, Executive Director, Davis Division of the Academic Senate



April 16, 2021

**Richard Tucker**

Chair, Davis Division of Academic Senate

**RE:** RFC: Systemwide Request to review revisions to SVSH Faculty and Staff Framework

Dear Richard:

The Committee on Privilege & Tenure -- Investigative Subcommittee reviewed the Request for Consultation (RFC) of the Systemwide Request to review revisions to SVSH Faculty and Staff Framework. The committee provides its suggested revisions, questions, and concerns on the revised framework:

- INTRODUCTION Second paragraph (page 1), "The University advocated strongly for DOE to change some components of the DOE Grievance Process before issuing the regulations; DOE did not. Because compliance with the regulations is a condition of federal funding, the University has revised its policies to fully implement them." The committee finds these sentences to be unnecessary and irrelevant.
- III. INVESTIGATING AND RESOLVING REPORTS OF PROHIBITED CONDUCT (Stage 1) III.B.3.d: Evidence Review (page 8). Is the added language on the opportunity to submit questions and follow up questions actually related to Evidence Review?
- IV. ASSESSMENT AND CONSULTATION (Stage 2) First paragraph (page 11), word "to" missing: "Matters investigated under the DOE Grievance Process that alleged No-Title IX Hearing DOE-Covered Conduct will go to Stage 2.C...."
- IV. ASSESSMENT AND CONSULTATION (Stage 2) First paragraph (page 11), "The steps outlined below for assessment and consultation apply to investigations of DOE-Covered Conduct and other Prohibited Conduct. An additional notice requirement that applies specifically to investigations of DOE-Covered Conduct is in the DOE Addendum." It would seem that the notice requirement for DOE-Covered Conduct is part of the steps for assessment and consultation for DOE-Covered Conduct. Why is it necessary to refer to the Addendum rather than just include the notice requirement there?
- VI. DECISION ON SANCTIONS FOR NON-SENATE FACULTY (Stage 3) First paragraph (page 15), DOE should be capitalized in parentheses: "following an investigation and any appeal (per Section IV.C of the Doe Addendum)"
- IV.B. PREHEARING AND HEARING (Stage 2.B) IVB.E.3 (page 23): appears to indicate that hearings have to be remote ("The hearing will be conducted remotely"), despite other provisions in the section and at other places suggesting that it is not necessarily the case (notice of the location of the hearing, separation of parties for well-being, etc.).
- IV.D. ADDITIONAL ASSESSMENT AND CONSULTATION (Stage 2.D) Ambiguous referent, repeat what? (page 29): "If the Chancellor or Chancellor's designee already took these steps (because the investigator determined or preliminarily determined the respondent violated the SVSH Policy), then they may choose to repeat them before proposing a resolution (for example, when the finding from following any hearing or appeal is different from the investigator's determination or preliminary determination). The Chancellor or Chancellor's designee will decide what action to take to resolve the matter."
  - Are the steps to be repeated limited to notification? The antecedent of "them" is unclear.

- There are a number of formatting/language inconsistencies (Senate vs senate, the complainant or the respondent vs complainant or respondent, commas where there should not be one, etc.).
- There are several places where there is a reference to a “DOE Addendum” and several places where the reference is to a “Doe Addendum.” This should be corrected and consistent throughout.
- The phrase "No-Title IX Hearing DOE-Covered Conduct" is one particular example of what makes this policy unclear. If the substance of the policy cannot be changed, perhaps at least the terminology can; the committee suggests replacing this term with something shorter and less convoluted.
- In reference to the convoluted wording, there is concern about the phrase "a program or activity provided for the benefit of minors, including elementary and secondary schools, and the Complainant is a beneficiary." One thing to notice is that it appears that elementary and secondary schools are minors, rather than the intended meaning of minors attending elementary and secondary schools. Another issue is the way the carve-out is worded to focus on minors. This is a carve-out to exclude non-tertiary education related activities of the university, but there are university students who are still minors (under the age of 18 upon admission); isn't there some better way to word this carve-out?

Thank you.



Julia Simon  
Chair, Committee on Privilege and Tenure – Investigative Subcommittee

cc: Edwin Arevalo, Executive Director, Davis Division of the Academic Senate

April 26, 2021

Mary Gauvain, Chair  
Academic Council

**Re: Systemwide Review of SVSH Investigation and Adjudication Frameworks for Faculty and Staff**

Dear Chair Gauvain,

The Irvine Division Senate Cabinet discussed the proposed revisions to the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty ("Faculty Framework") and the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel ("Staff and NFAP Framework") at its April 20, 2020 meeting. The proposed revisions were also reviewed by the Council on Faculty Welfare, Diversity, and Academic Freedom and Committee on Privilege and Tenure. The Councils' memos are attached for Academic Council consideration.

Thank you for the opportunity to comment.

Sincerely,



Jeffrey Barrett, Chair  
Academic Senate, Irvine Division

Cc: Joanna Ho, Chair Elect-Secretary  
Terry Dalton, CFW Chair  
Irene Tucker, CPT Chair  
Kate Brigman, Executive Director  
Gina Anzivino, Associate Director  
Julie Kennedy, CFW and CPT Analyst  
Brandon Haskey-Valerius, Cabinet Analyst



April 14, 2021

**JEFF BARRETT, CHAIR  
ACADEMIC SENATE, IRVINE DIVISION**

**RE: Systemwide Review of SVSH Frameworks for Faculty and Staff**

At its meeting on April 9, 2021, the Committee on Privilege and Tenure (CPT) discussed proposed revisions to sexual violence and sexual harassment (SVSH) frameworks for faculty and staff.

The Committee understands that these revisions were proposed by the systemwide Title IX office in an effort to comply with federal regulatory changes that went into effect August 14, 2020. While members expressed concerns about the U.S. Department of Education (DOE) Title IX regulations, they agreed that the changes represent an acceptable compromise between federal regulations and university procedures and support the revisions as proposed. The Committee is hopeful that the DOE review of the regulations ordered by President Biden will result in significant improvements.

The Committee on Privilege and Tenure appreciates the opportunity to comment.

Sincerely,



Irene Tucker, Chair  
Committee on Privilege and Tenure

C: Kate Brigman, Executive Director  
Gina Anzivino, Associate Director  
Julie Kennedy, CPT Analyst



April 19, 2021

**JEFFREY BARRETT, CHAIR  
ACADEMIC SENATE – IRVINE DIVISION**

**Re: Systemwide Review of SVSH Frameworks for Faculty and Staff**

Systemwide Senate Chair Gauvain has forwarded for review proposed revisions to sexual violence and sexual harassment (SVSH) frameworks for faculty and staff. These revisions were proposed by the systemwide Title IX office in efforts to comply with federal regulatory changes that went into effect August 14, 2020. The proposed revisions consist of additional changes to interim policies issued last summer. There has been accompanying Senate work to address regulatory impacts on procedures for Senate faculty. This includes both the recent change in the evidentiary standard to be used in Committee on Privilege and Tenure hearings for alleged violations of the SVSH policy as well as a forthcoming proposal to preclude unnecessary duplication when hearings are conducted at both the Title IX and P&T phases.

The Council on Faculty Welfare, Diversity, and Academic Freedom (CFW) discussed this issue at its meeting on April 13, 2021 and members had the following comments:

Members agreed that providing these additional safeguards (live hearings and appeals for cases) for an individual accused of sexual violence or sexual harassment seems reasonable. However, members were disappointed that the standard for P&T decisions was lowered to preponderance of the evidence from clear and convincing.

Sincerely,



Terry Dalton, Chair  
Council on Faculty Welfare, Diversity, and Academic Freedom



April 27, 2021

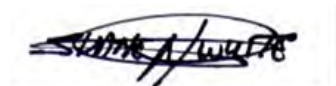
Mary Gauvain  
Chair, UC Academic Senate

Re: **Proposed Revisions to SVSH Frameworks for Faculty and Staff**

Dear Chair Gauvain,

The UCLA Division was unable to opine due to the unusually short review period. Although the item was distributed to the relevant committees, their meeting schedules did not permit review within the assigned period. The item was presented to Executive Board as an informational item, but this was in the absence of committee opinions, as explained above. Whereas, the Executive Board appreciates the necessity of compliance with DOE regulation, concern was expressed about the nature of the 2020 regulations. Concern was expressed that complainants not be unduly burdened by regulation and process. As division chair, I request that any changes made to UC policy remain as interim until the new administration have reviewed the 2020 regulations, and that a Senate member's right to a hearing by a Senate body remain.

Sincerely,



Shane White  
Chair  
UCLA Academic Senate

Cc: April de Stefano, Executive Director, UCLA Academic Senate  
Jody Kreiman, Vice Chair/Chair Elect, UCLA Academic Senate  
Michael Meranze, Immediate Past Chair, UCLA Academic Senate



OFFICE OF THE ACADEMIC SENATE  
ROBIN DELUGAN, CHAIR, ACADEMIC SENATE  
[senatechair@ucmerced.edu](mailto:senatechair@ucmerced.edu)

UNIVERSITY OF CALIFORNIA, MERCED  
5200 NORTH LAKE ROAD  
MERCED, CA 95343

**April 26, 2021**

**To: Mary Gauvain, Chair, Academic Council**

**RE: Proposed Revisions to the SVSH Frameworks for Faculty and Staff**

The Merced Divisional Council has reviewed the proposed revisions to the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty ("Faculty Framework") and the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel ("Staff and NFAP Framework"). The Council is cognizant of the regulatory requirements which stem from the new federal Title IX regulations issued in 2020, that UC follow a specific grievance process in response to complaints of conduct covered by the regulations ("DOE-Covered Conduct"). Among the requirements of this process are live hearings and appeals for cases with faculty and staff respondents.

Concerns have been raised that, because faculty and many staff already had the right to a hearing at the disciplinary stage under other policies, these additional requirements will deter complainants from participating in the grievance process, exacerbated by other components of the live hearing such as a requirement that parties be allowed to cross-examine each other through their advisors.

The UCM Divisional Council appreciates that UCOP has identified limited categories of allegations against employees that can be resolved without a Title IX hearing per the regulations, which arise from programs that are not "post-secondary educational institutions," as defined in the Regulations, even if they are part of the University.

The Council also appreciates the recognition, in the cover letter from the Systemwide Title IX Director, the efforts Academic Senate has made to address potentially adverse impacts on faculty process.

The Merced Divisional Council appreciates the opportunity to opine.

Sincerely,

A handwritten signature in cursive script that reads "Robin M. DeLugan".

Robin DeLugan  
Chair, Divisional Council  
UC Merced

CC: Divisional Council  
Hilary Baxter, Executive Director, Systemwide Academic Senate  
Michael LaBriola, Assistant Director, Systemwide Academic Senate  
Senate Office

Encl (3)





April 26, 2020

To: Mary Gauvain, Chair  
Academic Senate

From: Susannah Scott, Chair  
Santa Barbara Division 

Re: Systemwide Review of SVSH Frameworks for Faculty and Staff

The Santa Barbara Division distributed the proposed changes to the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty and the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel to the Council on Faculty Welfare, Academic Freedom, and Awards, the Charges Advisory Committee, and the Committee on Privilege and Tenure. The Council on Faculty Welfare, Academic Freedom, and Awards was invited to comment but did not have enough time to do so due to other heavy responsibilities. Each response is attached for your consideration.

The Charges Advisory Committee and the majority of Privilege and Tenure members who provided feedback support the proposed changes and their rationale, i.e., to minimize the potentially negative impact of the current Federal Title IX regulations (specifically the live hearing requirement) on UC's handling of SVSH cases involving faculty and staff respondents. Some concern was expressed that the Letter from Systemwide Title IX did not clearly convey the background to and rationale for the proposed revisions.

The Santa Barbara Division has no objection to the proposed changes.

One member of Privilege and Tenure suggested that the last word in Section IV.C.A.1.b of the proposed SVSH Framework for Faculty (page 27) should be "or" rather than "and." For clarification, please see the highlighted word in the text quoted below:

[IV.C] A. Grounds for Appeal

A party may only appeal on the grounds described in this section.

1. In cases of No-Title IX Hearing DOE-Covered Conduct:

a. There was procedural error in the investigation process that materially affected the outcome; procedural error refers to alleged deviations from University policy, and not challenges to policies or procedures themselves;

- b. There is new evidence that was not reasonably available at the time of the investigation that could have materially affected the outcome; and
- c. The investigator or Title IX Officer had a conflict of interest or bias that affected the outcome.

See also the principles in Section IV.B.(B)(2).

We thank you for the opportunity to opine.

**Academic Senate  
Santa Barbara Division**

April 26, 2021

To: Susannah Scott, Chair  
Academic Senate

From: Andrew Norris, Charges Officer  
Academic Senate

Re: Charges Advisory Committee Response to Proposed Revisions to UC's SVSH Frameworks for  
Faculty and Staff

The Charges Advisory Committee and the Charges Officer (hereafter together referred to as "the Committee") met recently to discuss the proposed revisions to UC's Sexual Violence and Sexual Harassment (SVSH) Frameworks for Faculty and Staff.

The Committee very much appreciated the opportunity to review and provide feedback on the proposed revisions. The Committee supports the proposed changes and their rationale, i.e., to minimize the potentially negative impact of a concerning feature of the current Federal Title IX regulations -- the requirement for a live hearing during the Title IX investigation phase -- on UC's handling of SVSH cases involving faculty and staff respondents.

Yours Sincerely,



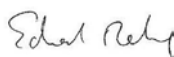
Andrew Norris  
Professor of Political Science and Affiliated Professor of Philosophy and of Religious Studies  
(805) 893-5154; anorris@polsci.ucsb.edu

**Academic Senate  
Santa Barbara Division**

April 26, 2021

To: Susannah Scott, Chair  
Academic Senate

From: Eckart Meiburg, Chair  
Committee on Privilege and Tenure



Re: Response to Proposed Changes to UC's SVSH Frameworks for Faculty and Staff

There was insufficient time for the Committee on Privilege and Tenure (P&T) to schedule a meeting to discuss the proposed revisions to UC's Sexual Violence and Sexual Harassment (SVSH) Frameworks for Faculty and Staff. Feedback on the proposed changes was thereby solicited via email.

The majority of P&T members who provided feedback supported the proposed changes and their rationale, i.e., to minimize the impact of a concerning feature of the current Federal Title IX regulations – the requirement for a live hearing during the Title IX investigation phase – on UC's processing of SVSH cases involving faculty and staff respondents.

No P&T member objected to the proposals although concern was expressed that the Letter from Systemwide Title IX did not clearly convey the background to and rationale for the proposed revisions.

One member suggested that the last word in Section IV.C.A.1.b of the proposed SVSH Framework for Faculty (page 27) should be "or" rather than "and." For clarification, please see the highlighted word in the text quoted below:

[IV.C] A. Grounds for Appeal

A party may only appeal on the grounds described in this section.

1. In cases of No-Title IX Hearing DOE-Covered Conduct:

- a. There was procedural error in the investigation process that materially affected the outcome; procedural error refers to alleged deviations from University policy, and not challenges to policies or procedures themselves;
  - b. There is new evidence that was not reasonably available at the time of the investigation that could have materially affected the outcome; **and**
  - c. The investigator or Title IX Officer had a conflict of interest or bias that affected the outcome.
- See also the principles in Section IV.B.(B)(2).



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SANTA CRUZ DIVISION  
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April 26, 2021

MARY GAUVAIN, Chair  
Academic Council

**Re: Systemwide Revisions to SVSH Frameworks for Faculty and Staff**

Dear Mary,

The Santa Cruz Division of the Academic Senate has completed its review of the proposed revisions to the Sexual Violence and Sexual Harassment Investigation and Adjudication Frameworks for faculty and staff. The Committees on Faculty Welfare (CFW), Privilege and Tenure (P&T), Rules, Jurisdiction, and Elections (RJ&E), and the Graduate Council (GC) provided comments. The Division recognizes the need for these changes in order to comply with current Department of Education (DOE) regulations promulgated by the DeVos administration. As such we also see these as potentially interim measures with the new Secretary of Education, Miguel Cardona, likely to make changes during the current Biden administration. The Division found the listing of specific situations to be too limited and some of the language of the policy to be unnecessarily opaque but appreciated the need for a “carve out.”

It is our understanding that the DOE’s new regulations pertain to conduct that arises from programs that are “postsecondary educational institutions.” Systemwide Title IX responded by identifying specific areas of exemption. These areas of exemption were presented as a list which members found to be unnecessarily limited and noted other situations in which prohibited conduct might occur, such as professional conferences. The Division suggests rather than enumerating all possible situations in which prohibited behavior might occur other than “postsecondary educational institutions” that these be inclusive of a category. Alternatively, the list could follow the preamble “This policy applies to activities not limited to . . . .”

As well, the Division was generally in favor of a “carve out,” given the interim nature of these changes, so that the policy may more easily be reverted to its former version as soon as possible.

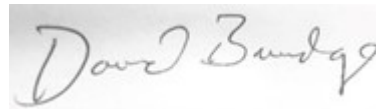
Finally, the Division found that the language of the policy was in places unnecessarily opaque which made the policy functionally inaccessible. Here are a few examples:

- The phrase “No-Title IX Hearing DOE-Covered Conduct,” used throughout the Frameworks, could be shortened.

- The contrasts between “Formal Investigation” and “DOE Grievance Process,” and between “Determination” and “Preliminary determination,” could be explained earlier and more explicitly.
- Sentences such as the following could be simplified: “The process for Prohibited Conduct that is not DOE-Covered Conduct does not include a hearing or appeal, the process for No-Title IX Hearing DOE-Covered Conduct does not include a hearing but may include an appeal, and the process for all other DOE-Covered Conduct may include both a hearing and an appeal” (p. 3)

The inaccessibility of the language may make it difficult for parties to understand what their rights are under the policy. This could be remedied by adopting clearer terminology, simplifying some of the syntax, and providing a list of definitions at the beginning of the policy.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Brundage", is shown within a rectangular border.

David Brundage, Chair  
Santa Cruz Division of the Academic Senate

cc: Nico Orlandi, Chair, Committee on Faculty Welfare  
Julie Guthman, Chair, Committee on Privilege and Tenure  
Donald Smith, Chair, Graduate Council  
Kenneth Pedrotti, Chair, Committee on Rules, Jurisdiction and Elections



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April 23, 2021

Professor Mary Gauvain  
Chair, Academic Senate  
University of California  
VIA EMAIL

Re: SVSH Investigation and Adjudication Framework

Dear Professor Gauvain,

The proposed revisions to the SVSH Investigation and Adjudication Framework were distributed to San Diego Divisional Senate standing committees and discussed at the April 19, 2021 Divisional Senate Council meeting. Senate Council had no objections to the proposal.

The response from the Divisional Committee on Privilege and Tenure is attached.

Sincerely,

A handwritten signature in black ink, reading "Steven Constable".

Steven Constable  
Chair  
San Diego Divisional Academic Senate

Attachments

cc: Tara Javidi, Vice Chair, San Diego Divisional Academic Senate  
Ray Rodriguez, Director, San Diego Divisional Academic Senate  
Hilary Baxter, Executive Director, UC Systemwide Academic Senate

April 7, 2021

**STEVEN CONSTABLE**

**Chair, San Diego Divisional Academic Senate**

**SUBJECT: Review of Proposed Revisions to SVSH Investigation and Adjudication Framework & Proposed Revision to UC Senate Bylaw 336, Privilege and Tenure – Divisional Committees – Disciplinary Cases**

Dear Chair Constable,

The UC San Diego Divisional Committee on Privilege and Tenure has reviewed the proposed revisions to the UC Sexual Violence and Sexual Harassment (SVSH) Investigation and Adjudication Framework and the proposed revision to UC Senate Bylaw 336 that were transmitted in your revised letter of March 18. The Committee's responses are provided below, preceded by a description of the context of these proposals for the benefit of Senate Council.

