

University of California

Sexual Violence/Sexual Assault Investigation Common Elements

I. Summary

These guidelines are intended to establish general practices of University personnel who conduct, supervise and manage the investigation of sexual violence complaints. The University's goal is for all such investigations, both criminal and administrative, to be completed in a manner that is as compassionate, fair, thorough, timely and efficient as possible. Additionally, these investigations should follow trauma-informed practices, facilitate delivery of support services for the complainant, respect the due process rights of the respondent, and protect confidentiality as required by the needs of the investigations and under the law and University policy. An investigator's work will always need to be tailored to the facts and circumstances of each individual investigation.

NOTE: The criminal justice system routinely uses the phrases "victim" and "accused" or "subject" when conducting investigations. For purposes of simplicity and ease of reading, these investigative guidelines use the term "complainant" to identify an individual who reports an incident of sexual violence. The term "respondent" refers to the accused.

II. Training and preparation

The foundation of a successful investigation begins with providing the necessary support and training to qualified investigative personnel. Criminal and administrative investigators alike must have a clear understanding of their role, responsibilities and options. They should keep up to date with changes in law, policy, community needs and the greater context of their work.

Initial and ongoing training for investigators should include the following topics, tailored to the specific needs of their role:

- Criminal law and procedures (for criminal investigators only)
- University policy and procedures
- Clery Act, VAWA, Title IX, and state law requirements
- Investigatory procedures and documentation
- Interview skills and techniques
- Short and long-term effects of crisis and trauma
- Complainant behaviors and challenges
- Respondent behaviors and characteristics
- University and community-based support and resource options for all involved parties
- The preponderance of the evidence standard

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III. Trauma-informed approach

The trauma-informed approach is based on scientific evidence that has established that an individual who is subjected to a traumatic situation experiences a change in brain function that can materially affect the person's response to the situation and how memories of the event may be stored and recalled. A trauma-informed approach also takes into account the fact that a complainant in a sexual violence case may have suffered a traumatic incident that may impact their participation during an investigation.

A complainant's physical and mental well-being during the investigation is a top priority. The complainant, like participants or witnesses, should be treated with respect and compassion by those responsible for this process. Every opportunity should be taken to remove obstacles to participation in the process. For example, in the criminal context, the trauma-informed approach suggests that a complainant should be afforded the opportunity to agree to a sexual assault exam after gaining an understanding of what is required for this investigative medical procedure.

Perhaps the single most critical investigatory response to the complainant in a sexual violence incident should be *empathy*. Empathy for the complainant does not mean a predisposition to make findings in the complainant's favor, nor does it equate to bias against the respondent. Empathy is the ability to be sensitive to the experience of a traumatized person.

Recognizing that procedural time requirements may not always be consistent with a complainant's and respondent's desired pace, the complainant and respondent should be informed at the earliest possible time about any dates, deadlines or specific needs.

Strategies to carry out a trauma-informed approach to investigation include:

- Utilizing a comfortable and appropriate location / facility for meetings and interviews
- Informing the parties of their options, rights and resources
- Avoiding pressuring the complainant to participate in the investigation
- Asking questions in a sensitive manner that avoids suggesting the complainant is to blame for the complained of conduct
- Encouraging participation by assuring complainants and witnesses that the University generally does not hold complainants and witnesses responsible for alcohol or drug-related violations that occurred at the time of the sexual violence incident

A trauma-informed approach is consistent with providing a fair and equitable process for the respondent. The administrative process should treat respondents with professionalism and respect and in accordance with existing policies and procedures. Administrative investigators should provide the respondent with information about applicable resources and support services that may be available to them.

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IV. Trauma-informed interviewing

Trauma-informed interviews are designed to treat the complainant's experience with sensitivity and to facilitate the recall of as much information about the event as possible.

Those who conduct these interviews should receive training about the neurobiology of trauma and techniques for conducting trauma-informed interviews. Trauma-informed interview techniques include:

- Scheduling the interview at a convenient time and place
- Displaying empathy, compassion, concern and sincerity
- Asking open-ended questions
- Listening actively and attentively without interruptions
- Allowing the individual to control the flow of information
- Allowing breaks as needed
- Asking questions designed to evoke sensory-based memories
- Avoiding questions that can be answered with single word responses
- Avoiding leading questions
- Avoiding loaded terms / words with inappropriate implications
- Recognizing that the way certain questions are asked (such as using the word "why" regularly or unnecessarily) may be perceived as victim blaming
- Explaining the need/context for any sensitive questions

Although the strategies highlighted above specifically address interviews with complainants in sexual violence cases, it is important to note that these strategies are often also best practices for conducting interviews with all parties, including other witnesses and the respondent, in these types of cases.