Background for Senate Council

Current process: The current process, codified in UC Senate Bylaw 336, requires a disciplinary hearing, conducted by the Privilege and Tenure Committee, before discipline can be imposed upon a Senate faculty member. For sexual violence/harassment cases at UCSD, the hearing would follow an investigation by the Office for the Prevention of Harassment and Discrimination (OPHD), our Title IX Office. The EVC initiates the disciplinary process by filing charges with CPT upon completion of the OPHD investigation.

What changed: New Title IX Regulations, published in May 2020 and effective in August 2020, contain a "grievance process for formal complaints of sexual harassment" which includes a hearing as part of the grievance process, before a determination of responsibility is made and disciplinary sanctions may be imposed. This new Title IX Department of Education (DOE) hearing occurs after an investigation has been completed and an investigative report has been issued.

Title IX DOE Hearing versus Bylaw 336 P&T Disciplinary Hearing:

At both hearings, witnesses testify under oath, and a neutral third party makes a determination as to whether the standard of proof has been met and produces a report. At a P&T hearing, a Hearing Panel composed of and chaired by Senate faculty (usually Privilege and Tenure Committee members) serve as the neutral third party. At the DOE hearing, a Hearing Officer, who cannot be the same person/s as the Title IX investigator/s, serves as the neutral third party.



The parties to a DOE hearing are the complainant and respondent. The parties at a P&T hearing are the Administration (e.g. EVC/Academic Personnel) and the respondent. Advisors/Attorneys for the complainant and the respondent may ask the other party questions at a DOE hearing. At a P&T hearing the Administration's Attorney and the respondent's Advisor/Attorney ask witnesses questions. Hearing Panel members may also ask questions at a P&T hearing. The rules for the DOE hearing are more detailed and technical (e.g., what type of questions may be asked during cross-examination).

Note: The Biden Administration will likely change the Regulations and we don't know what impact those changes may have on the new DOE hearing, and so there may be changes, but for the moment, we need to come into compliance with the current law.

What's Proposed, Part I – Revisions to the SVSH Investigation and Adjudication Framework: The UC Systemwide Title IX Office has determined that when SVSH allegations arise from programs that are not "postsecondary educational institutions," as defined in the DOE regulations, no Title IX live hearing is required, even if the programs are part of the University. The proposed revisions to the Framework explicitly distinguish the procedures to be followed in these specific categories of SVSH allegations.

What's Proposed, Part II – Bylaw 336 Revision: In order to avoid requiring witnesses to testify at two separate hearings, the DOE Hearing Report will be shared with the Committee on Privilege and Tenure and only new evidence not discoverable at the time of the DOE Hearing may be presented at a P&T Hearing. Requiring witnesses to testify twice is problematic, because witnesses may be reluctant to do so. The incident at issue may have been traumatic. Also, students graduate or transfer, and are then no longer part of the campus community. They may have moved away and they may want to leave the incident behind.

#### CPT Review of Proposed Revisions to SVSH Investigation and Adjudication Framework

The Committee agreed that the proposed revisions to the Framework (both the Senate and Non-Senate Faculty and the Staff and Non-Faculty Academic Personnel versions) are logical and well-motivated, and has no objections to them.

#### CPT Review of Proposed Revision to UC Senate Bylaw 336

The Committee endorses the proposed revision, with the proviso that the following change be made to the language to be added to section 336.F.3:

*For cases in which there was a hearing at the Title IX stage regarding violation of the University's policy on Sexual Violence and Sexual Harassment ("SVSH Policy"), the Hearing Committee shall accept into evidence the record and ~~decision~~ **report** from the Title IX process.*

It was firmly felt that the decision resulting from the Title IX process (which will be included in the associated report) does not qualify as evidence and should not be considered as such by the P&T Hearing Committee.

Sincerely,

James Posakony, Chair  
Committee on Privilege and Tenure

cc: Tara Javidi, Vice Chair  
Ray Rodriguez, Director

**Office of the Academic Senate**

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Sharmila Majumdar, PhD, Chair  
Steven Cheung, MD, Vice Chair  
Pamela Ling, MD, Secretary  
Jae Woo Lee, MD, Parliamentarian

April 26, 2021

Mary Gauvain, PhD  
Chair, Academic Council  
Systemwide Academic Senate  
University of California Office of the President  
1111 Franklin St., 12<sup>th</sup> Floor  
Oakland, CA 94607-5200

Re: Systemwide Review of Revisions to SVSH Frameworks for Faculty and Staff

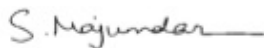
Dear Mary:

The San Francisco Division of the Academic Senate has reviewed the proposed Revisions to SVSH Frameworks for Faculty and Staff.

Understanding that these revisions are limited to those changes which were mandated by the U.S. Department of Education when it issued new regulations under the Trump administration, we support these necessary amendments. However, in light of the fact that the Biden administration will review these regulations for consistency with White House policies, we look forward to future changes as needed.

The UCSF Privilege and Tenure Committee (P&T) noted that the revisions are highly technical and procedural in nature. However, to promote UC's commitment to protect individuals against SVSH violations, SVSH frameworks should be accessible to members of the public. UCSF P&T recommends making the frameworks more succinct language including with respect to taxonomy and procedures.

Sincerely,



Sharmila Majumdar, PhD, 2019-21 Chair  
UCSF Academic Senate

Enclosures (1)

Cc: Susan Chapman, RN, PhD, Chair, UCSF Committee on Privilege and Tenure

April 26, 2021

Professor Sharmila Majumdar, PhD  
Chair, UCSF Academic Senate

RE: Revisions to SVSH Frameworks for Faculty and Staff

Dear Chair Majumdar,

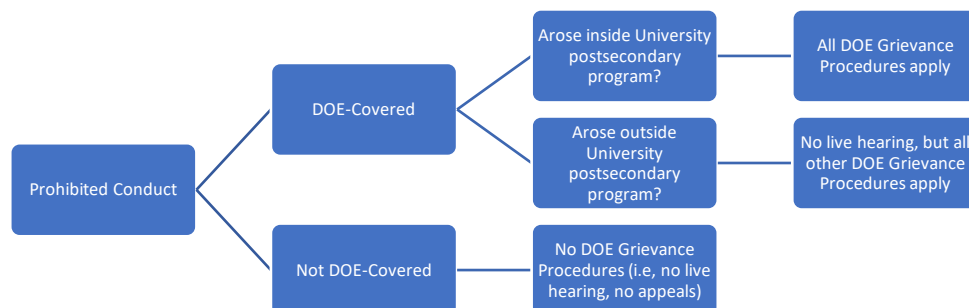
P&T discussed the [Revisions to SVSH Frameworks for Faculty and Staff](#). We acknowledge that these revisions are required by new Title IX regulations from the Department of Education (DOE) under the previous presidential administration and that the current President has signed an Executive Order directing the DOE to review the regulations for consistency with the new administration's policy.

#### **DOE Grievance Procedures & Hearing Carve-Out**

UC must follow a new grievance process for DOE-Covered Conduct that includes live hearings (i.e., Title IX hearing) and appeals separate from and in addition to the P&T hearing. Some SVSH cases may be resolved without a live Title IX hearing if the conduct arose outside the University's postsecondary program. For example, a "hearing carve-out" is applicable if the allegations arise from the provision of patient care to the complainant or a person in the complainant's charge. As UCSF is an Academic Medical Center, we might expect to see such SVSH cases in the future. It is important to note that the "hearing carve-out" does not eliminate the other DOE Grievance Procedures.

#### **Role of Title IX Officer**

The Title IX Officer determines if the alleged conduct is DOE-Covered Conduct and whether it arose outside the University's postsecondary program. This is a key determination with procedural implications.



### **Revised Framework**

Most of the revisions to the framework documents add language that incorporates the DOE-Covered Conduct procedures. We accept the revisions as they are necessary to comply with federal regulation.

However, in reading the document, much of the framework felt repetitive and contradictory. For example, text such as “A summary statement of the factual findings and determinations or preliminary determination (whichever applies)” lends confusion to the procedural framework. We are deeply concerned that it would be very difficult for an interested party to understand the framework without the assistance of a subject matter expert. Our own understanding of the process benefited from the “tree diagram” above.

Moreover, some of the terms were used without definitions. Interested parties including but not limited to victims of SVSH violations may have questions such as:

- What qualifications must an investigator have?
- How is the preponderance of the evidence standard defined?

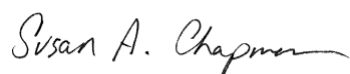
The text of the revisions could be more succinct. For example. The language about the evidence review, specifically pertaining to the investigators discretion to “ask a question” from one party to the other, could be improved for clarity and precision. In addition, we would recommend new taxonomy that is less confusing and drafted so that any member of the public could understand the document.

### **Impact on P&T**

The proposed revisions to SVSH frameworks will have a minor impact on P&T. In SVSH cases in which the respondent is a member of the Senate faculty, if the investigation finds a violation of policy occurred then the case goes to a Peer Review Committee which recommends to the Chancellor or their designee what disciplinary sanctions are appropriate. The Chancellor presents to the respondent a Notice of Intent to Impose Discipline which the respondent may accept or reject. If the respondent rejects, then the case goes to P&T where the administration has the burden of proving the violation occurred. The University Committee on Privilege and Tenure (UCPT) has proposed amendments to Senate bylaw 336 that will change the evidentiary hearing requirements for SVSH P&T cases. Under the proposed amendment to Senate bylaw 336, the P&T Hearing Committee “shall accept into evidence the record and decision from the Title IX process” with limited exception as determined by the Hearing Committee.

Thank you for this opportunity to review these proposed revisions.

Sincerely,



Susan Chapman, RN, PhD  
Chair, Privilege and Tenure  
UCSF Academic Senate, 2020-2021

April 28, 2021

To: Executive Board  
UCLA Academic Senate

From: Vilma Ortiz, Chair  
UCLA Privilege and Tenure Committee



**Re: Proposed revisions to systemwide Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty ("SVSH Framework")**

The Committee on Privilege and Tenure appreciates the opportunity to review the proposed revisions to the systemwide SVSH Framework. The Committee received the request on March 30, 2021 and was not able to schedule a discussion until their April 14, 2021 meeting. Nonetheless, the Committee felt that the policy was important to review although it appears the principal issue of concern—that of how disciplinary hearings for Senate faculty under SVSH charges will be handled—has yet to be proposed.

As a document that is meant to make the process under the revised policy clear, the SVSH Framework provides an array of definitions and pathways without a clear explanation differentiating the terms and possible pathways:

- Prohibited Conduct that is not DOE-Covered (no hearing, no appeal)
- No-Title IX Hearing DOE-Covered Conduct (no hearing, but may appeal)
- All other DOE-Covered Conduct (may include both a hearing and an appeal).

Since the principal issue of concern before the Taskforce and the Academic Senate at this point is the right to a hearing before Senate faculty before discipline can be imposed, it would seem to be a helpful step forward to differentiate clearly among the different types of "covered conduct" and pathway options. In addition to defining the conduct categories, what does it mean that "may include" a hearing? Whose option is the hearing? Clarity of these terms would help interpret provisions such as III.B (Investigation) under "Investigating and Resolving Reports of Prohibited Conduct (Stage 1)." This seems to indicate "one investigation" for all types of conduct, but it is not clear what the process will be since the definitions seem quite opaque. In addition, III.B in the main document appears to be in conflict with G.13 in the DOE ADDENDUM which states that after an investigation that is followed by a hearing, there can be a statement by the Chancellor/Chancellor's designee that determines whether "further investigation" is needed, separate from any allegations of Prohibited Conduct that were investigated under the SVSH Policy. That is not only confusing, but would seem counter-productive. If an investigation involves matters that do not fall under the SVSH (or DOE) policies, these should be handled in parallel or coordination by the processes already in place on the individual campuses.

**Hearing Issue**

The Committee would also like to comment on the issue of the impact of the new processes on the faculty right to a hearing in a disciplinary process. In resolving this, the Committee recommends explicit recognition of three provisions in the current regulations. First, the regulations do not require that the Hearing Officer be from an outside entity.

At 30251-30252 of the Preamble to the regulations:

The final regulations leave recipients flexibility to use their own employees, or to outsource Title IX investigation and adjudication functions, and the Department encourages recipients to pursue alternatives to the inherent difficulties that arise when a recipient's own employees are expected to perform these functions free from conflicts of interest and bias. The Department notes that several commenters favorably described regional center models that could involve recipients coordinating with each other to outsource Title IX grievance proceedings to experts free from potential conflicts of interest stemming from affiliation with the recipient. **The Department declines to require recipients to use outside, unaffiliated Title IX personnel because the Department does not conclude that such prescription is necessary to effectuate the purposes of the final regulations; although recipients may face challenges with respect to ensuring that personnel serve free from conflicts of interest and bias, recipients can comply with the final regulations by using the recipient's own employees.**<sup>1</sup>

The Committee recognizes that ensuring "free[dom from] conflicts of interest and bias" can indeed be challenging, especially with a single Hearing Officer. At the same time, having a Hearing Officer who does not understand the academic context can be equally problematic. For that reason, if there is to be a single hearing, the Committee recommends the use of a hearing *panel* that involves trained representation from the category of individuals involved (faculty, staff, students). The DOE regulations explicitly contemplate the use of a panel.

at page 30370 of the Preamble to the regulations, the Department notes: "The . . . final regulations leave significant flexibility to recipients, including whether the Title IX Coordinator can also serve as the investigator, **whether to use a panel of decision-makers** or a single decisionmaker, and **whether to use the recipient's own employees** or outsource investigative and adjudicative functions to professionals outside the recipient's employ."<sup>2</sup> [emphasis added]

The Faculty Code of Conduct provides that as much as feasible there should be a separation of investigative and disciplinary processes. Even if a hearing is required for some SVSH cases, the Committee does not find that negates the right to a faculty disciplinary hearing. This Committee does not find it appropriate that a Title IX Officer or a Hearing Officer recommend disciplinary sanctions. That is a function for the faculty disciplinary process.

The Committee also notes that the DOE regulations do not prohibit a sanction process which is separate from the findings hearing. In fact, the regulations emphasize that the process of finding a violation of Title IX is a *grievance* process, focused on remedies. In addition, the guidelines repeatedly emphasize that, while discipline cannot be imposed without following a grievance process, the imposition of discipline is completely up to the individual institutions.

Because Title IX is a civil rights law concerned with equal educational access, these final regulations do not require or prescribe disciplinary sanctions. The

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<sup>1</sup> United States Department of Education, Office of Civil Rights "Part 2: Questions and Answers Regarding the Department's Title IX Regulations" (January 15, 2021). Available: <https://www2.ed.gov/about/offices/list/ocr/docs/ga-titleix-part2-20210115.pdf>

<sup>2</sup> DOE, OCR "Part 2: Questions and Answers."

Department's charge under Title IX is to preserve victims' equal access to access, leaving discipline decisions within the discretion of recipients.<sup>3</sup>

The Department's focus in these final regulations is on ensuring that recipients take action to restore and preserve a complainant's equal educational access, leaving recipients discretion to make disciplinary decisions when a respondent is found responsible.<sup>4</sup>

Therefore, in light of federal guidance, the Committee recommends the following. First, there should be serious consideration of having the Hearing Officer be, at a minimum, someone with experience in the UC system, if not a current employee. In addition, even if the Hearing Officer is external, the Committee recommends that the University use a hearing *panel*. P&T should have the authority to appoint the panel members in a manner that conforms with hearing committee composition under Bylaws 335 and 336 in cases when the respondent and/or complainant are members of the Academic Senate. We note here that this should be explicit even when the complainant is a faculty member, as faculty also have grievance rights. Potential members should be provided training by the Administration, as provided in the Faculty Code of Conduct: "Divisions are encouraged to develop procedures to provide faculty investigators with training, consultation, or legal counsel to assist with the investigation of faculty disciplinary cases."<sup>5</sup> The Hearing Officer will not have a vote for recommending a sanction. Ideally, the panel members who have participated in the finding process would deliberate regarding recommending a sanction, in line with the process currently in existence in Bylaw 336§F.9, 10.

At a minimum, no sanction should be imposed without a hearing before a "properly constituted" committee of the Academic Senate. Therefore, should the University not agree to form a panel, there should be a separate disciplinary hearing to determine appropriate sanctions. Where the grievant is a faculty member, this panel should also (or instead) recommend appropriate remedies in compliance with faculty grievance rights. As long as the result is appropriately reported, federal guidance allows a "sanction phase."<sup>6</sup>

cc:

2020-21 Committee on Privilege and Tenure: Elizabeth F. Carter, Sandra H. Graham, Barry O'Neill, Clyde S. Spillenger, Dwight C. Streit, and Harry V. Vinters

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<sup>3</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. 106 §30070.

<sup>4</sup> 34 C.F.R. 106 §30044 (fn 164).

<sup>5</sup> APM 015§III.B.3

<sup>6</sup> See DOE, OCR "Part 2: Questions and Answers," pp. 10-11.



April 27, 2021


Mary Gauvain  
Chair, UC Academic Senate

Re: **Proposed Revisions to SVSH Frameworks for Faculty and Staff**

Dear Chair Gauvain,

The UCLA Division was unable to opine due to the unusually short review period. Although the item was distributed to the relevant committees, their meeting schedules did not permit review within the assigned period. The item was presented to Executive Board as an informational item, but this was in the absence of committee opinions, as explained above. Whereas, the Executive Board appreciates the necessity of compliance with DOE regulation, concern was expressed about the nature of the 2020 regulations. Concern was expressed that complainants not be unduly burdened by regulation and process. As division chair, I request that any changes made to UC policy remain as interim until the new administration have reviewed the 2020 regulations, and that a Senate member's right to a hearing by a Senate body remain.

Sincerely,



Shane White  
Chair  
UCLA Academic Senate

Cc: April de Stefano, Executive Director, UCLA Academic Senate  
Jody Kreiman, Vice Chair/Chair Elect, UCLA Academic Senate  
Michael Meranze, Immediate Past Chair, UCLA Academic Senate

## INTRODUCTION

Consistent with the UC Policy on Sexual Violence and Sexual Harassment (“SVSH Policy”), the following describes the University’s process for investigating and adjudicating alleged violations of the SVSH Policy in instances where the respondent is either a University employee whose conduct is governed by Personnel Policies for Staff Members (“PPSMs”), and who is subject to disciplinary and termination procedures set forth in [PPSM 62](#) (Corrective Action – Professional and Support Staff) and [PPSM 64](#) (Termination and Job Abandonment) or a non-faculty academic appointee who is subject to disciplinary procedures under the Academic Personnel Manual (“APM”), [APM-150](#) (Non-Senate Academic Appointees/Corrective Action and Dismissal).<sup>1</sup>

The Title IX regulations issued by the US Department of Education (“DOE”) that went into effect August 14, 2020 require the University to follow a specific grievance process (“DOE Grievance Process”) in response to conduct covered by the regulations (“DOE-Covered Conduct”). The University advocated strongly for DOE to change some components of the DOE Grievance Process before issuing the regulations; DOE did not. Because compliance with the regulations is a condition of federal funding, the University has revised its policies to fully implement them. The Title IX Officer will determine during their initial assessment of a report whether it alleges DOE-Covered Conduct and, if so, whether to open a DOE Grievance Process. Alleged conduct is DOE-Covered Conduct if it is a type of misconduct covered by the regulations (“DOE Sex-Based Misconduct”) that occurred in a University program or activity while the complainant was in the United States. This assessment is described in detail in Appendix IV of the SVSH Policy. The following, read with the attached [DOE Addendum](#), describes the process for investigating and adjudicating alleged violations of the SVSH Policy that include DOE-Covered Conduct.

A flow chart illustrating the processes for complaints against PPSM covered employees can be found in Attachments 1 and 1.A. A flow chart illustrating the process for complaints against non-faculty academic appointees can be found in Attachments 2 and 2.A.

This document should be read in conjunction with the SVSH Policy, as well as applicable PPSMs, including PPSM 62, [PPSM 63](#) (Investigatory Leave) and PPSM 64, and applicable provisions of the APM, including APM-150. The documents also incorporate recommendations issued by the President’s Committee on Sexual Violence Sexual Harassment Disciplinary Process for UC Personnel other than Faculty.

Applicable definitions from the SVSH Policy are incorporated herein. Other definitions are found in the applicable PPSMs and applicable APMs and are incorporated herein.

The SVSH Policy is available at <http://policy.ucop.edu/doc/4000385/SVSH>. The PPSM manual is available at <http://policy.ucop.edu/manuals/personnel-policies-for-staff-members.html>. The

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<sup>1</sup> For all represented staff and academic personnel who are covered by a Memorandum of Understanding with an exclusive bargaining agent, where there is a conflict with their collective bargaining agreement and this Investigation and Adjudication Framework, the collective bargaining agreement provision will apply, except as required by Federal law and regulations. When the respondent is represented, please refer to the relevant complaint resolution, investigation, grievance, and disciplinary procedures contained in the represented respondent’s collective bargaining agreement in conjunction with this Framework.

APM is accessible at <http://www.ucop.edu/academic-personnel-programs/academic-personnel-policy/general-university-policy-regarding-academic-appointees/index.html>.

## **I. REPORTING OPTIONS AND RESOURCES (Stage 0)**

These reporting options and resources are available for any conduct prohibited by the SVSH Policy (“Prohibited Conduct”), including DOE-Covered Conduct.

### **A. Reporting Options**

Any person may make a report, including anonymously, of Prohibited Conduct to the Title IX Office. The Title IX Office is responsible for receiving and responding to reports of Prohibited Conduct.

A person may also make a report to a Responsible Employee as defined by the SVSH Policy. The SVSH Policy requires a Responsible Employee who becomes aware of an incident of Prohibited Conduct to report it to the University by contacting their location’s Title IX Officer or designee.

While there is no time limit for reporting, reports of Prohibited Conduct should be brought forward as soon as possible.

A complainant may choose to make a report to the University and may also choose to make a report to law enforcement. A complainant may pursue either or both of these options at the same time. Anyone who wishes to report to law enforcement can contact the UC Police Department at their location.

### **B. Confidential Resources**

The University offers access to confidential resources for individuals who have experienced Prohibited Conduct and are seeking counseling, emotional support, or confidential information about how to make a report to the University. University Confidential Resources are defined pursuant to the SVSH Policy and include individuals who receive reports in their confidential capacity such as advocates in the CARE Office, as well as licensed counselors (e.g., Employee Assistance Program (EAP) and Counseling and Psychological Services (CAPS)), and Ombuds.

These individuals can provide confidential advice and counseling without that information being disclosed to the Title IX Office or law enforcement, unless there is a threat of serious harm to the individual or others or a legal obligation that requires disclosures (such as suspected abuse of a minor).

## **II. INITIAL ASSESSMENT (Stage 1)**

Upon receipt of a report of or information about alleged Prohibited Conduct, the Title IX Officer will make an initial assessment in accordance with the SVSH Policy, which will include making an immediate assessment concerning the health and safety of the complainant and the campus community.

The Title IX Officer will also determine;— and a determination of

- whether the alleged conduct is DOE-Covered Conduct, other Prohibited Conduct, or a combination, and
- if the alleged conduct is DOE-Covered Conduct, whether it arose outside the University’s postsecondary program, meaning in the context of: (i) the Respondent providing patient care to the Complainant or a person in the Complainant’s charge, (ii) a program or activity provided for the benefit of minors, including elementary and secondary schools, and the Complainant is a beneficiary, (iii) a program or activity provided for the benefit of people with intellectual disabilities (such as the UC Davis SEED Scholar program), and the Complainant is a beneficiary, (iv) a program or activity of Agricultural and Natural Resources or Lawrence Berkeley National Laboratory, or (v) a service or function of the UC Police Department (“No-Title IX Hearing” DOE-Covered Conduct).

These determinations affect the steps in the adjudication process that precedes decisions on corrective action, if there is one. The process for Prohibited Conduct that is not DOE-Covered Conduct does not include a hearing or appeal, the process for No-Title IX Hearing DOE-Covered Conduct does not include a hearing but may include an appeal, and the process for all other DOE-Covered Conduct may include both a hearing and an appeal.

The initial assessment process described below is for all reports of Prohibited Conduct, including DOE-Covered Conduct. A special dismissal provision that applies specifically to complaints of DOE-Covered Conduct is in the DOE Addendum.

#### **A. Supportive Measures**

The University will also consider and implement Supportive Measures, including Interim Measures, as appropriate to protect the safety of the parties or the University community; to restore or preserve a party’s access to a University program or activity; or to deter Prohibited Conduct per the SVSH Policy.

Investigatory leave of a PPSM-covered respondent may be imposed in accordance with PPSM 63. Investigatory leave of a non-faculty academic respondent may be imposed in accordance with APM-150.

#### **B. Written Rights & Options**

The Title IX Officer will ensure that the complainant, if their identity is known, is provided a written explanation of rights and available options as outlined in the SVSH Policy, including:

1. How and to whom to report alleged violations;
2. Options for reporting to and/or notifying law enforcement and campus authorities;
3. Information regarding confidential resources;

4. The rights of complainants regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by criminal or civil courts;
5. The importance of preserving evidence that may assist in proving that a criminal offense occurred or in obtaining a protection order;
6. Counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, and other services available both within the institution and the community;
7. Options for a change to 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 law enforcement; and
8. The range of possible outcomes for the report, including supportive and remedial measures and disciplinary actions, the procedures leading to such outcomes, and their right to make a DOE Formal Complaint.

### **III. INVESTIGATING AND RESOLVING REPORTS OF PROHIBITED CONDUCT (Stage 1)**

The below provisions for investigation and resolution of reports cover investigations of DOE-Covered Conduct and other Prohibited Conduct. Provided the University has sufficient information to respond, and in accordance with the SVSH Policy, the University may resolve reports of alleged Prohibited Conduct by respondents covered by this Framework through Alternative Resolution, Formal Investigation, or a DOE Grievance Process. Throughout the resolution process, the complainant and the respondent may be accompanied by an advisor. In addition, the University will offer to provide support services for complainants and for respondents. The Title IX Office will consider requests from parties and witnesses for language interpretation and, in consultation with the campus disability management office when appropriate, for disability-related accommodations.

#### **A. Alternative Resolution**

After a preliminary inquiry into the facts, if the complainant and respondent agree in writing, the Title IX Officer may initiate an Alternative Resolution in accordance with the [SVSH Policy](#). Alternative Resolution is not available when the complainant is a student [or patient](#) and the respondent is an employee.

#### **B. Investigation**

In cases where Alternative Resolution is inappropriate or unsuccessful, the Title IX Officer may conduct an investigation per the Formal Investigation or DOE Grievance Process provisions in the SVSH Policy.

When the University opens an investigation of allegations of DOE-Covered Conduct and other Prohibited Conduct that arise out of the same facts or circumstances, it will address all allegations together through the DOE Grievance Process procedures.

When the investigation includes allegations of both No-Title IX Hearing DOE-Covered Conduct and other DOE-Covered Conduct that arise out of the same facts or

circumstances, the University will address all allegations together through the full DOE Grievance Process, including reaching preliminary determinations and providing parties the right to a hearing.

1. Notification

The Title IX Officer will notify the Chancellor's designee and the respondent's supervisor or other appropriate administrative appointee when a Formal Investigation or DOE Grievance Process is commenced against a respondent. The Title IX Officer will be sensitive in their communication to protect the neutrality of the Chancellor's designee and the neutrality of the supervisor or other appropriate administrative appointee, as well as the privacy of the complainant and respondent.

Thereafter, the Title IX Officer will ensure that the Chancellor's designee and/or supervisor or other appropriate administrative appointee are regularly updated regarding the status of the Formal Investigation or DOE Grievance Process.

2. Notice of Investigation

When a Formal Investigation or DOE Grievance Process will be conducted, the Title IX Office will send written notice of the charges to the complainant and the respondent.

The written notice will be sent at least three business days before a party's requested interview date, to allow sufficient time for the party to prepare for the interview. The written notice will include:

- a. A summary of the allegations and potential violations of the SVSH Policy;
- b. The identities of the parties involved;
- c. The date, time, and location of the reported incident(s) (to the extent known);
- d. The specific provisions of the SVSH Policy potentially violated;
- e. A statement that the investigative report, when issued, will make factual findings and a determination (in a Formal Investigation or DOE Grievance Process for No-Title IX Hearing DOE-Covered Conduct) or preliminary determination (in any other DOE Grievance Process) whether there has been a violation of the SVSH Policy;
- f. A statement that the parties will each have an opportunity during the investigation to propose questions for the investigator to ask of the other party and witnesses;
- g. A statement that the parties will each have an opportunity, before the completion of the investigation, to review all the evidence submitted that is directly related – a standard broader than relevant - to whether a policy violation occurred;
- h. A statement that the findings under the SVSH Policy will be based on the preponderance of the evidence standard;
- i. A statement that a determination of whether a policy violation has occurred will only be made after an investigation or hearing (if required) and therefore

there is, at the outset, no presumption that the respondent is responsible for a policy violation;

- j. Where applicable, a statement that if it is determined or preliminarily determined that a DOE-Covered Conduct violation did not occur, the investigator will still in the investigative report make a determination or preliminary determination of whether other violations of the SVSH Policy occurred;
- k. A summary of the investigation and discipline processes, including the expected timeline;
- l. A summary of the rights of the complainant and respondent, including the right to an advisor of their choosing, who may be any person, including an attorney, who is not otherwise a party or a witness;
- m. A description of the resources available to complainant and respondent; and
- n. An admonition against intimidation or retaliation.

### 3. Investigative Process

The Title IX Officer will designate an investigator to conduct a fair, thorough, and impartial investigation.

#### a. Overview:

During the investigation, the complainant and respondent will be provided an equal opportunity to meet with the investigator, submit information, identify witnesses who may have relevant information, and propose questions for the investigator to ask the other party and witnesses.

The investigator will meet separately with the complainant, the respondent, and the third party witnesses who may have relevant information, and will gather other available and relevant information. The investigator may follow up with the complainant or the respondent as needed to clarify any inconsistencies or new information gathered during the course of the investigation. The investigator will generally consider, that is rely on, all evidence they determine to be relevant and reliable, including evidence that weighs in favor of and against a determination that a policy violation occurred. The investigator may determine the relevance and weigh the value of any witness or other evidence to the findings and may exclude evidence that is irrelevant or immaterial.

Disclosure of facts to persons interviewed will be limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation may be counseled about keeping information private to protect the integrity of the investigation.

The complainant or the respondent may have an advisor present when personally interviewed and at any related meeting. Other witnesses may have a representative present at the discretion of the investigator or as required by University policy or collective bargaining agreement.



b. Coordination with Law Enforcement:

When a law enforcement agency is conducting its own investigation into the alleged conduct, the Title IX investigator will make every effort to coordinate their fact-finding efforts with the law enforcement investigation. At the request of law enforcement, the investigation may be delayed temporarily to meet specific needs of the criminal investigation.

c. Specific Types of Evidence:

*Sexual history of complainant.*

The investigator will not, as a general rule, consider the complainant's sexual history. However, in limited circumstances, the complainant's sexual history may be directly relevant to the investigation. While the investigator will never assume that a past sexual relationship between the parties means the complainant consented to the specific conduct under investigation, evidence of how the parties communicated consent in past consensual encounters may help the investigator understand whether the respondent reasonably believed consent was given during the encounter under investigation. Further, evidence of specific past sexual encounters may be relevant to whether someone other than respondent was the source of relevant physical evidence. Sexual history evidence that shows a party's reputation or character will never be considered relevant on its own. The investigator will consider proffered evidence of sexual history, and provide it to the parties for review under Section III.B.4. below, only if the investigator determines it is directly relevant. The investigator will inform the parties of this determination.

*Expert witnesses.*

The parties may present evidence from expert witnesses if it would be relevant to the determination of whether a policy violation occurred. If a party wishes for such evidence to be considered, they will make a written request to the Title IX officer, indicating the person(s) they wish to present as, and who has agreed to be, their expert witness; the issue(s) on which the person(s) would provide expert evidence; why they believe that the issue(s) require an expert opinion for resolution; and any prior relationship, including personal and business relationships, between the party and the person(s).

The Title IX officer will grant the request for the proposed expert to provide evidence if the alleged evidence is relevant, and will deny the request if the proposed evidence is not relevant. Proposed expert evidence is not relevant if it is not pertinent to proving whether the facts material to the allegations under investigation are more or less likely to be true. For example, proposed expert evidence is not relevant if it offers opinions about the Title IX regulations or the DOE Grievance Process; if it offers opinions that do not require expertise to form; or if the proposed expert has a bias or conflict of interest so strong that their opinion would not assist the factfinder in determining whether the



facts material to the allegations under investigation are more or less likely to be true.

If the Title IX officer grants a request for proposed expert evidence, they will notify both parties. The other party may then request to present a proposed expert on the same issue (as well as to present their own expert evidence on other relevant issues). The Title IX office may also retain its own expert on any issue on which one or both parties will be presenting expert evidence; the Title IX office will ensure that any such expert does not have bias or conflict of interest and will notify the parties of any expert it intends to retain.

As part of the evidence they present, any expert witness will provide the investigator information about their qualifications; the factual bases for their assertions; and their principles and methods and the reliability thereof. These factors will contribute to the assessment of the weight and credibility of the expert witness's evidence.

In general, parties may not later request proposed expert witnesses to testify at the hearing unless those witnesses have provided evidence during the investigation.

*Clinical records.*

The investigator will not during the investigation access, review, consider, disclose, or otherwise use a complainant's or respondent's medical or other behavioral health records that are made in connection with treatment without the party's voluntary written consent.

*Privileged Records.*

During the investigation, the investigator will not access, review, consider, disclose, or otherwise use evidence that constitutes, or seeks disclosure of, information protected under a legally recognized privilege without the party's voluntary written consent.

d. Evidence Review:

Before the investigator concludes the investigation and finalizes a written report, both Complainant and Respondent will have an equal opportunity to review and respond in writing to the evidence that the investigator has deemed directly related, including evidence that weighs against finding a policy violation(s) and evidence on which the investigator does not intend to rely, whether obtained from a party or another source. This is true regardless of whether a party has participated in the investigation. This review will also include a summary of directly related statements made by the parties and any witnesses. The Title IX Officer will ensure that this review occurs in a manner designed to protect the privacy of both parties. The Title IX Officer will

designate a reasonable time for this review and response by the parties that, absent good cause found by the Title IX Officer, of at least 10 business days.

In investigations of No-Title IX Hearing DOE-Covered Conduct, the investigator will provide parties the opportunity to submit written questions they propose the investigator ask the other party and witnesses, share the responses to their submitted questions, and allow them to propose limited follow-up questions. The investigator has discretion to decline to ask questions that are not relevant or unduly repetitive, and will rephrase any questions that violate the rules of conduct. If the investigator declines to ask a question, they will explain their reasoning.

4. Investigation Report and Determination or Preliminary Determination

Following conclusion of the investigation, the Title IX investigator will prepare a written report. The written investigation report will include a statement of the allegations and issues, statements of the parties and witnesses, and a summary of the evidence the investigator considered. The investigation report will include findings of fact and a determination (in a Formal Investigation or DOE Grievance Process for No-Title IX Hearing DOE-Covered Conduct) and a preliminary determination (in any other DOE Grievance Process) ~~and a determination (in a Formal Investigation)~~ regarding whether, applying the preponderance of the evidence standard, there is sufficient evidence to conclude that respondent violated the SVSH Policy.

If the complainant or respondent offered witnesses or other evidence that was not relied upon by the investigator, the investigation report will explain why it was not relied upon. The investigation report will also indicate when and how the parties were given an opportunity to review and respond to the evidence (see Section 2.c above).

In investigations of No-Title IX Hearing DOE-Covered Conduct, the investigator will provide both Complainant and Respondent an opportunity to review and respond in writing to the investigation report before it becomes final. The investigator has discretion to revise the written report to reflect the parties' responses. The investigation report will become final no sooner than 10 business days from the date it is shared with parties for their review and response.

If the findings of fact indicate that DOE-Covered Conduct occurred, but was not charged as such in the notice of investigation, then the investigator will reach determinations (for No-Title IX Hearing DOE-Covered Conduct) or preliminary determinations (for all other DOE-Covered Conduct) regarding whether a policy violation occurred and the Title IX Officer will notify the parties that the case will now proceed per the DOE Grievance Process.

If instead, the investigator preliminarily determines that conduct charged as DOE-Covered Conduct does not meet that definition, the report will include (if

indicated in the Notice of Investigation) analysis and a preliminary determination both of whether respondent engaged in DOE-Covered Conduct and the other Prohibited Conduct.

5. Notice of Investigation Outcome

Upon completion of the investigation report, the Title IX Officer or designee will send to the complainant and the respondent a written notice of investigation outcome regarding the investigator's preliminary determination or determination (whichever applies) of whether there was a violation of the SVSH Policy. The notice of investigation outcome will generally be accompanied by a copy of the investigation report, which may be redacted as necessary to protect privacy rights.

The Title IX Officer or designee will also send the notice of investigation outcome and accompanying investigation report to the Chancellor's designee and the supervisor or other appropriate administrative authority.

a. In all cases, the notice of investigation outcome will include:

- A summary statement of the factual findings and determinations or preliminary determination (whichever applies) (in a Formal Investigation) or preliminary determinations (in a DOE Grievance Process) regarding whether respondent violated the SVSH Policy;
- An admonition against intimidation or retaliation;
- An explanation of any Supportive Measures that will remain in place;
- A statement that the complainant and respondent have an opportunity to respond in writing and/or in person to the Chancellor's designee and supervisor or other appropriate administrative authority;
- A statement indicating whether it appears that further investigation by another appropriate body may be necessary to determine whether violations of other policies occurred, separate from any allegations of Prohibited Conduct that were investigated under the SVSH Policy.

b. If in a Formal Investigation process or DOE Grievance Process for No-Title IX Hearing DOE-Covered Conduct the investigator determined that respondent violated the SVSH Policy, the notice of investigation outcome will also include:

- For matters involving PPSM-covered respondents, a description of the process for deciding whether and what discipline to impose, including a statement that the supervisor will propose a resolution, which may include corrective action as defined by PPSM-62 or termination in accordance with PPSM-64, and that the proposal will be subject to review and approval by the Chancellor's designee;
- For matters involving non-faculty academic respondents, a description of the process for deciding whether and what discipline to impose, including

a statement that the supervisor or other appropriate administrative authority will propose a resolution, which may include corrective action or dismissal as described in APM-150, and that the proposal will be subject to review and approval by the Chancellor's designee;

- A statement that the complainant and the respondent will be informed of the final resolution of the matter, including any discipline imposed, and a statement of the anticipated timeline.

c. In a DOE Grievance Process for No-Title IX Hearing DOE-Covered Conduct, the notice of investigation will also include a statement that both parties have the right to appeal the investigator's determination per Section IV.C of the Doe Addendum.

e.d. In any other DOE Grievance Process, the notice of investigation outcome will also include:

- If the investigator preliminarily determined that the respondent violated the SVSH Policy, a statement that the supervisor or other appropriate administrative authority will provide the parties an opportunity to respond to the findings, and will propose a resolution to be reviewed and approved by the Chancellor's designee.
- A statement that, unless both parties accept the preliminary determination and any proposed resolution, there will be a fact-finding hearing to determine whether the SVSH Policy has been violated, after which the supervisor or other appropriate administrative authority will propose a resolution and submit to the Chancellor's designee for review and approval; and
- An explanation of the procedures and timeline for accepting the preliminary determination (see the DOE Addendum).