V. Parallel and coordinated investigations

If a sexual violence incident is reported as both a criminal complaint and an administrative complaint, these may proceed simultaneously, although administrative investigation and action may be delayed for a short period of time as needed to meet any specific needs of the criminal investigation. The integrity and effectiveness of criminal sexual violence investigations often rely on law enforcement's ability to control the release of information and keep certain facts confidential. Where there are parallel investigations occurring, the individuals conducting the criminal and administrative investigations should coordinate to mitigate conflict to the greatest extent possible while maintaining confidentiality per Penal Code 293.

In certain cases, administrative procedures may be appropriate to address a sexual violence complaint when a criminal investigation has been suspended. The decision of a law enforcement agency to suspend investigation or the decision of a district attorney to decline prosecution should not be interpreted to mean that the complaint has no merit. Administrative

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policies cover a broader range of conduct and utilize a different burden of proof than criminal law, so administrative action may be appropriate even where criminal proceedings are not. Consistent with applicable laws, the content of the criminal investigation may become available to administrative investigators; however, in those cases that have been referred to the district attorney, prior approval from the district attorney may be needed. UCPD should follow the practice established between their campus police department and the appropriate District Attorney.

In many cases, it may be necessary to conduct parallel investigations. Information should be shared between the investigators to the maximum extent possible under the law (without damaging the criminal investigation). Where possible, investigators should develop protocols to maximize information sharing between criminal and administrative investigations (such as sharing of the content of victim or witness interviews, or other evidence). Investigators should refer to the Memorandum of Understanding between the campus and local law enforcement for guidance.¹ In cases where the complainant has opted to remain confidential in the law enforcement process, the complainant must provide a waiver to law enforcement for information sharing to occur.

When the University learns a law enforcement agency other than the University Police is conducting a sexual violence investigation involving an accused individual who is subject to University policy, UCPD should follow established practice for its jurisdiction and, if appropriate, assist as a liaison to facilitate exchange of information between the University's administrative investigators and the outside agency.

Both law enforcement and administrative investigators should make every effort to keep the complainant and complainant's advocate aware of the progress of the investigation.

Administrative investigators should also keep the respondent aware of the progress of the investigation. Once the administrative investigation concludes and findings are made, the complainant and respondent must be notified in accordance with University policy and procedure.

VI. Law enforcement response and investigation guidelines

When the University Police (UCPD) engages in a criminal investigation of a sexual violence incident, it should remain ever cognizant of the potential for coordination with administrative investigators. It is likely that action by the University may occur in addition to or instead of any court action. Each criminal investigation is unique. A complainant may report a sexual assault immediately after the incident, or an incident may come to law enforcement's attention days, weeks, months or years later.

¹ The *Model Memorandum of Understanding (MOU)* developed jointly by the Office of the Attorney General and the University of California, which is comprised of a How-To Guide and Template MOU for law enforcement agencies and institutions of higher learning, also is a resource for investigators in these situations. See <https://oag.ca.gov/sites/all/files/agweb/pdfs/campus/how-to-guide.pdf>

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First responders (such as uniformed police officers) who may be the first point of contact for a report of a sexual violence to the University should receive appropriate awareness and procedural training consistent with the philosophy and guidelines articulated in this document and other relevant law enforcement guidance. Training in the trauma-informed approach will aid the officers in asking necessary, but difficult investigative questions in a fashion that minimizes the potential for victim-blaming perceptions.