#### 6. Timeframe for Completion of Investigation; Extension for Good Cause

The notice of investigation outcome and accompanying investigation report will be issued promptly, typically within sixty (60) to ninety (90) business days of initiation of the Formal Investigation or DOE Grievance Process, unless extended by the Title IX Officer for good cause, with written notice to the complainant and the respondent of the reason for the extension and the projected new timeline.

The Title IX Officer or designee will keep the complainant and respondent regularly informed concerning the status of the investigation.

#### **IV. ASSESSMENT AND CONSULTATION (Stage 2)**

The steps outlined below for assessment and consultation apply to investigations of DOE-Covered Conduct and other Prohibited Conduct. An additional notice requirement that applies specifically to investigations of DOE-Covered Conduct is in the DOE Addendum. After this assessment and consultation, matters investigated through Formal Investigation

will go through Stage 3 (Corrective Actions~~Decision on Sanctions~~) below. Matters investigated under the DOE Grievance Process that alleged No-Title IX Hearing DOE-Covered Conduct will go Stage 2.C. (Appeal of the Determination) in the DOE Addendum. All other matters~~Matters~~—investigated under the DOE Grievance Process will go to Stage 2.A (Opportunity to Accept the Preliminary Determination) in the DOE Addendum.

At the conclusion of a Formal Investigation, the respondent's supervisor or other appropriate administrative authority has the responsibility to propose and implement action in response to the findings of the investigation report. The proposed decision by the supervisor or other appropriate administrative authority will be reviewed and approved by the Chancellor's designee. The supervisor or other appropriate administrative authority may determine that additional investigation is required to determine whether violations of other policies occurred, but will not reinvestigate allegations of Prohibited Conduct investigated by the Title IX Office.

At the conclusion of a DOE Grievance Process investigation of No-Title IX Hearing DOE-Covered Conduct, the parties have the opportunity to appeal. Once any appeal is final or the period for submitting an appeal has lapsed, the supervisor or other appropriate administrative authority has the responsibility to propose and implement action in response to the findings. See Stages 2.C (Appeal of Determination) and 2.D (Additional Assessment and Consultation) of the DOE Addendum.

At the conclusion of any other DOE Grievance Process investigation, the parties have the opportunity to accept or not accept the preliminary determination. When the preliminary determination is that the respondent engaged in DOE-Covered Conduct, or both DOE-Covered Conduct and other Prohibited Conduct, the supervisor or other appropriate administrative authority will propose a resolution that will be reviewed and approved by the Chancellor's designee, and the parties will have the opportunity to review the proposed resolution before deciding whether to accept the preliminary determination and proposed resolution.

The Chancellor's designee, as well as the supervisor or other appropriate administrative authority, may consult with the Title IX Office, Staff Human Resources, or the Academic Personnel Office, or any other appropriate entities at any time during the decision-making process.

#### **A. Opportunity to Respond**

The complainant and the respondent will have an opportunity to respond to the notice of investigation outcome and accompanying investigation report through a written statement and/or in-person meeting that will be submitted to the respondent's supervisor or other appropriate administrative authority and the Chancellor's designee. The parties will have five business days after the Title IX Officer sends the investigation report to respond.

The purpose of this response is not to challenge the factual findings in the Title IX investigation report or present new evidence, but to provide the complainant and the respondent with an opportunity to express their perspectives and address what outcome they wish to see.

## **B. Decision Proposal and Submission for Approval**

In the event that the investigation determines or preliminarily determines~~(in a Formal Investigation) or preliminarily determines (in a DOE Grievance Process)~~ that a respondent is responsible for violating the SVSH Policy, the respondent's supervisor or other appropriate administrative authority will propose a decision regarding how to resolve the matter. The proposal must be submitted to the Chancellor's designee for review and approval.

In the event the Chancellor's designee does not approve the proposed decision, they will send it back to the supervisor or other appropriate administrative authority for reconsideration and submission of a revised proposed decision.

In the event the Chancellor's designee approves the proposed decision, they will inform the supervisor or other appropriate administrative authority who will take steps to implement (in a Formal Investigation), or inform the Title IX Office and either Staff Human Resources or the Academic Personnel Office of (in a DOE Grievance Process), the approved decision.

This proposal and approval process will occur in all cases where the investigation has determined or preliminarily determined the respondent violated the SVSH Policy pursuant to these procedures. Staff Human Resources or the Academic Personnel Office will be consulted throughout the process. Additionally, the Chancellor's designee will consult with the campus Title IX Officer on the appropriateness of the proposed decision before approving or disapproving it.

## **V. CORRECTIVE OR OTHER ACTIONS (Stage 3)**

The below provisions apply when a respondent is found in violation of the SVSH Policy following a Formal Investigation, following an investigation and any appeal (per Section IV.C of the DOE Addendum) in a DOE Grievance Process addressing No-Title IX Hearing DOE-Covered Conduct, or following a hearing and any appeal (per Section IV.C of the DOE Addendum) in any other DOE Grievance Process.

### **A. PPSM Covered Staff: Decision Approval and Implementation**

Following approval by the Chancellor's designee, the respondent's supervisor will implement the approved decision in accordance with applicable PPSMs, including PPSM-62 and PPSM-64.

#### **1. No Further Action**

The supervisor may propose to resolve the matter without taking any further action. This proposal will be reviewed by the Chancellor's designee for approval.

In the event it is approved, this decision and its rationale will be promptly communicated to both the complainant and the respondent.

2. Action Not Requiring Notice of Intent

The supervisor may propose corrective or remedial actions that do not amount to corrective action as defined by PPSM 62 or termination under PPSM 64. The proposed actions will be reviewed by the Chancellor's designee for approval.

In the event it is approved, the decision will be implemented by the supervisor and the decision and its terms and rationale will be promptly communicated to both the complainant and the respondent.

3. Notice of Intent

The supervisor may propose to issue a notice of intent to institute corrective action in accordance with PPSM-62 or notice of intent to terminate in accordance with PPSM-64. The proposed terms of the notice of intent will be reviewed by the Chancellor's designee for approval. In the event it is approved, the decision will be implemented by the supervisor and the notice of intent will issue.

Following the provision of a notice of intent, corrective action will be taken in accordance with PPSM-62 and/or actions to terminate will be taken in accordance with PPSM-64. The terms of the implemented action and its rationale will be promptly communicated to both the complainant and the respondent.

**B. Non-Faculty Academic Personnel: Decision Approval and Implementation**

Following approval by the Chancellor's designee, the respondent's supervisor or other appropriate administrative authority will implement the approved action in accordance with APM-150.

1. No Further Action

The supervisor or appropriate administrative authority may propose to resolve the matter without taking any further action. This proposal will be reviewed by the Chancellor's designee for approval. In the event it is approved, this decision and its rationale will be promptly communicated to both the complainant and the respondent.

2. Informal Resolution

The supervisor or appropriate administrative authority may propose an informal resolution in accordance with APM-150, which may include discipline and/or other corrective or remedial measures. The proposed informal resolution and its terms will be reviewed by the Chancellor's designee for approval. Informal resolution can be achieved at any time prior to the final imposition of dismissal or corrective action.

In the event the informal resolution is approved and agreed to by the respondent, the complainant will be promptly informed of its terms and the rationale.

3. Notice of Intent



The supervisor or other appropriate administrative authority may propose to issue a notice of intent instituting dismissal or other corrective action in accordance with APM-150. The proposed terms of the notice of intent shall be reviewed by the Chancellor's designee for approval.

Following the provision of a notice of intent, corrective action or termination will be implemented in accordance with APM-150. The terms of the implemented action and its rationale will be promptly communicated to both the complainant and the respondent.

#### **C. Timeframe for Implementation of Decision; Extension for Good Cause**

The supervisor or other appropriate administrative authority should implement their approved decision promptly, typically within forty (40) business days of receipt of the notice of investigation outcome and accompanying investigation report. If the matter has not been otherwise resolved within forty (40) business days, a notice of intent will be issued.

Extensions to this timeline may be granted by the Chancellor's designee for good cause with written notice to the complainant and the respondent stating the reason for the extension and the projected new timeline.

### **VI. PROCESS FOLLOWING ACTION TAKEN**

The below provisions apply when a respondent is found in violation of the SVSH Policy following a Formal Investigation, or following a hearing and/or any appeal (per Section IV.B and Section IV.C of the DOE Addendum) in a DOE Grievance Process.

In the event that a PPSM-covered respondent submits a complaint under [PPSM-70](#), or a non-faculty academic appointee respondent submits a grievance under [APM-140](#), the Chancellor's designee will ensure that both the complainant and the respondent receive regular updates regarding the status of the complaint or grievance.

The complainant may follow processes appropriate to their own personnel or student policies.

Subsequent to any final decision, the Chancellor's designee will promptly inform the complainant and the respondent of the decision, including any final decision on discipline, and its rationale.



**DOE ADDENDUM  
TO INVESTIGATION AND ADJUDICATION FRAMEWORK  
FOR STAFF AND NON-FACULTY ACADEMIC PERSONNEL**

**INTRODUCTION**

In general, the Staff and Non-Faculty Academic Personnel Framework (“Framework”) applies to both DOE-Covered Conduct and other Prohibited Conduct. Special provisions that apply to specifically to DOE-Covered Conduct are described below.

**I. REPORTING AND RESOURCES (Stage 0)**

Reporting options and resources are as described in corresponding numbered section in the Framework.

**II. INITIAL ASSESSMENT (Stage 1)**

The initial assessment, including Supportive Measures and written rights and options are as described in the corresponding numbered section of the Framework. The additional provision below on Dismissal of Formal Complaints is specific to DOE-Covered Conduct.

**A. Supportive Measures**

Supportive measures are as described in the corresponding numbered section of the Framework.

**B. Written Rights and Options**

Written rights and options are as described in the corresponding numbered section of the Framework.

**C. Required Dismissal**

The Title IX Officer must “dismiss” allegations in a DOE Formal Complaint if:

- they determine during the Initial Assessment that the alleged conduct, even if true, is not DOE-Covered Conduct, as defined in the SVSH Policy, or
- they determine during the investigation that the alleged conduct, even if true, did not occur in a University program or activity or that the Complainant was not in the United States at the time.

The Title IX Officer will then proceed as described in the *SVSH Policy* Appendix IV, Section C. Dismissal means the Title IX Officer will no longer consider the allegations DOE-Covered Conduct; it does not necessarily mean the Title IX Officer will close the matter. Rather, the Title IX Officer will decide whether and how to continue resolution of the dismissed allegations. See *SVSH Policy*, Appendix IV, Section C.

### III. INVESTIGATING AND RESOLVING REPORTS OF PROHIBITED CONDUCT (Stage 1)

The investigation and resolution of reports, including Alternative Resolution and Investigation, are described in the corresponding numbered section of the Framework

If the Title IX Officer determines during the investigation that they must dismiss any allegations in a DOE Formal Complaint per Section II.C., above, they will proceed as described in the *SVSH Policy* Appendix, Section C.

### IV. ASSESSMENT AND CONSULTATION (Stage 2)

The assessment and consultation is as described in the corresponding numbered section of the Framework.

In DOE-Covered Conduct cases, After the assessment and consultation described in Stage 2 of the Framework, the Chancellor or Chancellor's designee will inform Staff Human Resources or the Academic Personnel Office, and Title IX Officer, of the proposed decision and its rationale, and the Staff Human Resources or Academic Personnel Office or Title IX Officer (whichever the campus designates) will notify the parties. The parties will receive this notice within 15 business days of the notice of investigative findings and determination or preliminary determination.

Sections IV.A. (Opportunity to Accept the Preliminary Determination) and IV.B (Prehearing and Hearing), below, apply to all DOE Grievance Process cases except those alleging No-Title IX Hearing DOE-Covered Conduct. Section IV.C (Appeal of Determination) applies to all DOE Grievance Process cases, including those alleging No-Title IX Hearing DOE-Covered Conduct.

#### IV.A. OPPORTUNITY TO ACCEPT THE PRELIMINARY DETERMINATION (Stage 2.A)

~~After the assessment and consultation described in Stage 2 of the Framework, the Chancellor or Chancellor's designee will inform Staff Human Resources or the Academic Personnel Office, and Title IX Officer, of the proposed decision and its rationale, and the Staff Human Resources or Academic Personnel Office or Title IX Officer (whichever the campus designates) will notify the parties. The parties will receive this notice within 15 business days of the notice of investigative findings and preliminary determination.~~

Unless both parties accept the preliminary determination and proposed resolution, there will be a fact-finding hearing to determine whether the SVSH Policy was violated.

##### A. Accepting the Preliminary Determination

##### 1. Timeline

Either party may accept the preliminary determination and proposed resolution within 20 business days of the notice of investigative findings and preliminary determination. Unless both parties accept the preliminary determination and

proposed resolution within this time period, then the matter will proceed to a hearing to determine if a policy violation occurred.

2. Written Acceptance

A party may accept the preliminary determination by providing Staff Human Resources or the Academic Personnel Office, or the Title IX Officer (whichever the campus designates) with a written acknowledgment stating that the party accepts the preliminary determination and any proposed resolution, and wishes not to proceed with a hearing.

3. Final Decision Following Acceptance

If both parties provide the written acknowledgment during the 20 business days, then the preliminary determination regarding policy violation(s) becomes final, and the respondent's supervisor or appropriate administrative authority will impose the proposed resolution, including any discipline or corrective measures. The parties do not have the opportunity to appeal the final decision following their acceptance of the preliminary determination, nor complain under PPSM-70 (for a PPSM-covered respondent), submit a grievance under APM-140 (for a non-faculty academic appointee respondent), or submit a grievance under a collective bargaining agreement (for represented employee respondents).

**B. Notice of Hearing or No Hearing**

1. Notice of Hearing

Unless both parties accept the preliminary determination by the end of the 20 business days, Staff Human Resources or the Academic Personnel Office, or the Title IX Officer (whichever the campus selects), will notify the parties that there will be a hearing. The notice of hearing will include a summary of the hearing procedures described in Section IV.C.

2. Notice of No Hearing

If both parties accept the preliminary determination, Staff Human Resources or the Academic Personnel Office, or the Title IX Officer (whichever the campus selects), will notify the parties that there will be no hearing. This notice will indicate that the Title IX investigator's preliminary determination as to policy violation(s) is final, and that the respondent's supervisor or other appropriate administrator is imposing the proposed resolution (if any).

If the resolution includes corrective action, the University will issue any applicable Notice of Intent as described in Section V.A.3 and Section V.B.3 of the Framework.

**IV.B PREHEARING AND HEARING (Stage 2.B)**

**A. Fact-finding Hearing**

Unless both parties accept the investigator's preliminary determinations, there will be a fact-finding hearing before a single hearing officer. The hearing is to determine whether a violation of the SVSH Policy occurred. The University's role in the hearing is neutral. The University will consider the relevant evidence available, including relevant evidence presented by the parties, in order to make factual findings and determine whether a policy violation occurred.

## **B. Hearing Officer**

### **1. Overview**

The hearing officer may be a University employee or outside contractor, and may not be the same person as the Title IX Officer or the investigator. Regardless, they will be appropriately trained, with such training coordinated by the Title IX Officer.

### **2. Bias and Conflict of Interest**

The hearing coordinator will inform the parties of the hearing officer's identity. Within 5 business days after the notification, the parties may request the hearing officer's disqualification on the basis of bias or conflict of interest.

- a. For example, involvement in the case or knowledge of the allegations at issue prior to being selected as the hearing officer, or a close personal relationship with a party or expected witness in the proceeding could, depending on the circumstances, warrant disqualification of the hearing officer.
- b. Employment by the University, or prior work for the University as a contractor, on its own, does not warrant disqualification.
- c. The hearing officer's gender, gender identity, race, ethnicity, religion, sexual orientation or similar identifying characteristic, or the fact that they differ from those of any party, do not, on their own, warrant disqualification.

### **3. Disqualification Decision**

Staff Human Resources or the Academic Personnel Office will decide any request for disqualification of the hearing officer and inform both parties of their decision and, if they determine to change hearing officers, the name of the new hearing officer.

## **C. Hearing Coordinator**

Each hearing will have a hearing coordinator, distinct from the hearing officer, who will manage the administrative and procedural aspects of the hearing.

## **D. Pre-Hearing Procedures**

### **1. Meeting with Parties**

The hearing officer and hearing coordinator will hold a separate meeting (in person or remotely) with each party, to explain the hearing process, address

questions, begin to define the scope of the hearing, and address other issues to promote an orderly, productive and fair hearing.

- a. The hearing coordinator will provide written notice to each party of their prehearing meeting, including time, location (or if remote, call instructions), and purpose of the meeting, at least 10 business days before the pre-hearing meeting.
- b. No later than 5 business days before the pre-hearing meeting, each party will submit to the hearing officer a preliminary statement of what issues, if any, each considers to be disputed and relevant to the determination of whether a policy violation occurred, and the evidence they intend to present on each issue, including all documents to be presented, the names of all requested witnesses, and a brief summary of such witnesses' expected testimony. The parties will later have an additional opportunity to submit proposed evidence, see Section 5 below.
- c. At the pre-hearing meeting, the hearing officer and party will discuss the evidence the party has provided, to help identify and refine the issues to be decided at the hearing, which will inform the hearing officer's determination of the scope of the hearing.
- d. Each party should also come to the pre-hearing meeting prepared to schedule dates for the hearing.
- e. The hearing officer and/or coordinator will explain what to expect at the hearing, see Section E below.
- f. The hearing officer and/or coordinator will discuss measures available to protect the well-being of parties and witnesses at the hearing, as appropriate. These may include, for example, use of lived names and pronouns during the hearing, including in screen names; a party's right to have their support person available to them use at all times during the hearing; a hearing participant's ability to request a break during the hearing, except when a question is pending.
- g. The hearing officer and/or coordinator will inform the parties that the hearing will be conducted remotely. If a party believes that they need a University-provided physical space or technological equipment or assistance to participate remotely – for example, because of safety or privacy concerns, or a disability - they may request such resources of the hearing coordinator during the prehearing meeting. The hearing coordinator will respond to any such request in writing within five business days of the hearing meeting.
- h. The parties and their advisors, if they have one, are required to participate in the pre-hearing meeting.

- i. If a party does not participate in the pre-hearing meeting (or does not let the hearing coordinator know they need to reschedule in advance), the hearing coordinator will notify the party that they have 2 business days to contact the hearing coordinator to reschedule. Absent extenuating circumstances, if the party does not contact the hearing coordinator within the 2 business days, the hearing will proceed but the non-participating party will be presumed to agree with the hearing officer's definition of the scope of the hearing.

## 2. Scope of Hearing

Within 5 business days after concluding meetings with both parties (or determining that a party has decided not to participate in the pre-hearing process), the hearing officer will determine what issues are disputed and relevant to the determination of whether a policy violation(s) occurred, and will notify the parties of the scope of the issues to be addressed at the hearing and the expected witnesses. The hearing officer has discretion to grant or deny, in whole or part, the parties' requests for witnesses on the basis of relevance. The hearing officer's determination of scope may include issues, evidence, and witnesses that the parties themselves have not provided.

Throughout the pre-hearing process, including in the notice of scope of hearing, the hearing officer will:

- a. Exclude evidence including witness testimony that is, for example, irrelevant in light of the policy violation(s) charged, or relevant only to issues not in dispute, or unduly repetitive, and implement the evidentiary principles in Section III.B.3;
- b. Decide any procedural issues for the hearing; and/or
- c. Make any other determinations necessary to promote an orderly, productive, and fair hearing that complies with the rules of conduct.

## 3. Submission of Additional Information

Within 5 business days after receiving the hearing officer's definition of scope, the parties may then submit additional information about the evidence, including witness testimony, that they would like to present.

## 4. Notice of Hearing

Not less than 10 business days before the hearing, the hearing coordinator will send a written notice to the parties informing them of the hearing date, time, location, and procedures.

## 5. Witness Participation

The hearing coordinator will ensure that the Title IX investigator (or if not available, a representative from that office) will be available to testify during the hearing. Testimony by the Title IX investigator may be appropriate to help

resolve disputes about the authenticity of evidence summarized in the investigation report and at issue at the hearing, or whether the investigator accurately memorialized a party's or witness's statement in the investigation. The Title IX investigator should not be questioned about their assessment of party or witness credibility, nor the investigative process generally, nor their preliminary determination of whether policy violations occurred, because the hearing officer will make their own credibility determinations and determination of policy violation(s) so this information would not be relevant. Based on the hearing officer's determination, the hearing coordinator will request the attendance of all witnesses whose testimony is determined to be within the scope of the hearing.

6. Confirmation of Scope, Evidence, and Witnesses

At least 2 business days prior to the hearing, the parties will receive the hearing officer's confirmation of scope and evidence; copies of all the evidence that will be considered at the hearing that the hearing officer has received, including the investigation file (consisting of the investigation report and any evidence deemed directly related by the investigator, as documented in the investigation report) and any other documents that will be considered; the names of expected witnesses and a summary of their expected testimony. If the hearing officer has excluded evidence (including witness testimony) that a party has requested to present, they will explain why that evidence was not relevant. The hearing officer will also notify the parties of any procedural determinations they have made regarding the hearing. This material will also be provided to the Title IX Officer.

7. Submission of Questions

The parties are encouraged to submit any questions for the other party and any expected witnesses to the hearing coordinator before the hearing, but will not be limited to those questions at the hearing. These questions will not be shared with the other party or witnesses.

8. Advisor Participation and Provision by University

At any point before the hearing, if a party anticipates that they will not have an advisor available at the hearing to ask their questions for them, they should let the hearing coordinator know, to allow the University to plan for assigning the party a person ask the party's questions at the hearing ("Reader"). Even without notice or during a hearing in progress, however, the University will provide such a resource if a party does not have one. If any party does not have an advisor available at the hearing for the purpose of asking their questions for them, the hearing coordinator will assign a person to fulfill the sole and specific function of asking the party's questions (and not of serving as their advisor more generally), without cost to the party.

**E. Hearing Procedures**

1. Advisors and Support Persons

The parties may have their advisors present throughout the hearing. They may also have a support person present throughout the hearing.

2. Rules of Conduct

The hearing will be conducted in a respectful manner that promotes fairness and accurate fact-finding and that complies with the rules of conduct. The parties and witnesses will address only the hearing officer, and not each other. Only the hearing officer and the parties' advisors may question witnesses and parties.

3. Virtual Hearing

The hearing will be conducted remotely with any modification the hearing coordinator has made in response to a party's request for assistance, see Section D.1.f above.

4. Hearing Evidence and Procedures

Courtroom rules of evidence and procedure will not apply. The hearing officer will generally consider, that is rely on, all evidence they determine to be relevant and reliable. The hearing officer may determine and weigh the relevance and weigh the value of any witness testimony or other evidence to the findings, subject to Section F.1 below. The hearing officer will also follow the evidentiary principles in Section III.B.3 of the Framework. Throughout the hearing, the hearing officer will:

- a. Exclude evidence including witness testimony that is, for example, irrelevant in light of the policy violation(s) charged, or relevant only to issues not in dispute, or unduly repetitive, and require rephrasing of questions that violate the rules of conduct,
- b. Decide any procedural issues for the hearing, and/or
- c. Make any other determinations necessary to promote an orderly, productive, and fair hearing.

5. Access to Witnesses

Parties will be able to see and hear (or, if deaf or hard of hearing, to access through auxiliary aids and services) all questioning and testimony at the hearing, if they choose to. Witnesses (other than the parties) will attend the hearing only for their own testimony.

6. Questioning at the Hearing

The hearing officer may ask questions of all parties and witnesses that are relevant, including those that are relevant to assessing credibility. Each party's advisor may ask questions of the other party and witnesses that are relevant, including those that are relevant to assessing credibility. As noted in Section D.8 above, the University will assign a person for the purpose of asking a party's questions whenever a party does not have an advisor at the hearing.



The hearing officer will determine the order of questioning of the parties and witnesses. For each party or witness, the hearing officer will ask their own questions first.

Each party will prepare their questions, including any followup questions, for the other party and witnesses, and will provide them to their advisor. The advisor will ask the questions as the party has provided them, and may not ask questions that the advisor themselves have developed without their party.

If a party does not attend the hearing, the hearing will still proceed, and they may still have their advisor - or if they do not have one, a University-assigned Reader – ask the questions that they have prepared.

When a party's advisor is asking questions of the other party or a witness, the hearing officer will determine whether each question is relevant before the party or witness answers it and will exclude any that are not relevant or unduly repetitive, and will require rephrasing of any questions that violate the rules of conduct. If the hearing officer determines that a question should be excluded as not relevant, they will explain their reasoning.

At any time, the hearing officer may ask follow-up questions of the parties.

Any expert witnesses identified during the investigation, see Section III.B.3.c of the Framework, will be subject to these same questioning procedures.

7. Investigation File

The investigation file will be entered as evidence at the hearing. The hearing officer generally will rely on any finding in the report that is not disputed.

8. Impact of Selective and Non-Participation

The Hearing Officer will not draw adverse inferences from a party's decision to not participate in the hearing, or to remain silent during the hearing. However, they may consider a party's selective participation - such as choosing to answer some but not all questions posed, or choosing to provide a statement only after reviewing the other evidence gathered in the investigation – when assessing credibility. Further, parties should bear in mind, as discussed below, that on any disputed and material issue, a hearing officer may not rely on any statement of a party about which the party refuses to answer questions at the hearing.

9. Well-Being Measures

The hearing officer will implement measures they deem appropriate to protect the well-being of parties and witnesses. For example, the hearing officer will allow separation of the parties, breaks, and the attendance of support persons in accordance with these procedures.

10. Visual Separation

The hearing officer will allow the parties and/or witnesses to be visually separated during the hearing except as noted in paragraph 5 above. This may include, but is not limited to, videoconference and/or any other appropriate technology. To assess credibility, the hearing officer must have sufficient access to the Complainant, Respondent, and any witnesses presenting information; if the hearing officer is sighted, then the hearing officer must be able to see them.

**11. Presentation of Evidence**

The parties will have the opportunity to present the evidence they submitted, subject to any exclusions determined by the hearing officer. Generally, the parties may not introduce evidence, including witness testimony, at the hearing that they did not identify during the pre-hearing process. However, the hearing officer has discretion to accept or exclude additional evidence presented at the hearing. The parties are expected not to spend time on undisputed facts or evidence that would be duplicative.

**12. Recording**

The University will audio record the hearing and make the recording available for the parties' review at their request.

**F. Determination of Policy Violation**

**1. Standards for Deliberation**

The hearing officer will decide whether a violation of the SVSH Policy occurred based on a Preponderance of Evidence standard.

**2. Information Considered**

The hearing officer will take into account the investigative file and the evidence presented and accepted at the hearing. The evidentiary principles in Section III.B.C also apply. On any disputed and material issue, the hearing officer should make their own findings and credibility determinations based on all of the evidence before them. However, on any disputed and material issue, the hearing officer may not consider any statement about which a party or witness has refused, in whole or in part, to answer questions posed by a party through their advisor and allowed as relevant by the hearing officer. For purposes of these procedures, a statement is anything that constitutes a person's intent to make factual assertions.

**G. Notice of Determination**

Within 15 business days of the hearing, the hearing coordinator will send written notice to the complainant and respondent (with a copy to the Title IX Officer) setting forth the hearing officer's determination on whether the SVSH Policy has been violated. The written notice will include the following:

1. A summary of the allegations that would constitute a violation of the SVSH Policy;
2. The determinations of whether the SVSH Policy has been violated;
3. A statement that the Title IX Officer will determine whether complainant will be provided additional remedies, and will inform the complainant of that determination;
4. A description of the procedural history of the complaint;
5. The findings on each disputed, material fact and an analysis of the evidence supporting the findings;
6. A summary of the facts found by the investigator that the parties did not dispute;
7. The rationale for the determination of each charge;
8. If the hearing officer determines that DOE-Covered Conduct did not occur, an analysis of whether other charged conduct, including other SVSH Policy violations, occurred;
9. An admonition against retaliation;
10. A statement of the right to appeal, grounds and timeframe for the appeal, the office to which the appeal must be submitted, and the procedure that the University will follow in deciding the appeal;
11. An explanation that both the parties will receive a copy of any appeal submitted in accordance with these procedures;
12. A description of the process for deciding whether and what discipline to impose if the final determination (following any appeal) is that the respondent violated the SVSH Policy, and a statement that both parties will be informed of the final resolution of the matter; and
13. A statement indicating the supervisor or other appropriate administrative authority will determine whether further investigation by another body is necessary to determine whether violations of other policies occurred, separate from any allegations of Prohibited Conduct that were investigated under the SVSH Policy.

#### **H. Documentation of Hearing**

Throughout the pre-hearing and hearing process, the hearing coordinator will document the process's compliance with the procedures (including timeframes) in this section. After the notice of policy violation determination has been finalized, the hearing coordinator will provide this documentation, along with all documents relating to the hearing, and the recording of the hearing, to the Title IX Officer.

#### **IV.C APPEAL OF DETERMINATION (Stage 2.C)**

The Complainant and Respondent have an equal opportunity to appeal the policy violation determination(s) ~~and any sanction(s)~~. The University administers the appeal process, but is not a party and does not advocate for or against any appeal.

#### **A. Grounds for Appeal**

A party may only appeal on the grounds described in this section.

##### 1. In cases of No-Title IX Hearing DOE-Covered Conduct:

- a. There was procedural error in the investigation process that materially affected the outcome; procedural error refers to alleged deviations from University policy, and not challenges to policies or procedures themselves;
- b. There is new evidence that was not reasonably available at the time of the investigation that could have materially affected the outcome; and
- c. The investigator or Title IX Officer had a conflict of interest or bias that affected the outcome. See also the principles in Section IV.B.(B)(2).

##### 2. In all other cases:

- a. There was procedural error in the hearing process that materially affected the outcome; procedural error refers to alleged deviations from University policy, and not challenges to policies or procedures themselves;
- b. There is new evidence that was not reasonably available at the time of the hearing that could affect the outcome; and
- c. The hearing officer had a conflict of interest or bias that affected the outcome. See the principles in Section IV.B.B.2.

The appeal should identify the reason(s) why the party is challenging the outcome on one or more of the available grounds.

#### **B. Commencing an Appeal**

An appeal must be submitted to the hearing coordinator within ~~2040~~ business days following issuance of the investigation outcome (in cases of No-Title IX Hearing DOE-Covered Conduct) or of the notice of the hearing officer's determination (in all other cases). The appeal must identify the ground(s) for appeal and contain specific arguments supporting each ground for appeal. The Title IX Officer will notify the other party of the basis for the appeal and that the other party can submit a written statement in response to the appeal within 3 business days, and supporting documentation from the other party as appropriate.

#### **C. Standards for Deliberation**

The appeal officer will decide whether the appealing party has proven the asserted ground(s) for appeal. They will only consider the evidence presented during the investigation (in No-Title IX Hearing DOE-Covered Conduct cases) or at the hearing (in all other cases), the investigation file, and the appeal statements of the parties. They will not make their own factual findings, nor any witness credibility determinations.

#### **D. Decision by Appeal Officer**

The appeal officer, who will be an unbiased person without prior involvement in the case or personal relationship with the parties, may:

1. Uphold the findings;
2. Overturn the findings;
3. Modify the findings; or
4. In appeals alleging material procedural error or new evidence, send the case back to the investigator (in No-Title IX Hearing DOE-Covered Conduct cases) or hearing officer (in all other cases) for further fact-finding if needed, for example on the issue of whether the alleged error, new evidence, would have materially affected the outcome.

#### **E. Written Report**

The appeal officer will summarize their decision in a written report that includes the following:

1. A statement of the grounds identified on appeal;
2. A summary of the information considered by the appeal officer; and
3. The decision of the appeal officer and the rationale for the decision including, where the findings are overturned or modified, an explanation of how the procedural error materially affected the outcome.

#### **F. Distribution of Written Decision**

Within 10 business days of receiving the appeal, the appeal officer will send their written decision to complainant and respondent, with a copy to the Title IX Officer.

1. Unless the appeal officer remands the matter, they will inform the respondent and the complainant that the matter is closed with no further right to appeal.
2. If the appeal officer remands the matter, they will specify what further fact-finding should occur or what additional information should be considered and request that the investigator or hearing officer report back to the appeal officer on their additional fact-finding. After receiving the investigator or hearing officer's additional factual findings, the appeal officer will issue their decision within 10 business days. This decision will be final.

### **IV.D ADDITIONAL ASSESSMENT AND CONSULTATION (Stage 2.D)**

Once any appeal is final or the period for submitting an appeal has lapsed, the Title IX Officer will send the final finding and determination to the respondent's supervisor or

appropriate administrative authority, with a summary explanation of any difference between the investigator's determination or preliminary determination (whichever applies) and the final determination and findings.

The respondent's supervisor or appropriate administrative authority has the authority and responsibility to propose and implement any responsive action. The supervisor or other appropriate administrative authority may determine that additional investigation is required to determine whether violations of other policies occurred, but will not reconsider the findings and determinations regarding SVSH Policy violations made through the hearings and any appeal.

If the final hearing results in a finding is that a respondent is responsible for violating the SVSH Policy, then the respondent's supervisor or other appropriate administrative authority will, if they did not already do so, consult with the Title IX Officer as described in *Assessment and Consultation (Stage 2)* of the Framework. If the Respondent's supervisor or appropriate administrative authority already took these steps (because the investigator determined or preliminarily determined the respondent violated the SVSH Policy), then they may but are not required to repeat it before proposing a resolution (for example, when the finding from the following any hearing or appeal is different from the investigator's determination or preliminary determination). The Respondent's supervisor or other appropriate administrative authority will propose a decision regarding how to resolve the matter. The proposal must be submitted to the Chancellor's designee for review and approval.

In the event the Chancellor's designee does not approve the proposed decision, they will send it back to the supervisor or other appropriate administrative authority for reconsideration and submission of a revised proposed decision.

In the event the Chancellor's designee approves the proposed decision, they will inform the supervisor or other appropriate administrative authority who will take steps to implement the approved decision.

This proposal and approval process will occur in all cases where the final outcome of a hearing is a finding that the Respondent violated the SVSH Policy. Staff Human Resources or the Academic Personnel Office will be consulted throughout the process. Additionally, the Chancellor's designee will consult with the campus Title IX Officer on the appropriateness of the proposed decision before approving or disapproving it.

## V. CORRECTIVE ACTION (Stage 3)

### A. PPSM Covered Staff

Following final adjudication in the hearing and appeal processes described above, the Respondent's supervisor will implement the approved decision in accordance with applicable PPSMs, including PPSM-62 and PPSM-64. The options for resolving the matter and implementation processes are described in Section VI.A ("PPSM-Covered Staff: Decision Approval and Implementation") of the Framework.

**B. Non-Faculty Academic Personnel: Decision Approval and Implementation**

Following final adjudication in the hearing and appeal processes described above, the Respondent's supervisor or other appropriate administrative authority will implement the approved decision in accordance with APM-150. The options for resolving the matter and implementation processes are described in Section VI.B ("Non-Faculty Academic Personnel: Decision Approval and Implementation") of the Framework.

**C. Timeframe for Implementation of Decision; Extension for Good Cause**

The supervisor or other appropriate administrative authority should implement their approved decision promptly, typically within forty (40) business days of receipt of the notice of investigation outcome and accompanying investigation report. If the matter has not been otherwise resolved within forty (40) business days, a notice of intent will be issued.

Extensions to this timeline may be granted by the Chancellor's designee for good cause with written notice to the complainant and the respondent stating the reason for the extension and the projected new timeline.

**VI. PROCESS FOLLOWING ACTION TAKEN**

In the event that a PPSM-covered respondent submits a complaint under [PPSM-70](#), or a non-faculty academic appointee respondent submits a grievance under [APM-140](#), the Chancellor's designee will ensure that both the complainant and the respondent receive regular updates regarding the status of the complaint or grievance.

The complainant may follow processes appropriate to their own personnel or student policies.

Subsequent to any final decision, the Chancellor's designee will promptly inform the complainant and the respondent of the decision, including any final decision on discipline, and its rationale.

Such complaints and grievances are not available in cases in which the parties accept the investigator's preliminary determination.



## INTRODUCTION

Consistent with the UC Policy on Sexual Violence and Sexual Harassment (“SVSH Policy”), the following describes the University’s process for investigating and adjudicating alleged violations of the SVSH Policy in instances where the respondent is a University faculty member whose conduct is governed by Section 015 of the Academic Personnel Manual ([APM-015](#)), The Faculty Code of Conduct (“Code of Conduct”).

The Title IX regulations issued by the US Department of Education (“DOE”) that went into effect August 14, 2020 require the University to follow a specific grievance process (“DOE Grievance Process”) in response to conduct covered by the regulations (“DOE-Covered Conduct”). The University advocated strongly for DOE to change some components of the DOE Grievance Process before issuing the regulations; DOE did not. Because compliance with the regulations is a condition of federal funding, the University has revised its policies to fully implement them. The Title IX Officer will determine during their initial assessment of a report whether it alleges DOE-Covered Conduct and, if so, whether to open a DOE Grievance Process. Alleged conduct is DOE-Covered Conduct if it is a type of misconduct covered by the regulations (“DOE Sex-Based Misconduct”) that occurred in a University program or activity while the complainant was in the United States. This assessment is described in detail in Appendix IV of the SVSH Policy. The following, read with the attached [DOE Addendum](#), describes the process for investigating and adjudicating alleged violations of the SVSH Policy that include DOE-Covered Conduct.

A flow chart illustrating the processes for complaints against Academic Senate faculty can be found in Attachments 1 and 1.A. A flow chart illustrating the processes for complaints against non-Senate faculty can be found in Attachments 2 and 2.A.

These documents should be read in conjunction with the SVSH Policy, as well as applicable [APM provisions](#), including APM-015, [APM-016](#) (University Policy on Faculty Conduct and the Administration of Discipline), and [APM-150](#) (Non-Senate Appointees/Corrective Action and Dismissal), and applicable [Senate Bylaws](#), including Senate Bylaw 336 (procedures for disciplinary hearings) and Senate Bylaw 335 (procedures for considering grievances). The documents also incorporate recommendations issued by the Joint Committee of the Administration and the Senate.