The following priorities and procedures may or may not be applicable in every case, or utilized in any specific order:

- Ensuring scene safety and access to emergency medical aid
- Gathering the complainant's preliminary statement
- Contacting an appropriate advocate or support person
- Offering and arranging a forensic medical exam (anticipate clothing, transportation, support needs)
- Identifying and securing crime scene(s)
- Gathering evidence through subpoenas, search warrants, and other means if necessary
- Gathering photos of injuries, damage
- Notifying / offering complainant and respondent resource information
- Offering confidentiality per Penal Code 293 / Penal Code 6254 and waiver choices
- Explaining reporting options, rights,
- Conducting a neighborhood / area canvas for witnesses, video, other evidence
- Identifying and gathering preliminary statements from witnesses
- If probable cause exists and suspect location is known, effecting arrest
- Attempting forensic medical exam of suspect (with search warrant if necessary)
- Obtaining a Protective Order if needed

Uniformed officers may be asked to complete many or most of the above tasks. Some police departments may assign detectives who have received more extensive training to complete the investigation. Other departments may assign the investigation to a uniformed officer.

Regardless, the following tasks should be addressed as the criminal investigation progresses:

- Manage the investigation and delegate individual tasks
- Visit the crime scene, guide evidence collection, evaluate and process evidence
 - Obtain Center for Student Conduct, housing, or other administrative reports
 - Photograph the entire area where the incident occurred
 - Video surveillance
 - Text messages, emails, letters, social media, voicemails
 - Entry/exit logs to the crime location if that data exists
 - Prior investigative reports involving same party or parties
- Notify the Clery Coordinator or designees to initiate a Timely Warning determination

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- Determine the best person to interview the complainant. Give thought that the complainant may be more comfortable with someone other than the officer assigned the investigation.
- Identify the likely Penal Code violated and determine the specific elements of the crime
- Identify potential witnesses and, plan the sequence of the interviews and possible evidence to seek.
- Conduct a trauma-informed interview of the complainant (after at least 1 sleep cycle when feasible).
 - Ensure the complainant is aware of health and wellness resources.
 - Highlight services of Confidential Victim Advocate and make the appropriate contact if requested by the complainant.
 - Explain the confidentiality provisions of Penal Code 293. If the complainant invokes PC 293, the complainant will need to provide a waiver for law enforcement to advise Title IX of the full circumstances of the complaint and information provided by complainant. Absent this waiver, law enforcement officers should still inform Title IX that an assault has been reported and provide information as permitted by law, but officers will be limited by PC 293 in the information that can be conveyed.
 - Explain the investigatory process and timelines, and set expectations for investigative updates.
 - Conduct a thorough interview regarding the facts of the reported incident in a trauma-informed manner.
 - Carefully assess credibility.
 - Ask about other witnesses who can provide additional information.
 - Follow up with the complainant after respondent and witness interviews if necessary to clarify inconsistencies.
- Consider and offer/facilitate trauma-informed investigative options.
- Conduct a thorough interview of the respondent.
 - Conduct a thorough interview regarding the facts of the reported incident.
 - Carefully assess credibility. Ask about other witnesses who should be contacted.
 - Follow up with respondent after other witness interviews if necessary to clarify inconsistencies.
- Investigatory interview with witnesses.
 - Discuss confidentiality (limitations and expectations).
 - Gather relevant facts.
- Follow consistent practices for documenting all aspects of the investigation. Retain evidence for possible prosecution.
 - Report components should contain ultimate classification of the case, a factual summary of the incident, summary of all interviews conducted, all investigative efforts and a list of evidence obtained
- Submit the case report to the assigned attorney from the District Attorney's Office for determination of prosecution.
- Provide and document periodic updates to complainant of the investigation status.

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- Determine/set expectations during interviews.
- Agreement on how contact will occur.
- Coordinate efforts with District Attorney, University administrative investigators, laboratory technicians, other agencies and resources.
- Ensure all proper notifications/referrals have been made.
- Determine ultimate classification and disposition of case.

VII. Administrative response and investigation guidelines

The University will respond promptly and effectively to reports of sexual harassment and sexual violence, and will take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates the University of California Policy on Sexual Violence and Sexual Harassment (“SVSH Policy”).

If a complainant discloses an incident to a responsible employee of the University but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, Title IX must weigh that request against the University’s obligation to provide a safe, non-discriminatory environment for all students, including the complainant.

Each investigation is unique and the following priorities and procedures may or may not be applicable in every case, or utilized in any specific order:

- Determine administrative jurisdiction over the subject matter reported and potential involved parties.
- Provide the parties with written notification about the commencement of an investigation.
- Coordinate the administrative response with law enforcement,² student conduct, human resources, academic personnel, and other relevant campus partners or administrators at the earliest possible stages.
- Determine need for interim measures and coordinate with campus partners (may occur at any time, including prior to complainant interview). Examples:
 - No contact directives
 - Housing adjustments
 - Workplace adjustments
 - Academic accommodations
 - Safety escorts
 - Interim suspension of respondent
- Submit Clery report, if applicable.
- Determine appropriate investigator(s).