Applicable definitions can be found in the SVSH Policy and are incorporated herein. Other definitions can be found in applicable APMs and Senate Bylaws and are incorporated herein.

The SVSH Policy is available at <http://policy.ucop.edu/doc/4000385/SVSH>. The Faculty Code of Conduct (APM-015) is available at <http://www.ucop.edu/academic-personnel-programs/files/apm/apm-015.pdf>. APM-016 is available at <http://www.ucop.edu/academic-personnel-programs/files/apm/apm-016.pdf>. APM-150 is available at <http://ucop.edu/academic-personnel-programs/files/apm/apm-150.pdf>. All provisions of the APM are accessible at <http://www.ucop.edu/academic-personnel-programs/academic-personnel-policy/general-university-policy-regarding-academic-appointees/index.html>.



## **I. REPORTING OPTIONS AND RESOURCES (Stage 0)**

These reporting options and resources are available for any conduct prohibited by the SVSH Policy (“Prohibited Conduct”), including DOE-Covered Conduct.

### **A. Reporting Options**

Any person may make a report, including anonymously, of Prohibited Conduct to the Title IX Office. The Title IX Office is responsible for receiving and responding to reports of Prohibited Conduct.

A person may also make a report to a Responsible Employee as defined by the SVSH Policy. The SVSH Policy requires a Responsible Employee who becomes aware of an incident of Prohibited Conduct to report it to the University by contacting their location’s Title IX Officer or designee.

While there is no time limit for reporting, reports of Prohibited Conduct should be brought forward as soon as possible.

A complainant may choose to make a report to the University and may also choose to make a report to law enforcement. A complainant may pursue either or both of these options at the same time. Anyone who wishes to report to law enforcement can contact the UC Police Department.

### **B. Confidential Resources**

The University offers access to confidential resources for individuals who have experienced Prohibited Conduct and are seeking counseling, emotional support or confidential information about how to make a report to the University. Confidential Resources are defined pursuant to the SVSH Policy and include individuals who receive reports in their confidential capacity such as advocates in the [CARE Office](#), as well as licensed counselors (e.g., Employee Assistance Program (EAP) and Counseling and Psychological Services (CAPS)), and Ombuds.

These employees can provide confidential advice and counseling without that information being disclosed to the Title IX Office or law enforcement, unless there is a threat of serious harm to the individual or others or a legal obligation that requires disclosure (such as suspected abuse of a minor).

## **II. INITIAL ASSESSMENT (Stage 1)**

Upon receipt of a report of or information about alleged Prohibited Conduct, the Title IX Officer will make an initial assessment in accordance with the SVSH Policy, which shall include making an immediate assessment concerning the health and safety of the complainant and the campus community.

The Title IX Officer will also determine; ~~and a determination of~~

- whether the alleged conduct is DOE-Covered Conduct, other Prohibited Conduct, or a combination, and

- if the alleged conduct is DOE-Covered Conduct, whether it arose outside the University's postsecondary program, meaning in the context of: (i) the Respondent providing patient care to the Complainant or a person in the Complainant's charge, (ii) a program or activity provided for the benefit of minors, including elementary and secondary schools, and the Complainant is a beneficiary, (iii) a program or activity provided for the benefit of people with intellectual disabilities (such as the UC Davis SEED Scholar program), and the Complainant is a beneficiary, or (iv) a program or activity of Agricultural and Natural Resources or Lawrence Berkeley National Laboratory ("No-Title IX Hearing" DOE-Covered Conduct).

These determinations affect the steps in the adjudication process that precedes decisions on sanctions, if there is one. The process for Prohibited Conduct that is not DOE-Covered Conduct does not include a hearing or appeal, the process for No-Title IX Hearing DOE-Covered Conduct does not include a hearing but may include an appeal, and the process for all other DOE-Covered Conduct may include both a hearing and an appeal.

The initial assessment process described below is for all reports of Prohibited Conduct, including DOE-Covered Conduct. A special dismissal provision that applies specifically to complaints of DOE-Covered Conduct is in the [DOE Addendum](#).

#### **A. Supportive Measures**

The University will also consider and implement Supportive Measures, including Interim Measures, as appropriate to protect the safety of the parties or the University community; to restore or preserve a party's access to a University program or activity; or to deter Prohibited Conduct per the SVSH Policy.

Involuntary leave of a Senate faculty respondent may be imposed in accordance with APM-016. Investigatory leave of a non-Senate faculty respondent may be imposed in accordance with APM-150.

#### **B. Written Rights & Options**

The Title IX Officer will ensure that the complainant, if their identity is known, is provided a written explanation of rights and available options as outlined in the SVSH Policy, including:

1. How and to whom to report alleged violations;
2. Options for reporting to and/or notifying law enforcement and campus authorities;
3. Information regarding confidential resources;
4. The rights of complainants regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by criminal or civil courts;
5. The importance of preserving evidence that may assist in proving that a criminal offense occurred or in obtaining a protection order;

6. Counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, and other services available both within the institution and the community;
7. Options for, and available assistance to, a change to 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 alleged conduct to law enforcement; and
8. The range of possible outcomes of the report, including Supportive and Remedial Measures and disciplinary actions, the procedures leading to such outcomes, and their right to make a DOE Formal Complaint.

### **III. INVESTIGATING AND RESOLVING REPORTS OF PROHIBITED CONDUCT (Stage 1)**

The below provisions for investigation and resolution of reports cover investigations of DOE-Covered Conduct and other Prohibited Conduct. Provided the University has sufficient information to respond, and in accordance with the SVSH Policy, the University may resolve reports of alleged Prohibited Conduct by respondents covered by this Framework through Alternative Resolution, Formal Investigation, or a DOE Grievance Process. Throughout the resolution process, the complainant and the respondent may be accompanied by an advisor. In addition, the University will offer to provide support services for the complainants and for the respondents. The Title IX Office will consider requests from parties and witnesses for language interpretation and, in consultation with the campus disability management office when appropriate, for disability-related accommodations.

#### **A. Alternative Resolution**

After a preliminary inquiry into the facts, if the complainant and respondent agree in writing, the Title IX Officer may initiate an Alternative Resolution in accordance with the [SVSH Policy](#). Alternative Resolution is not available when the complainant is a student [or patient](#) and the respondent is an employee.

#### **B. Investigation**

In cases where Alternative Resolution is inappropriate or unsuccessful, the Title IX Officer may conduct an investigation per the Formal Investigation or DOE Grievance Process provisions in the SVSH Policy.

When the University opens an investigation of allegations of DOE-Covered Conduct and other Prohibited Conduct that arise out of the same facts or circumstances, it will address all allegations together through the DOE Grievance Process procedures. When the investigation includes allegations of both No-Title IX Hearing DOE-Covered Conduct and other DOE-Covered Conduct that arise out of the same facts or circumstances, the University will address all allegations together through the full DOE Grievance Process, including reaching preliminary determinations and providing parties the right to a hearing.

## **1. Notification to Chancellor**

The Title IX Officer will notify the Chancellor and the Chancellor's designee when a Formal Investigation or DOE Grievance Process is commenced against a faculty respondent. The Title IX Officer will be sensitive in their communication to protect the neutrality of the Chancellor and the Chancellor's designee, as well as the privacy of the complainant and the respondent.

Thereafter, the Title IX Officer will regularly communicate with the Chancellor and the Chancellor's designee regarding the status of the Formal Investigation or DOE Grievance Process.

## **2. Notice of Investigation**

When a Formal Investigation or DOE Grievance Process will be conducted, the Title IX Office will send written notice of the charges to the complainant and respondent.

The written notice will be sent at least three business days before a party's requested interview date, to allow sufficient time for the party to prepare for the interview. The notice will include:

- a. A summary of the allegations and potential violations of the SVSH Policy;
- b. the identities of the parties involved;
- c. the date, time, and location of the reported incident(s) (to the extent known);
- d. the specific provisions of the SVSH Policy potentially violated;
- e. A statement that the investigative report, when issued, will make factual findings and a determination (in a Formal Investigation or DOE Grievance Process for No-Title IX Hearing DOE-Covered Conduct) or preliminary determination (in any other DOE Grievance Process) whether there has been a violation of the SVSH Policy;
- f. A statement that the parties will each have an opportunity during the investigation to propose questions for the investigator to ask of the other party and witnesses;
- g. A statement that the parties will each have an opportunity, before the completion of the investigation, to review all the evidence submitted that is directly related – a standard broader than relevance - to whether a policy violation occurred;
- h. A statement that the findings under the SVSH Policy will be based on the preponderance of the evidence standard and that a finding of a violation of the SVSH Policy will establish probable cause under APM-015;
- i. A statement that a determination of whether a policy violation has occurred will only be made after an investigation or hearing (if required) and therefore there is, at the outset, no presumption that the respondent is responsible for a policy violation;
- j. When applicable, a statement that if it is determined or preliminarily determined that a DOE-Covered Conduct violation did not occur, the investigator will still make a determination or preliminary determination of whether other violations of the SVSH Policy occurred;

- k. A summary of the Title IX and faculty discipline process, including the expected timeline;
- l. A summary of the rights of the complainant and respondent, including the right to an advisor of their choosing, who may be any person, including an attorney, who is not otherwise a party or a witness;
- m. A description of the resources available to complainant and respondent; and
- n. An admonition against intimidation or retaliation.

At any point during the investigation, the Title IX Officer may amend the notice to add additional charges identified during the investigation. Any amended notice should include all the information described above.

### **3. Investigative Process**

The Title IX Officer will designate an investigator to conduct a fair, thorough, and impartial investigation.

#### **a. Overview:**

During the investigation, the complainant and the respondent will be provided an equal opportunity to meet with the investigator, submit information, identify witnesses who may have relevant information, and propose questions for the investigator to ask the other party and witnesses.

The investigator will meet separately with the complainant, the respondent, and the third party witnesses who may have relevant information, and will gather other available and relevant information. The investigator may follow up with the complainant or the respondent as needed to clarify any inconsistencies or new information gathered during the course of the investigation. The investigator will generally consider, that is rely on, all evidence they determine to be relevant and reliable, including evidence that weighs in favor of and against a determination that a policy violation occurred. The investigator may determine the relevance and weigh the value of any witness or other evidence to the findings and may exclude evidence that is irrelevant or immaterial.

Disclosure of facts to persons interviewed will be limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation may be counseled about keeping information private to protect the integrity of the investigation.

The complainant or the respondent may have an advisor present when personally interviewed and at any related meeting. Other witnesses may have a representative present at the discretion of the investigator or as required by University policy or collective bargaining agreement.

#### **b. Coordination with Law Enforcement:**

When a law enforcement agency is conducting its own investigation into the alleged conduct, the Title IX investigator will make every effort to coordinate

their fact-finding efforts with the law enforcement investigation. At the request of law enforcement, the investigation may be delayed temporarily to meet specific needs of the criminal investigation.

c. Specific Types of Evidence:

*Sexual history of complainant.* The investigator will not, as a general rule, consider the complainant's sexual history. However, in limited circumstances, the complainant's sexual history may be directly relevant to the investigation. While the investigator will never assume that a past sexual relationship between the parties means the complainant consented to the specific conduct under investigation, evidence of how the parties communicated consent in past consensual encounters may help the investigator understand whether the respondent reasonably believed consent was given during the encounter under investigation. Further, evidence of specific past sexual encounters may be relevant to whether someone other than respondent was the source of relevant physical evidence. Sexual history evidence that shows a party's reputation or character will never be considered relevant on its own. The investigator will consider proffered evidence of sexual history, and provide it to the parties for review under Section 4.d. below, only if the investigator determines it is directly relevant. The investigator will inform the parties of this determination.

*Expert Evidence.* The parties may present evidence from expert witnesses if it would be relevant to the determination of whether a policy violation occurred. If a party wishes for such evidence to be considered, they will make a written request to the Title IX officer, indicating the person(s) they wish to present as, and who has agreed to be, their expert witness; the issue(s) on which the person(s) would provide expert evidence; why they believe that the issue(s) require an expert opinion for resolution; and any prior relationship, including personal and business relationships, between the party and the person(s).

The Title IX officer will grant the request for the proposed expert to provide evidence if the alleged evidence is relevant, and will deny the request if the proposed evidence is not relevant. Proposed expert evidence is not relevant if it is not pertinent to proving whether the facts material to the allegations under investigation are more or less likely to be true. For example, proposed expert evidence is not relevant if it offers opinions about the Title IX regulations or the DOE Grievance Process; if it offers opinions that do not require expertise to form; or if the proposed expert has a bias or conflict of interest so strong that their opinion would not assist the factfinder in determining whether the facts material to the allegations under investigation are more or less likely to be true.

If the Title IX officer grants a request for proposed expert evidence, they will notify both parties. The other party may then request to present a proposed expert on the same issue (as well as to present their own expert evidence on other relevant issues). The Title IX office may also retain its own expert on any issue

on which one or both parties will be presenting expert evidence; the Title IX office will ensure that any such expert does not have bias or conflict of interest and will notify the parties of any expert it intends to retain.

As part of the evidence they present, any expert witness will provide the investigator information about their qualifications; the factual bases for their assertions; and their principles and methods and the reliability thereof. These factors will contribute to the assessment of the weight and credibility of the expert witness's evidence.

In general, parties may not later request proposed expert witnesses to testify at the hearing unless those witnesses have provided evidence during the investigation.

*Clinical records.* The investigator will not during the investigation access, review, consider, disclose, or otherwise use a complainant's or respondent's medical or behavioral health records that are made in connection with treatment without the party's voluntary written consent.

*Privileged Records.* During the investigation, the investigator will not access, review, consider, disclose, or otherwise use evidence that constitutes, or seeks disclosure of, information protected under a legally recognized privilege without the party's voluntary written consent.

d. Evidence Review:

Before the investigator concludes the investigation and finalizes a written report, both Complainant and Respondent will have an equal opportunity to review and respond in writing to the evidence that the investigator has deemed directly related, including evidence that weighs against finding a policy violation(s) and evidence on which the investigator does not intend to rely, whether obtained from a party or another source. This is true regardless of whether a party has participated in the investigation. This review will also include a summary of directly related statements made by the parties and any witnesses. The Title IX Officer will ensure that this review occurs in a manner designed to protect the privacy of both parties. The Title IX Officer will designate a reasonable time for this review and response by the parties that, absent good cause found by the Title IX Officer, of at least 10 business days.

In investigations of No-Title IX Hearing DOE-Covered Conduct, the investigator will provide parties the opportunity to submit written questions they propose the investigator ask the other party and witnesses, share the responses to their submitted questions, and allow them to propose limited follow-up questions. The investigator has discretion to decline to ask questions that are not relevant or unduly repetitive, and will rephrase any questions that violate the rules of conduct. If the investigator declines to ask a question, they will explain their reasoning.

#### **5.4. Investigation Report and Determination or Preliminary Determination**



Following conclusion of the investigation, the Title IX investigator will prepare a written report. The written investigation report will include a statement of the allegations and issues, statements of the parties and witnesses, and a summary of the evidence the investigator considered. The investigation report will include findings of fact and a determination (in a Formal Investigation or DOE Grievance Process for No-Title IX Hearing DOE-Covered Conduct) and a preliminary determination (in any other DOE Grievance Process) ~~and a determination (in a Formal Investigation)~~ regarding whether, applying the preponderance of the evidence standard, there is sufficient evidence to conclude that the respondent violated the SVSH Policy.

If the complainant or the respondent offered witnesses or other evidence that was not relied upon by the investigator, the investigation report will explain why it was not relied upon. The investigation report will also indicate when and how the parties were given an opportunity to review and respond to the evidence (see Section 3.d above).

In investigations of No-Title IX Hearing DOE-Covered Conduct, the investigator will provide both Complainant and Respondent an opportunity to review and respond in writing to the investigation report before it becomes final. The investigator has discretion to revise the written report to reflect the parties' responses. The investigation report will become final no sooner than 10 business days from the date it is shared with parties for their review and response.

If the findings of fact indicate that DOE-Covered Conduct occurred, but was not charged as such in the notice of investigation, then the investigator will reach determinations (for No-Title IX Hearing DOE-Covered Conduct) or preliminary determinations (for all other DOE-Covered Conduct) regarding whether a policy violation occurred and the Title IX Officer will notify the parties that the case will now proceed per the DOE Grievance Process.

If, instead, the investigator preliminarily determines that conduct charged as DOE-Covered Conduct does not meet that definition, the report will include (if indicated in the Notice of Investigation) analyses and preliminary determinations of both whether respondent engaged in DOE-Covered Conduct and other Prohibited Conduct.

A determination ~~following~~ in a Formal Investigation or DOE Grievance Process (including any appeal) for No-Title IX Hearing DOE-Covered Conduct that the respondent violated the SVSH Policy will establish probable cause as defined in the Code of Conduct. ([APM-015](#) at III.A.4.)

## **6.5. Notice of Investigation Outcome**

Upon ~~finalization~~ completion of the investigation report, the Title IX Officer or designee will send to the complainant and the respondent a written notice of investigation outcome regarding the investigator's preliminary determination or determination (whichever applies) of whether there was a violation of the SVSH Policy. The notice of investigation outcome will generally be accompanied by a copy



of the investigation report, which may be redacted as necessary to protect privacy rights. The Title IX Officer or designee will also send the notice of investigation outcome and accompanying investigation report to the Chancellor or Chancellor's designee.

- a. In all cases, the notice of investigation outcome will include:
  - A summary statement of the factual findings and determinations or preliminary determination (whichever applies(in a Formal Investigation) or preliminary determinations (in a DOE Grievance Process)) regarding whether respondent violated the SVSH Policy;
  - An admonition against intimidation or retaliation;
  - An explanation of any Supportive Measures that will remain in place;
  - A statement that the complainant and respondent have an opportunity to respond in writing and/or in person to the Chancellor or Chancellor's designee;
  - A statement of the anticipated timeline and a statement that both complainant and respondent will be informed of the final resolution of the matter; and
  - A statement of whether it appears that further investigation by the Chancellor or Chancellor's designee or other appropriate body may be necessary to determine whether other violations of the Code of Conduct occurred, separate from any allegations of Prohibited Conduct that were investigated under the SVSH Policy.
- b. If in a Formal Investigation process or DOE Grievance Process for No-Title IX Hearing DOE-Covered Conduct the investigator determined that the faculty respondent violated the SVSH Policy, the notice of investigation outcome will also include:
  - A statement that the finding that respondent violated the SVSH Policy constitutes a finding of probable cause as defined in APM-015;
  - For matters involving Senate faculty respondents, a description of the process for deciding whether and what discipline to impose, including a statement that the Chancellor or Chancellor's designee will engage the Peer Review Committee to advise on appropriate resolution, which may include pursuing discipline in accordance with APM-016;
  - For matters involving non-Senate faculty respondents, a description of the process for deciding whether and what discipline to impose, including a statement that the Chancellor or Chancellor's designee will engage the Peer Review Committee or consult with the Academic Personnel Office to advise on appropriate resolution, which may include corrective action or termination in accordance APM-150; and
  - A statement of the anticipated timeline and a statement that both complainant and respondent will be informed of the final resolution of the matter.

c. In a DOE Grievance Process for No-Title IX Hearing DOE-Covered Conduct, the notice of investigation will also include a statement that both parties have the right to appeal the investigator's determination per Section IV.C of the Doe Addendum.

e.d. In any other DOE Grievance Process, the notice of investigation outcome will also include:

- If the investigator preliminarily determined that the respondent violated the SVSH Policy, a statement that the Chancellor or Chancellor's designee will propose a resolution after engaging the Peer Review Committee or consulting with the Academic Personnel Office (depending on whether the respondent is a senate or non-senate faculty member, and the process the campus has chosen);
- A statement that, unless both parties accept the preliminary determination and any proposed resolution, there will be a fact-finding hearing to determine whether the SVSH Policy has been violated, after which the Chancellor or Chancellor's designee will determine the resolution; and
- An explanation of the procedures and timeline for accepting the preliminary determination (see the [DOE Addendum](#)).