² A complainant’s request that the University not share information with law enforcement, for the purpose of initiating a criminal investigation, will be honored except when doing so presents a safety risk and, in those cases, appropriate support will be provided to the complainant.

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- Develop an investigative plan for completion of investigation within 60 workdays³.
- Outreach and/or investigatory interview with complainant.
 - Provide “Required Notifications for Reports of Sexual Violence” (as outlined in SVSH Policy).
 - Provide health and wellness resources.
 - Highlight services of Confidential CARE Advocate.
 - Consider potential interim measures.
 - Provide copy of SVSH Policy.
 - Explain confidentiality (limitations and expectations).
 - Explain no contact directives (if applicable).
 - Explain prohibition against retaliation.
 - Explain investigatory process and timelines.
 - Discuss and set expectations for frequency and method of status notifications.
 - Inform complainant of ability to bring representative or support person of choice.
 - Fact-gathering (see Trauma Informed Response and interviewing, above).
 - Ask about other witnesses who should be contacted.
 - Follow up with complainant after respondent and witness interviews if necessary to clarify any inconsistencies.
 - Provide periodic updates to complainant on status of investigation.
- Gather relevant evidence, for example:
 - Police report
 - Conduct, housing, or other administrative reports
 - Photographs
 - Video surveillance
 - Text messages, emails, letters, social media, voicemails
 - Entry/exit logs to residential halls or other buildings
 - Personnel files
 - Prior investigations involving same party or parties
 - Consider visual inspection of incident locations
- Outreach and/or investigatory interview with respondent
 - Review allegations.
 - Provide health and wellness resources.
 - Provide copy of SVSH Policy.
 - Explain confidentiality (limitations and expectations).
 - Explain no contact directives (if applicable).
 - Explain prohibition against retaliation.
 - Highlight availability of respondent service professional.
 - Explain investigatory process and timelines.
 - Discuss and set expectations for frequency and method of status notifications.
 - Inform respondent of ability to bring representative or support person of choice
 - Fact gathering.

³ Extensions of time may be provided consistent with the SVSH Policy.

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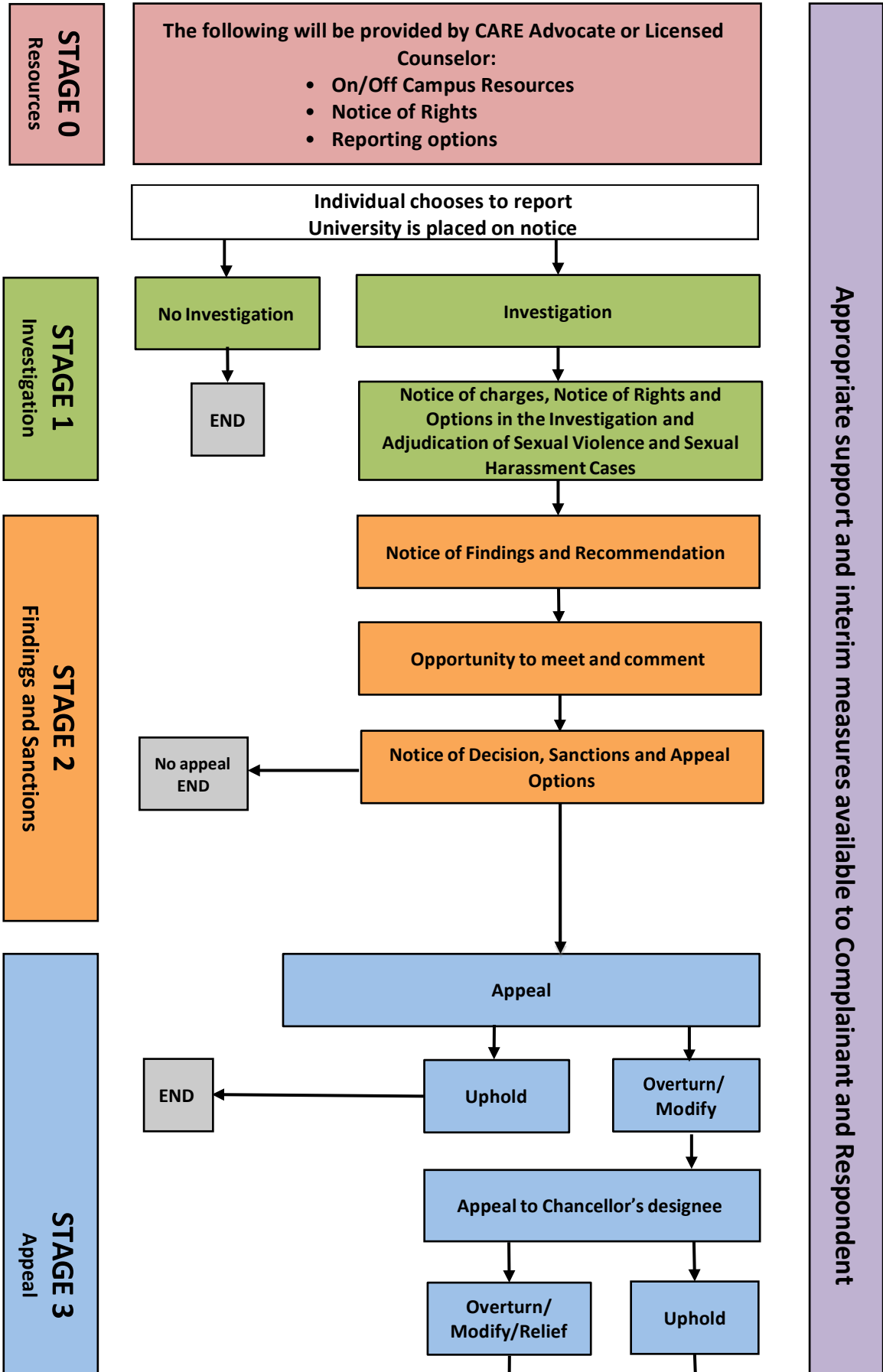
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- Ask about other witnesses who should be contacted.
- Follow up with respondent after other witness interviews if necessary to clarify any inconsistencies.
- Provide periodic updates to respondent on status of investigation.

- Investigatory interview with witnesses
 - Discuss health and wellness resources, as appropriate.
 - Discuss confidentiality (limitations and expectations).
 - Discuss prohibition against retaliation.
 - Discuss investigatory process.
 - Fact gathering.
- Follow consistent practices for documenting investigations
- Analysis
 - Credibility assessment
 - Analyze facts: disputed, undisputed and other evidence
 - Make a recommendation about whether SVSH policy was violated
- Written report
 - Applies the preponderance of the evidence standard in determining whether or not there has been a violation of policy.
 - Submitted to a designated University official with authority to decide and implement the actions necessary to resolve the complaint.
 - Report components: a statement of the allegations and issues, the positions of the parties, a summary of the evidence, findings of fact, and a recommendation by the investigator whether the SVSH policy has been violated.
 - Document any investigative delays that required an extension to the 60 work day deadline.
- Notifications
 - Complainant and respondent notified as to finding and recommendation, in accordance with SVSH policy
 - Provides information about deadlines, adjudication procedures and information (if applicable), appeal rights, and interim measures that remain in place.

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Student Adjudication Model – Process Flow Chart*



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I. PREFACE

The University of California is committed to creating and maintaining a community where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of sexual violence and sexual harassment. Consistent with its legal obligations under Title IX of the Education Amendments of 1972, the Violence Against Women Reauthorization Act of 2013, and California Education Code section 67386, the University responds promptly and effectively to reports of sexual violence and sexual harassment, and takes appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates the University's policy on Sexual Violence and Sexual Harassment.

The University's student disciplinary procedures emphasize education, personal growth, accountability, and ethical behavior -- upholding standards of responsible conduct to protect the welfare of the University community. When formal fact-finding procedures are used, the procedures are designed to provide a prompt, fair, and impartial resolution of the matter.

The following describes the University's procedures for resolving complaints of sexual violence and sexual harassment where the parties are students, including the discipline of students found in violation of University policy.