#### **7.6. Timeframe for Completion of Investigation; Extension for Good Cause**

The notice of investigation outcome and accompanying investigation report will be issued promptly, typically within sixty (60) to ninety (90) business days of initiation of the Formal Investigation or DOE Grievance Process, unless extended by the Title IX Officer for good cause, with written notice to the complainant and the respondent of the reason for the extension and the projected new timeline.

The Title IX Officer or designee will keep the complainant and the respondent regularly informed concerning the status of the investigation.

#### **IV. ASSESSMENT AND CONSULTATION (Stage 2)**

The steps outlined below for assessment and consultation apply to investigations of DOE-Covered Conduct and other Prohibited Conduct. An additional notice requirement that applies specifically to investigations of DOE-Covered Conduct is in the DOE Addendum. After this assessment and consultation, matters investigated through Formal Investigation will go to Stage 3 (Decision on Sanctions), below. Matters investigated under the DOE Grievance Process that alleged No-Title IX Hearing DOE-Covered Conduct will go Stage 2.C. (Appeal of the Determination) in the DOE Addendum. All other Matters-matters investigated under the DOE Grievance Process will go to Stage 2.a (Opportunity to Accept the Preliminary Determination) in the [DOE Addendum](#).

At the conclusion of a Formal Investigation, the Chancellor or Chancellor's designee has the authority and responsibility to decide what action to take in response to the findings of the investigation report. The Chancellor or Chancellor's designee may determine that additional

investigation is required to determine whether other Code of Conduct violations occurred, but will not reinvestigate the allegations of Prohibited Conduct investigated by the Title IX Office.

At the conclusion of a DOE Grievance Process investigation of No-Title IX Hearing DOE-Covered Conduct, the parties have the opportunity to appeal. Once any appeal is final or the period for submitting an appeal has lapsed, the Chancellor or Chancellor's designee has the authority and responsibility to decide what action to take. See Stages 2.C (Appeal of Determination) and 2.D (Additional Assessment and Consultation) of the DOE Addendum.

At the conclusion of any other DOE Grievance Process investigation, the parties have the opportunity to accept or not accept the preliminary determination. When the preliminary determination is that the respondent engaged in DOE-Covered Conduct, or both DOE-Covered Conduct and other Prohibited Conduct, the Chancellor or Chancellor's designee will propose a resolution after engaging the Peer Review Committee or consulting with the Academic Personnel Office (depending on whether the respondent is a Senate or non-Senate faculty member, and the process the campus has chosen), as described below, and the parties will decide whether to accept the preliminary determination and the proposed resolution.

The Chancellor or Chancellor's designee may consult with the Title IX Office, the Academic Personnel Office, or other appropriate entities at any time during the decision-making process.

#### **A. Opportunity to Respond**

The Chancellor or Chancellor's designee will offer the complainant and the respondent an opportunity to respond to the notice of investigation outcome and accompanying investigation report, either through an in-person meeting with the Chancellor or Chancellor's designee, a written statement to the Chancellor or Chancellor's designee, or both. The parties will have five business days after the Title IX Officer sends the investigation report to respond.

The purpose of this response is not to challenge the factual findings in the investigation report or present new evidence, but to provide the complainant and the respondent with an opportunity to express their perspectives and address what outcome they wish to see.

#### **B. Peer Review Committee for Senate Faculty**

In the event that the investigation determines or preliminarily determines~~(in a Formal Investigation) or preliminarily determines (in a DOE Grievance Process)~~ that a Senate faculty respondent is responsible for violating the SVSH Policy, the Chancellor or Chancellor's designee will engage the campus Peer Review Committee to advise on appropriate resolution.

The Peer Review Committee, composed on each campus at the direction of the President, will advise the Chancellor or Chancellor's designee regarding how to resolve the matter. At the conclusion of a Formal Investigation or DOE Grievance Process investigation of No-Title IX Hearing DOE-Covered Conduct, this will include advising on whether the Chancellor or Chancellor's designee should pursue a formal charge for violation of the

Code of Conduct or pursue an early resolution. In all cases, the Peer Review Committee should provide advice on the appropriate discipline or other corrective or remedial measures.

The Peer Review Committee will be engaged in all cases where the Title IX investigator has determined or preliminarily determined a Senate faculty respondent has violated the SVSH Policy.

**C. Peer Review Committee or Consultation with Academic Personnel for Non-Senate Faculty**

In the event that the investigation determines or preliminarily determines ~~(in a Formal Investigation) or preliminarily determines (in a DOE Grievance Process)~~ that a non-Senate faculty respondent is responsible for violating the SVSH Policy, the Chancellor or Chancellor's designee will engage the Peer Review Committee or consult with the Academic Personnel Office, depending on what form of consultation the campus decided to employ. Such consultation, as decided by the campus, will occur in all cases where the investigation has determined or preliminarily determined the non-Senate faculty respondent has violated the SVSH Policy. The advisory role of the Peer Review Committee is described in Section IV.B above.

**D. Title IX Officer Consultation for Senate and Non-Senate Faculty**

In all cases where the investigation determines or preliminarily determines a Senate or non-Senate faculty respondent is responsible for violating the SVSH Policy, the Chancellor or Chancellor's designee will consult with the campus Title IX Officer on how to resolve the matter, including the appropriate discipline or other corrective measures.

**V. DECISION ON SANCTIONS FOR SENATE FACULTY (Stage 3)**

The steps outlined below apply when a Senate faculty respondent is found in violation of the SVSH Policy following a Formal Investigation, following an investigation and any appeal (per Section IV.C of the Doe Addendum) in a DOE Grievance Process addressing No-Title IX Hearing DOE-Covered Conduct, or following a hearing and any appeal (per Sections IV.B and IV.C of the Doe Addendum) in any other DOE Grievance Process.

**A. Decision by Chancellor or Chancellor's Designee**

Following consultation with the Peer Review Committee and Title IX Officer, in accordance with APM-016, the Chancellor or Chancellor's designee will decide what action to take to resolve the matter.

As stated in APM-015, "The Chancellor must initiate related disciplinary action by delivering notice of proposed action to the respondent no later than three years after the Chancellor is deemed to have known about the alleged violation." As further stated in APM-015, "[f]or an allegation of sexual violence or sexual harassment, the Chancellor is deemed to know about an alleged violation of the Faculty Code of Conduct when the allegation is first reported to any academic administrator at the level of department chair or above or the campus Title IX Officer." (APM-015, Part III, A.3.)

### **1. No Formal Discipline**

In the event the Chancellor or Chancellor's designee determines to resolve the matter without taking any formal disciplinary action, the Chancellor or Chancellor's designee will promptly communicate this decision and its rationale to both the complainant and the respondent.

### **2. Early Resolution**

The Chancellor or Chancellor's designee can enter into an early resolution with the respondent in accordance with APM 016. An early resolution can be achieved at any time prior to the final imposition of discipline.

Subsequent to the respondent agreeing to the terms of the early resolution, the Chancellor or Chancellor's designee will promptly inform complainant of those terms, including any discipline or other corrective or remedial measures, and the rationale for these terms.

### **3. Charge Filed with Academic Senate Committee on Privilege & Tenure**

The Chancellor or Chancellor's designee can take steps to propose discipline and file a charge with the Academic Senate's Committee on Privilege & Tenure without first pursuing early resolution, or if respondent does not agree to early resolution.

The Chancellor or Chancellor's designee will promptly inform complainant that the charge has been filed.

### **B. Timeframe for Decision; Extension for Good Cause**

The Chancellor or Chancellor's designee should implement their decision promptly, typically within 40 business days of receipt of the notice of investigation outcome and accompanying investigation report. If the matter has not been otherwise resolved within forty (40) business days, a charge will be filed with the Academic Senate's Committee on Privilege & Tenure. A charge will not be held in abeyance or suspended while an early resolution is being pursued or finalized.

Extensions to this timeline may be granted by the Chancellor for good cause with written notice to the complainant and respondent stating the reason for the extension and the projected new timeline.

### **C. Process Following the Filing of a Senate Charge**

The procedures following the filing of a charge with the Academic Senate's Committee on Privilege & Tenure are set forth in the APM-015 and APM-016, Senate Bylaw 336 and other applicable Senate bylaws, as well as divisional bylaws on each campus.

The investigation report and hearing officer's notice of determination (if any) will be accepted as evidence in the Privilege & Tenure hearing. The Chancellor or Chancellor's

designee will ensure that complainant and respondent receive regular updates regarding the status of the proceedings.

Within 14 calendar days of receiving the recommendation from the Academic Senate's Committee on Privilege & Tenure, in accordance with APM-016 and other applicable procedures, the Chancellor will make a final decision regarding discipline, unless the decision involves dismissal for a faculty who has tenure or security of employment. As stated in [APM-016](#), "Authority for dismissal of a faculty member who has tenure or security of employment rests with The Regents, on recommendation of the President, following consultation with the Chancellor." (APM-016, Section II.6.) Extensions to this timeline may be granted for good cause with written notice to the complainant and respondent stating the reason for the extension and the projected new timeline.

The complainant and the respondent will be promptly informed of the decision regarding discipline and its rationale.

## **VI. DECISION ON SANCTIONS FOR NON-SENATE FACULTY (Stage 3)**

The below provisions apply when a non-Senate faculty respondent is found in violation of the SVSH Policy following a Formal Investigation, [following an investigation and any appeal \(per Section IV.C of the Doe Addendum\) in a DOE Grievance Process addressing No-Title IX Hearing DOE-Covered Conduct](#), or following a hearing and any appeal (per Sections IV.B and IV.C of the DOE Addendum) in [any other](#) DOE Grievance Process.

### **A. Decision by Chancellor or Chancellor's Designee**

Following consultation with the Title IX Officer and Peer Review Committee or Academic Personnel Office, and in accordance with APM-150, the Chancellor or Chancellor's designee shall decide what action to take to resolve the matter.

As stated in APM-015, "The Chancellor must initiate related disciplinary action by delivering notice of proposed action to the respondent no later than three years after the Chancellor is deemed to have known about the alleged violation." As further stated in APM-015, "[f]or an allegation of sexual violence or sexual harassment, the Chancellor is deemed to know about an alleged violation of the Faculty Code of Conduct when the allegation is first reported to any academic administrator at the level of department chair or above or the campus Title IX Officer." (APM-015, Part III, A.3.)

#### **1. No Disciplinary Action**

In the event the Chancellor or Chancellor's designee determines to resolve the matter without taking any disciplinary or corrective action, the Chancellor or Chancellor's designee will promptly communicate this decision and its rationale to both the complainant and respondent.

#### **2. Informal Resolution**

The Chancellor or Chancellor's designee can pursue an informal resolution in accordance with APM-150, which may include discipline and/or other corrective or

remedial measures. Informal resolution can be achieved at any time prior to the final imposition of dismissal or corrective action.

Subsequent to respondent agreeing to the terms of an informal resolution, the Chancellor or Chancellor's designee will promptly inform complainant of those terms, including any discipline or other corrective or remedial measures, and the rationale for these terms.

### **3. Notice of Intent**

The Chancellor or Chancellor's designee can issue a notice of intent instituting dismissal or other corrective action in accordance with APM-150.

#### **B. Timeframe for Decision; Extension for Good Cause**

The Chancellor or Chancellor's designee should implement their decision promptly, typically within forty (40) business days of receipt of the notice of investigation outcome and accompanying investigation report. If the matter has not been otherwise resolved within forty (40) business days, a notice of intent shall be issued.

Extensions to this timeline may be granted by the Chancellor for good cause with written notice to the complainant and respondent stating the reason for the extension and the projected new timeline.

#### **C. Process Following the Provision of a Written Notice of Intent.**

The procedures following the provision of a notice of intent are set forth in APM-150.

Should the respondent submit a grievance under [APM-140](#) alleging a violation of APM-150 or otherwise challenging an administrative decision described in this process, the Chancellor's designee will ensure that both the complainant and respondent receive regular updates regarding the status of the grievance.

As stated in APM-140, "When a non-Senate faculty member receives notice of termination before the expiration of his or her appointment, he or she may select as a grievance mechanism either APM-140, as described in this policy, or Section 103.9 of the Standing Orders of the Regents (S.O. 103.9), the procedures of which are described in Academic Senate Bylaw 337. In selecting either APM-140 or S.O. 103.9, the non-Senate faculty member waives the right to invoke the other mechanism to review the same grievance." (APM-140-14e.)

Subsequent to any final decision, the Chancellor or Chancellor's designee will promptly inform the complainant and the respondent of the decision, including any final decision on discipline and its rationale.



**DOE ADDENDUM  
TO INVESTIGATION AND ADJUDICATION FRAMEWORK  
FOR SENATE AND NON-SENATE FACULTY**

**INTRODUCTION**

In general, the Senate and Non-Senate Faculty Framework (“Framework”) applies to both DOE-Covered Conduct and other Prohibited Conduct. Special provisions that apply specifically to DOE-Covered Conduct are described below.

**I. REPORTING AND RESOURCES (Stage 0)**

Reporting options and resources are as described in the corresponding numbered section in the Framework.

**II. INITIAL ASSESSMENT (Stage 1)**

The initial assessment, including Supportive Measures and written rights and options are as described in the corresponding numbered section of the Framework. The additional provision below on Dismissal of Formal Complaints is specific to DOE-Covered Conduct.

**A. Supportive Measures**

Supportive Measures are as described in the corresponding section of the Framework.

**B. Written Rights and Options**

Written rights and options are as described in the corresponding section of the Framework.

**C. Required Dismissal**

The Title IX Officer must “dismiss” allegations in a DOE Formal Complaint if:

- they determine during the Initial Assessment that the alleged conduct, even if true, is not DOE-Covered Conduct, as defined in the SVSH Policy, or
- they determine during the investigation that the alleged conduct, even if true, did not occur in a University program or activity or that the Complainant was not in the United States at the time.

The Title IX Officer will then proceed as described in the *SVSH Policy* Appendix IV, Section C. Dismissal means the Title IX Officer will no longer consider the allegations DOE-Covered Conduct; it does not necessarily mean the Title IX Officer will close the matter. Rather, the Title IX Officer will decide whether and how to continue resolution of the dismissed allegations. See *SVSH Policy*, Appendix IV, Section C.

**III. INVESTIGATING AND RESOLVING REPORTS OF PROHIBITED CONDUCT (Stage 1)**

The investigation and resolution of reports, including Alternative Resolution and Investigation, are as described in the corresponding numbered section of the Framework.



If the Title IX Officer determines during the investigation that they must dismiss any allegations in a DOE Formal Complaint per Section II.C., above, they will proceed as described in the *SVSH Policy* Appendix IV, Section C.

#### **IV. ASSESSMENT AND CONSULTATION (Stage 2)**

The assessment and consultation is as described in the corresponding numbered section of the Framework.

In DOE-Covered Conduct cases, after the assessment and consultation described in Stage 2 of the Framework, the Chancellor or Chancellor's designee will inform the Academic Personnel Office and Title IX Officer of any proposed resolution and its rationale, and the Academic Personnel Office or Title IX Officer (whichever the campus designates) will notify the parties. The parties will receive this notice within 15 business days of the notice of investigative findings and determination or preliminary determination.

Sections IV.A. (Opportunity to Accept the Preliminary Determination) and IV.B (Prehearing and Hearing), below, apply to all DOE Grievance Process cases except those alleging No-Title IX Hearing DOE-Covered Conduct. Section IV.C (Appeal of Determination) applies to all DOE Grievance Process cases, including those alleging No-Title IX Hearing DOE-Covered Conduct.

#### **IV.A. OPPORTUNITY TO ACCEPT THE PRELIMINARY DETERMINATION (Stage 2.A)**

~~After the assessment and consultation described in Stage 2 of the Framework, the Chancellor or Chancellor's designee will inform the Academic Personnel Office and Title IX Officer of any proposed resolution and its rationale, and the Academic Personnel Office or Title IX Officer (whichever the campus designates) will notify the parties. The parties will receive this notice within 15 business days of the notice of investigative findings and preliminary determination.~~

Unless both parties accept the preliminary determination and any proposed resolution, there will be a fact-finding hearing to determine whether the SVSH Policy was violated.

##### **A. Accepting the Preliminary Determination and Proposed Resolution**

###### **1. Timeline**

Either party may accept the preliminary determination and any proposed resolution within 20 business days of the notice of investigative findings and preliminary determination. Unless both parties accept the preliminary determination and any proposed resolution within this time period, then the matter will proceed to a hearing to determine if a policy violation occurred.

###### **2. Written Acceptance**

A party may accept the preliminary determination and any proposed resolution by providing the Academic Personnel Office or Title IX Officer (whichever the campus designates) with a written acknowledgment stating that the party accepts the

preliminary determination and any proposed resolution, and wishes not to proceed with a hearing.

### **3. Final Decision Following Acceptance**

If both parties provide the written acceptance during the 20 business days, then the preliminary determination regarding policy violation(s) becomes final and the Chancellor or Chancellor's designee will impose the proposed resolution, including any discipline or other corrective measures.

## **B. Notice of Hearing or No Hearing**

### **1. Notice of Hearing**

Unless both parties accept the preliminary determination and any proposed resolution by the end of the 20 business days, the Academic Personnel Office or Title IX Officer (whichever the campus designates) will notify the parties that there will be a hearing. The notice of hearing will include a summary of the hearing procedures described in Section IV.C.

### **2. Notice of No Hearing**

If both parties accept the preliminary determination and any proposed resolution, the Academic Personnel Office or Title IX Officer (whichever the campus designates) will notify the parties that there will be no hearing. This notice will indicate that the investigator's preliminary determination as to policy violation(s) is final, and that the Chancellor or Chancellor's designee is imposing the proposed resolution (if any).

## **IV.B. PREHEARING AND HEARING (Stage 2.B)**

### **A. Fact-finding Hearing**

Unless both parties accept the investigator's preliminary determinations, there will be a fact-finding hearing before a single hearing officer. The hearing is to determine whether a violation of the SVSH Policy occurred. The University's role in the hearing is neutral. The University will consider the relevant evidence available, including relevant evidence presented by the parties, in order to make factual findings and determine whether a policy violation occurred.

### **B. Hearing Officer**

#### **1. Overview**

The hearing officer may be a University employee or outside contractor, and may not be the same person as the Title IX Officer or the investigator. Regardless, they will be appropriately trained, with such training coordinated by the Title IX Officer.

#### **2. Bias and Conflict of Interest**

The hearing coordinator will inform the parties of the hearing officer's identity. Within 5 business days after the notification, the parties may request the hearing officer's disqualification on the basis of bias or conflict of interest.

- a. For example, involvement in the case or knowledge of the allegations at issue prior to being selected as the hearing officer, or a close personal relationship with a party or expected witness in the proceeding could, depending on the circumstances, warrant disqualification of the hearing officer.
- b. Employment by the University, or prior work for the University as a contractor, on its own, does not warrant disqualification.
- c. The hearing officer's gender, gender identity, race, ethnicity, religion, sexual orientation or similar identifying characteristic, or the fact that they differ from those of any party, do not, on their own, warrant disqualification.