II. RESOURCES RELATING TO SEXUAL VIOLENCE AND SEXUAL HARASSMENT

The University has a Title IX Office at each campus that is responsible for receiving and responding to reports of sexual violence and sexual harassment. Confidential resources also are available both before and after a person communicates with the Title IX Office about potential violations of the Sexual Violence and Sexual Harassment policy. Confidential resources include CARE advocates, Ombuds, and licensed counselors in student counseling centers. These resources can provide confidential advice and counseling without that information being disclosed to the Title IX Office or law enforcement without the student's

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consent, 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).

III. REPORT OF SEXUAL VIOLENCE AND SEXUAL HARASSMENT

- A. For purposes of this model, the University will consider any alleged victim of sexual violence or sexual harassment a “complainant,” whether or not he or she makes a report or participates in the investigation and resolution process.
- B. The University will strive to honor the stated wishes of the complainant concerning whether to move forward with an investigation. There may be circumstances, however, in which the University may need to move forward against the complainant’s wishes, or in which the University may determine that an investigation will not occur despite the complainant’s wish to pursue an investigation.
- C. Throughout the resolution process, the University will offer and provide support services for complainants through the CARE office, and for respondents through the respondent services professional.
- D. The University will also consider and take interim measures as appropriate to ensure the safety, well-being, and equal access to University programs and activities of its students. Interim measures include, but are not limited to, the following: no contact orders; housing assistance; academic support and accommodations; and counseling. The University may place the respondent on an Interim Suspension as appropriate and consistent with the *Policies Applying to Campus Activities, Organizations and Students (PACAOS)* - 105.08.
- E. At all stages of the process, the complainant has the right to an advisor and a support person of their choosing.
At all stages of the process, the respondent has the right to an advisor and a support person of their choosing.

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- F. Neither the complainant nor the respondent is required to participate in the resolution process. The University will not draw any adverse inferences from a complainant or respondent's decision not to participate or to remain silent during the process. An investigator, decision-maker, or appeal body will reach findings and conclusions based on the information available. An investigator, decision-maker, or appeal body may draw adverse inferences when a student selectively participates in the process, such as choosing to answer some but not all questions posed.
- G. The campus Case Management Team (CMT) will track all stages of the resolution process – from receipt of the report through the investigation and, if applicable, the University student discipline process.
- H. All University officials involved in the resolution process will be trained to carry out their roles in an impartial manner in keeping with trauma-informed practices.
- I. The standard of proof at all stages of the process is preponderance of the evidence.
- J. The University will complete the process, including all appeals, within 120 business days from the date of Title IX's receipt of a report. This deadline and all deadlines contained herein may be extended for good cause shown and documented. The complainant and respondent will be notified in writing of any extension.

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IV. INVESTIGATION OF ALLEGATION OF SEXUAL VIOLENCE AND SEXUAL HARASSMENT

- A. Upon receipt of a report of or information about alleged sexual violence and/or sexual harassment, the Title IX Officer for the campus will determine, consistent with the University's policy on Sexual Violence and Sexual Harassment, whether an investigation should be initiated.
- B. If an investigation will not be conducted, the Title IX Officer will notify the complainant in writing and explain the rationale for the determination.
- C. If an investigation will be conducted, the Title IX Officer and the Center for Student Conduct will jointly send written notice of the charges to the complainant and respondent. The written notice will include:
 1. A summary of the allegations and potential policy violations;
 2. The purpose of the investigation;
 1. A statement that the investigative report, when issued, will make factual findings and a recommendation regarding whether there has been a violation of University policy;
 - i. A statement that the findings and recommendation will be based on a preponderance of the evidence standard;
 - ii. A summary of the process, including the expected timeline; and
 - iii. A summary of the rights of the complainant and respondent.

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- b. The Title IX Officer will oversee the investigation and will designate an investigator to conduct a fair, thorough, and impartial investigation.
- c. During the investigation, the complainant will be provided an opportunity to meet with the investigator, submit information, and identify witnesses who may have relevant information.

During the investigation, the respondent will be provided an opportunity to meet with the investigator, submit information, and identify witnesses who may have relevant information.

- d. The investigator will meet separately with the complainant, respondent, and third party witnesses who may have relevant information, and will gather other available and relevant evidence and 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.
- e. The investigator may determine the relevance of any witness or other evidence to the findings and may exclude certain types of evidence or information that is irrelevant or immaterial.
- f. When a law enforcement agency is conducting its own investigation, the investigator should coordinate his or her fact-finding efforts with the law enforcement investigation. At the request of law enforcement, the investigation may be delayed as needed to meet any specific needs of the criminal investigation. Such a delay may be cause for

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extending the timelines to complete the process and delay will be communicated and documented.

- g. The investigator will prepare a written report that includes a statement of the allegations and issues, the positions of the parties, a summary of the evidence, findings of fact, and a recommendation regarding whether there are any policy violations. If the complainant or respondent offered witnesses or other evidence that was not considered by the investigator, the investigation report will include an explanation why it was not considered.
- h. The investigation file must be retained and made available to the parties on request, and may be redacted as necessary to protect student privacy rights.

V. DECISION ON RESPONSIBILITY AND DISCIPLINARY SANCTIONS

- A. Upon completion of the Title IX Investigation, the Title IX Officer and the Center for Student Conduct will jointly send to the complainant and the respondent (a) written notice of the investigation findings and the investigator's recommended determinations, and (b) will provide a copy of the investigation report. The investigation report may be redacted if necessary to protect student privacy rights.
- B. The written notice of the findings and recommended determinations will include the following:
 - 1. A statement of the factual findings and recommendations regarding whether the charge(s) have been substantiated, including whether policies have been violated;
 - 2. An admonition against intimidation or retaliation;
 - 3. An explanation of any interim measures that will remain in place;

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4. A statement of the right to appeal that will be explained further in the notice of decision;
 5. A statement that the Center for Student Conduct will determine whether the charges have been substantiated and policies have been violated and, if so, assess the disciplinary sanctions and inform the complainant and respondent of the sanctions within ten (10) business days of the notice of findings; and
 6. A statement that the complainant and/or respondent may schedule a meeting with the Center for Student Conduct and/or submit a statement in writing to be heard on the question of the findings of any policy violations and the discipline prior to the decision and the imposition of sanctions.
- C. If the Center for Student Conduct determines that disciplinary sanctions are appropriate, the sanctions will be determined in accordance with the sanctioning guidelines that are included as an Appendix to these procedures.
1. Disciplinary sanctions for sexual assault, domestic/dating violence, or stalking in which one or more of the following factors are present will result in a minimum sanction of Suspension for at least two years, up to dismissal:
 - i. force, violence, menace, or duress;
 - ii. deliberately causing a person to become incapacitated or deliberately taking advantage of a person's incapacitation; or
 - iii. recording, photographing, transmitting, viewing, or distributing intimate or sexual images without consent.
 2. Disciplinary sanctions for sexual assault involving penetration, domestic/dating violence, or stalking will, absent exceptional circumstances, result in a minimum sanction of Suspension for two years, up to dismissal.

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3. Disciplinary sanctions for other sexual contact in violation of policy will, absent exceptional circumstances, result in a minimum sanction of Suspension for one year.
- D. The Center for Student Conduct may consult with the Title IX office at any point in the decision-making process.
- E. Within ten (10) business days of the notice of findings and recommended determinations, the Center for Student Conduct will send written notice to the complainant and respondent setting forth the decision on whether the charges have been substantiated and any policies have been violated, and any sanctions to be imposed. The written notice will include the following:
1. A description of the determinations on whether the charges have been substantiated and any policies have been violated, and if so, a description of the sanctions;
 2. The rationale for the determinations¹ and the sanctions;
 3. A statement of the right to appeal, the procedure that will be followed in hearing the appeal, the grounds upon which the appeal may be based, and the office to which the appeal may be submitted; and
- F. An explanation that both the complainant and respondent will receive a copy of any appeal prior to a hearing. The Title IX investigation and the Center for Student Conduct's determination of responsibility and sanctions will be completed within 60 business days from Title IX's receipt of a report absent an extension for good cause.

¹ If the Center for Student Conduct adopts the investigator's recommended determinations, the notice may incorporate the investigation report by reference as the rationale for the decision. If the determinations differ from the investigator's recommendations, then the notice will explain the rationale for that decision.