### **3. Disqualification Decision**

The Academic Personnel Office will decide any request for disqualification of the hearing officer and inform both parties of their decision and, if they determine to change hearing officers, the name of the new hearing officer.

### **C. Hearing Coordinator**

Each hearing will have a hearing coordinator, distinct from the hearing officer, who will manage the administrative and procedural aspects of the hearing.

### **D. Pre-Hearing Procedures**

#### **1. Meeting with Parties**

The hearing officer and hearing coordinator will hold a separate meeting (in person or remotely) with each party to explain the hearing process, address questions, begin to define the scope of the hearing, and address other issues to promote an orderly, productive and fair hearing.

- a. The hearing coordinator will provide written notice to each party of their prehearing meeting, including time, location (or if remote, call instructions), and purpose of the meeting, at least 10 business days before the pre-hearing meeting.
- b. No later than five business days before the pre-hearing meeting, each party will submit to the hearing officer a preliminary statement of what issues, if any, each considers to be disputed and relevant to the determination of whether a policy violation occurred, and the evidence they intend to present on each issue, including all documents to be presented, the names of all requested witnesses, and a brief summary of such witnesses' expected testimony. The parties will later have an additional opportunity to submit proposed evidence, see Section 5 below.
- c. At the pre-hearing meeting, the hearing officer and party will discuss the evidence the party has provided, to help identify and refine the issues to be decided at the hearing, which will inform the hearing officer's determination of the scope of the hearing.
- d. Each party should also come to the pre-hearing meeting prepared to schedule dates for the hearing.

- e. The hearing officer and/or coordinator will explain what to expect at the hearing, see Section E below.
- f. The hearing officer and/or coordinator will also discuss measures available to protect the well-being of parties and witnesses at the hearing, as appropriate. These may include, for example, use of lived names and pronouns during the hearing, including in screen names; a party's right to have their support person available to them at all times during the hearing; a hearing participant's ability to request a break during the hearing, except when a question is pending.
- g. The hearing officer and/or coordinator will inform the parties that the hearing will be conducted remotely. If a party believes that they need a University-provided physical space or technological equipment or assistance to participate remotely – for example because of safety or privacy concerns, or a disability - they may request such resources of the hearing coordinator during the prehearing meeting. The hearing coordinator will respond to any such request in writing within five business days of the prehearing meeting.
- h. The parties and their advisors, if they have one at this stage of the process, are expected to participate in the pre-hearing meeting.
- i. If a party does not participate in the pre-hearing meeting (or does not let the hearing coordinator know they need to reschedule in advance), the hearing coordinator will notify the party that they have 2 business days to contact the hearing coordinator to reschedule. Absent extenuating circumstances, if the party does not contact the hearing coordinator within the 2 business days, the hearing will proceed but the non-participating party will be presumed to agree with the hearing officer's definition of the scope of the hearing.

## **2. Scope of Hearing**

Within 5 business days after concluding meetings with both parties (or determining that a party has decided not to participate in the pre-hearing process), the hearing officer will determine what issues are disputed and relevant to the determination of whether a policy violation(s) occurred, and will notify the parties of the scope of the issues to be addressed at the hearing and the expected witnesses. The hearing officer has discretion to grant or deny, in whole or part, the parties' requests for witnesses on the basis of relevance. The hearing officer's determination of scope may include issues, evidence, and witnesses that the parties themselves have not provided.

Throughout the pre-hearing process, including in the notice of scope of hearing, the hearing officer will:

- a. Exclude evidence including witness testimony that is, for example, irrelevant in light of the policy violation(s) charged, or relevant only to issues not in dispute, or unduly repetitive, and implement the evidentiary principles in Section III.B.3;
- b. Decide any procedural issues for the hearing; and/or

- c. Make any other determinations necessary to promote an orderly, productive, and fair hearing that complies with the rules of conduct.

### **3. Submission of Additional Information**

Within 5 business days after receiving the hearing officer's definition of scope, the parties may then submit additional information about the evidence, including witness testimony, that they would like to present.

### **4. Notice of Hearing**

Not less than 10 business days before the hearing, the hearing coordinator will send a written notice to the parties informing them of the hearing date, time, location, and procedures.

### **5. Witness Participation**

The hearing coordinator will ensure that the Title IX investigator (or if not available, a representative from that office) will be available to testify during the hearing. Testimony by the Title IX investigator may be appropriate to help resolve disputes about the authenticity of evidence summarized in the investigation report and at issue at the hearing, or whether the investigator accurately memorialized a party's or witness's statement in the investigation. The Title IX investigator should not be questioned about their assessment of party or witness credibility, nor the investigative process generally, nor their preliminary determination of whether policy violations occurred, because the hearing officer will make their own credibility determinations and determination of policy violation(s) so this information would not be relevant. Based on the hearing officer's determination, the hearing coordinator will request the attendance of all witnesses whose testimony is determined to be within the scope of the hearing.

### **6. Confirmation of Scope, Evidence, and Witnesses**

At least 2 business days prior to the hearing, the parties will receive the hearing officer's confirmation of scope and evidence; copies of all the evidence that will be considered at the hearing that the hearing officer has received, including the investigation file (consisting of the investigation report and any evidence deemed directly related by the investigator, as documented in the investigation report) and any other documents that will be considered; the names of expected witnesses and a summary of their expected testimony. If the hearing officer has excluded evidence (including witness testimony) that a party has requested to present, they will explain why that evidence was not relevant. The hearing officer will also notify the parties of any procedural determinations they have made regarding the hearing. This material will also be provided to the Title IX Officer.

### **7. Submission of Questions**

The parties are encouraged to submit any questions for the other party and any expected witnesses to the hearing coordinator and hearing officer before the hearing.

but will not be limited to those questions at the hearing. These questions will not be shared with the other party or witnesses.

#### **8. Advisor Participation and Provision by University**

At any point before the hearing, if a party anticipates that they will not have an advisor available at the hearing to ask their questions for them, they should let the hearing coordinator know, to allow the University to plan for assigning the party a person to ask the party's questions at the hearing ("Reader"). Even without notice or during a hearing in progress, however, the University will provide such a resource if a party does not have one. If any party does not have an advisor available at the hearing for the purpose of asking their questions for them, the hearing coordinator will assign a person to fulfill the sole and specific function of asking the party's questions (and not of serving as their advisor more generally), without cost to the party.

### **E. Hearing Procedures**

#### **1. Advisors and Support Persons**

The parties may have their advisors present throughout the hearing. They may also have a support person present throughout the hearing.

#### **2. Rules of Conduct**

The hearing will be conducted in a respectful manner that promotes fairness and accurate fact-finding and that complies with the rules of conduct. The parties and witnesses will address only the hearing officer, and not each other. Only the hearing officer and the parties' advisors (or Readers if they do not have advisors), consistent with paragraph 6 below, may question witnesses and parties.

#### **3. Virtual Hearing**

The hearing will be conducted remotely, with any modifications the hearing coordinator has made in response to a party's request for assistance, see Section D.1.f above.

#### **4. Hearing Evidence and Procedures**

Courtroom rules of evidence and procedure will not apply. The hearing officer will generally consider, that is rely on, all evidence they determine to be relevant and reliable. The hearing officer may determine the relevance and weigh the value of any witness testimony or other evidence to the findings, subject to Section F.1 below. The hearing officer will also follow the evidentiary principles in Section III.B.3 of the Framework. Throughout the hearing, the hearing officer will:

- a. Exclude evidence including witness testimony that is, for example, irrelevant in light of the policy violation(s) charged, or relevant only to issues not in dispute, or unduly repetitive, and require rephrasing of questions that violate the rules of conduct,
- b. Decide any procedural issues for the hearing, and/or

- c. Make any other determinations necessary to promote an orderly, productive, and fair hearing that complies with the rules of conduct.

## **5. Access to Witnesses**

Parties will be able to see and hear (or, if deaf or hard of hearing, to access through auxiliary aids for services) all questioning and testimony at the hearing, if they choose to. Witnesses (other than the parties) will attend the hearing only for their own testimony.

## **6. Questioning at the Hearing**

The hearing officer may ask questions of all parties and witnesses that are relevant, including those that are relevant to assessing credibility. Each party's advisor may ask questions of the other party (not their party) and witnesses that are relevant, including those that are relevant to assessing credibility. As noted in Section D.8 above, the University will assign a person to ask a party's questions whenever a party does not have an advisor at the hearing.

The hearing officer will determine the order of questioning of the parties and witnesses. For each party or witness, the hearing officer will ask their own questions first.

Each party will prepare their questions, including any follow-up questions, for the other party and witnesses, and will provide them to their advisor. The advisor will ask the questions as the party has provided them, and may not ask questions that the advisor themselves have developed without their party.

If a party does not attend the hearing, the hearing will still proceed, and they may still have their advisor - or if they do not have one, a University-assigned Reader – ask the questions that they have prepared.

When a party's advisor is asking questions of the other party or a witness, the hearing officer will determine whether each question is relevant before the party or witness answers it and will exclude any that are not relevant or unduly repetitive, and will require rephrasing of any questions that violate the rules of conduct. If the hearing officer determines that a question should be excluded as not relevant, they will explain their reasoning.

At any time, the hearing officer may ask follow-up questions of the parties and witnesses.

Any expert witnesses identified during the investigation, see Section III.B.3.c of the Framework, will be subject to these same questioning procedures.

## **7. Investigation File**

The investigation file will be entered as evidence at the hearing. The hearing officer generally will rely on any finding in the report that is not disputed.

## **8. Impact of Selective and Non-Participation**

Hearing Officer will not draw adverse inferences from a party's decision to not participate in the hearing, or to remain silent during the hearing. However, they may consider a party's selective participation – such as choosing to answer some but not all questions posed, or choosing to provide a statement only after reviewing the other evidence gathered in the investigation – when assessing credibility. Further, parties should bear in mind, as discussed below, that on any disputed and material issue, a hearing officer may not rely on any statement of a party about which the party refuses to answer questions at the hearing.

## **9. Well-Being Measures**

The hearing officer will implement measures they deem appropriate to protect the well-being of parties and witnesses. For example, the hearing officer will allow separation of the parties, breaks, and the attendance of support persons in accordance with these procedures.

## **10. Visual Separation**

The hearing officer will allow the parties and/or witnesses to be visually separated during the hearing except as noted in paragraph 5 above. This may include, but is not limited to videoconference and/or any other appropriate technology. To assess credibility, the hearing officer must have sufficient access to the Complainant, Respondent, and any witnesses presenting information; if the hearing officer is sighted, then the hearing officer must be able to see them.

## **11. Presentation of Evidence**

The parties will have the opportunity to present the evidence they submitted, subject to any exclusions determined by the hearing officer. Generally, the parties may not introduce evidence, including witness testimony, at the hearing that they did not identify during the pre-hearing process. However, the hearing officer has discretion to accept or exclude additional evidence presented at the hearing. The parties are expected not to spend time on undisputed facts or evidence that would be duplicative.

## **12. Recording**

The University will audio record the hearing and make the recording available for the parties' review at their request.

## **13. Advisors and Support Persons**

The parties may have their advisors and support persons available throughout the hearing.

# **F. Determination of Policy Violation**

## **1. Standards for Deliberation**

The hearing officer will decide whether a violation of the SVSH Policy occurred based on a Preponderance of Evidence standard.

## **2. Information Considered**



The hearing officer will take into account the investigative file and the evidence presented and accepted at the hearing. The evidentiary principles in Section III.B.C also apply. On any disputed and material issue, the hearing officer should make their own findings and credibility determinations based on all of the evidence before them. However, on any disputed and material issue, the hearing officer may not consider any statement about which a party or witness has refused, in whole or in part, to answer questions posed by a party through their advisor or a University-assigned reader and allowed as relevant by the hearing officer. For purposes of these procedures, a statement is anything that constitutes a person's intent to make factual assertions.

#### **G. Notice of Determination**

Within 15 business days of the hearing, the hearing coordinator will send simultaneous written notice to the complainant and respondent (with a copy to the Title IX Officer) setting forth the hearing officer's determination on whether the SVSH Policy has been violated. The written notice will include the following:

1. A summary of the allegations that would constitute a violation of the SVSH Policy;
2. The determinations of whether the SVSH Policy has been violated;
3. A statement that the Title IX Officer will determine whether complainant will be provided additional remedies, and will inform the complainant of that determination;
4. A description of the procedural history of the complaint;
5. The findings on each disputed, material fact and an analysis of the evidence supporting the findings;
6. A summary of the facts found by the investigator that the parties did not dispute;
7. The rationale for the determination of each charge;
8. If the hearing officer determines that DOE-Covered Conduct did not occur, an analysis of whether other charged conduct, including other SVSH Policy violations, occurred;
9. An admonition against retaliation;
10. A statement of the right to appeal, grounds and timeframe for the appeal, the office to which the appeal must be submitted, and the procedure that the University will follow in deciding the appeal;
11. An explanation that both the parties will receive a copy of any appeal submitted in accordance with these procedures;
12. A description of the process for deciding whether and what discipline to impose if the final determination (following any appeal) is that the respondent violated the SVSH Policy, and a statement that both parties will be informed of the final resolution of the matter;
13. A statement indicating the Chancellor or Chancellor's designee will determine whether further investigation by another body is necessary to determine whether violations of other policies occurred, separate from any allegations of Prohibited Conduct that were investigated under the SVSH Policy; and

14. A statement that a final determination (including exhaustion of any appeal rights) that the respondent violated the SVSH Policy will establish probable cause as defined in the Code of Conduct. ([APM-015](#) at III.A.4).

#### **H. Documentation of Hearing**

Throughout the pre-hearing and hearing process, the hearing coordinator will document the process's compliance with the procedures (including timeframes) in this section. After the notice of policy violation determination has been finalized, the hearing coordinator will provide this documentation, along with all documents relating to the hearing, and the recording of the hearing, to the Title IX Officer.

#### **IV.C. APPEAL OF DETERMINATION (Stage 2.C)**

The Complainant and Respondent have an equal opportunity to appeal the policy violation determination(s) ~~and any sanction(s)~~. The University administers the appeal process, but is not a party and does not advocate for or against any appeal.

##### **A. Grounds for Appeal**

A party may appeal only on the grounds described in this section.

###### 1. In cases of No-Title IX Hearing DOE-Covered Conduct:

- a. There was procedural error in the investigation process that materially affected the outcome; procedural error refers to alleged deviations from University policy, and not challenges to policies or procedures themselves;
- b. There is new evidence that was not reasonably available at the time of the investigation that could have materially affected the outcome; and
- a.c. The investigator or Title IX Officer had a conflict of interest or bias that affected the outcome. See also the principles in Section IV.B.(B)(2).

###### 2. In all other cases:

- b.a. There was procedural error in the hearing process that materially affected the outcome; procedural error refers to alleged deviations from University policy, and not challenges to policies or procedures themselves;
- e.b. There is new evidence that was not reasonably available at the time of the hearing that could have materially affected the outcome; and
- d.c. The hearing officer had a conflict of interest or bias that affected the outcome. See also the principles in Section IV.B.(B)(2)

The appeal should identify the reason(s) why the party is challenging the outcome on one or more of the available grounds.

##### **B. Commencing an Appeal**

An appeal must be submitted to the hearing coordinator within ~~2040~~ business days following issuance of the notice of the investigation outcome (in cases of No-Title IX Hearing DOE-Covered Conduct) or of the hearing officer's determination (in all other cases). The appeal must identify the ground(s) for appeal and contain specific arguments supporting each ground for appeal. The Title IX Officer will notify the other party of the basis for the appeal and that the other party can submit a written statement in response to

the appeal within three business days, and supporting documentation from the other party as appropriate.

### **C. Standards for Deliberation**

The appeal officer<sup>5</sup> will decide whether the appealing party has proven the asserted ground(s) for appeal. They will only consider the evidence presented during the investigation (in No-Title IX Hearing DOE-Covered Conduct cases) or at the hearing (in all other cases), the investigation file, and the appeal statements of the parties. They will not make their own factual findings, nor any witness credibility determinations.

### **D. Decision by Appeal Officer**

The appeal officer, who will be an unbiased person without prior involvement in the case or personal relationship with the parties, may:

1. Uphold the findings;
2. Overturn the findings;
3. Modify the findings; or
4. In appeals alleging material procedural error or new evidence, send the case back to the investigator (in No-Title IX Hearing cases) or hearing officer (in all other cases) for further fact-finding if needed, for example on the issue of whether the alleged error, new evidence, would have materially affected the outcome.

### **E. Written Report**

The appeal officer will summarize their decision in a written report that includes the following:

1. A statement of the grounds identified on appeal;
2. A summary of the information considered by the appeal officer;
3. The decision of the appeal officer and the rationale for the decision including, where the findings are overturned or modified, an explanation of why the ground(s) for appeal were proven; and
4. If the final decision is that the respondent violated the SVSH Policy, a statement that the decision constitutes a finding of probable cause as defined in APM-015.

### **F. Distribution of Written Decision**

Within 10 business days of receiving the appeal, the appeal officer will send their written decision to complainant and respondent, with a copy to the Title IX Officer.

1. Unless the appeal officer remands the matter, they will inform the respondent and the complainant that the matter is closed with no further right to appeal.
2. If the appeal officer remands the matter, they will specify what further fact-finding should occur or what additional information should be considered and request that the investigator or hearing officer report back to the appeal officer on their additional fact-finding. After receiving the investigator or hearing officer's additional factual

findings, the appeal officer will issue their decision within 10 business days. This decision will be final.

#### **IV.D. ADDITIONAL ASSESSMENT AND CONSULTATION (Stage 2.D)**

Once any appeal is final or the period for submitting an appeal has lapsed, the Title IX Officer will send the final findings and determination to the Chancellor or Chancellor's designee, with a summary explanation of any difference between the investigator's determination or preliminary determination (whichever applies) and the final determination and findings.

The Chancellor or Chancellor's designee has the authority and responsibility to decide what action to take in response to the final determination and findings. The Chancellor or Chancellor's designee may determine that additional investigation is required to determine whether other Code of Conduct violations occurred, but will not reconsider the findings and determinations regarding SVSH Policy violations made through the hearing and any appeal.

If the final hearing results in a finding is that a faculty respondent violated the SVSH Policy, then the Chancellor or Chancellor's designee will, if they did not already do so, consult with the Title IX Officer and either engage the Peer Review Committee or consult with the Academic Personnel Office as described in *Assessment and Consultation (Stage 2)* of the Framework. If the Chancellor or Chancellor's designee already took these steps (because the investigator determined or preliminarily determined the respondent violated the SVSH Policy), then they may choose to repeat them before proposing a resolution (for example, when the finding from the following any hearing or appeal is different from the investigator's determination or preliminary determination). The Chancellor or Chancellor's designee will decide what action to take to resolve the matter.

For Senate Faculty, matters will then proceed as described in [Decision on Sanctions for Senate Faculty \(Stage 3\)](#) of the Framework. ~~If there is a Privilege & Tenure hearing, the Chancellor will make their decision on sanctions based on the preponderance of evidence standard.~~

For Non-Senate Faculty, the matter will then proceed as described in [Decision on Sanctions for Non-Senate Faculty \(Stage 3\)](#) of the Framework.



SYSTEMWIDE TITLE IX OFFICE

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

March 15, 2021

Dear Colleagues,

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

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

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

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

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

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

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

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

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

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

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

Yours Very Truly,

A handwritten signature in cursive script that reads "Suzanne Taylor".

Suzanne Taylor

Systemwide Title IX Director