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VI. APPEAL PROCESS

- A. The complainant and respondent may contest the decision and/or the sanctions by submitting an appeal. The appeal should identify the reason(s) why the party is challenging the outcome under one or more of the following grounds:
1. There was procedural error in the process that materially affected the outcome, such as the investigation was not fair, thorough or impartial;
 2. The decision was unreasonable based on the evidence;
 3. There is new, material information that was unknown and/or unavailable at the time the decision was made that should affect the outcome;
 4. The disciplinary sanctions were disproportionate to the findings;
- B. An appeal must be submitted in writing to the designated campus office within ten (10) business days following written notice of the decision and disciplinary sanctions, if imposed. The appeal must identify the grounds for appealing and contain a brief statement of the reasons supporting each ground for appeal.
- C. If an appeal is submitted, any disciplinary sanctions ordinarily will not be imposed until the appeal process is completed. Interim measures, such as no contact orders, academic accommodations, etc. will remain in effect during the appeal process.
- D. The appeal will be decided at a hearing by an Appeal Body composed of one to three individuals who may be University staff or academic appointees, or non-University officials, such as administrative law judges or experienced investigators. The Appeal Body will be appropriately trained. A Hearing Coordinator may assist the Appeal Body with the administration of the process.
- E. The Appeal Body will review the information and decide whether it contains sufficient information concerning the grounds for appeal and the reasons related to

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those grounds. The purpose of this review is not to decide the merits of the appeal, but to identify the nature and scope of the issues to be addressed in the hearing. If the written appeal is defective or incomplete, the appealing party should be given an opportunity to correct and resubmit the appeal.

F. Conducting the Appeal Hearing

1. Pre-Hearing Procedures

- a. Not less than ten (10) business days before the appeal hearing, the Hearing Coordinator will send written notice to the complainant and respondent of the hearing date, time, location and procedures. The notice will include a copy of the appeal(s) to be considered at the hearing.
- b. Prior to the hearing, the complainant and respondent will submit to the Appeal Body the information they intend to present at the appeal, including all documents to be presented, the names of all witnesses, and a brief summary of all witnesses' expected testimony.
- c. At least two days prior to the appeal hearing, the complainant and respondent will receive copies of all the information that will be considered at the appeal hearing, including the names of potential witnesses and a summary of the information they are expected to provide.
- d. Prior to the appeal hearing and/or during the hearing, the Appeal Body may:

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- i. Exclude information and/or witness testimony that is irrelevant in light of the grounds for appeal, not in dispute, or unduly repetitive.
 - ii. Decide any procedural issues for the appeal hearing.
 - iii. Make any other determinations necessary to ensure an orderly, productive, and procedurally proper appeal hearing.
2. Appeal Hearing Procedures:
 - a. The Title IX investigator will be present at the appeal hearing. The Appeal Body may question the investigator, the complainant, and/or the respondent. The investigation report and any supporting documents or materials will be entered as evidence at the appeal hearing.
 - b. The Appeal Body may allow the complainant, respondent, and/or witnesses to be visually or physically separated during the appeal hearing. This may include, but is not limited to, the use of a physical partition, a separate physical location, videoconference and/or any other appropriate technology. The Appeal Body must be able to see the complainant, respondent and any witnesses when they are presenting information.
 - c. The complainant and respondent will have the opportunity to present the information they submitted pursuant to Section VI.F.1.b (unless excluded by the Appeal Body pursuant to Section VI.F.1.d.).

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- d. The complainant and respondent have the right to hear all individuals who testify at the hearing and to propose questions to be asked of all individuals who testify at the hearing.
 - e. The Appeal Body will determine the order of questioning. Whenever possible, the Appeal Body will ask the questions as they are submitted by the complainant and respondent and will not rephrase or change them. The Appeal Body may, however, exclude questions that are unduly repetitive, clearly not relevant, or unduly time consuming.
 - f. The appeal hearing will be audio recorded.
 - g. Formal rules of evidence will not apply. The Appeal Body may consider the form in which information is presented, as well as the credibility of any party or witness, in weighing the information and reaching findings.
- G. Appeal Decision:
- 1. The Appeal Body will deliberate in private and reach a decision based on a preponderance of the evidence standard. The Appeal Body shall attempt to reach consensus on a decision, but the majority shall make the decision if consensus cannot be reached.
 - 2. The Appeal Body shall take into account the record developed by the investigator and the evidence presented at the hearing, and may make its own findings and credibility determinations based on all of the evidence before it.
 - 3. The Appeal Body may:
 - a. Uphold the findings and disciplinary sanctions;

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- b. Overturn the findings or sanctions; or
 - c. Modify the findings or sanctions.
4. The Appeal Body will summarize its decision in a written report that includes the following:
 - a. A statement of the grounds for the appeal;
 - b. A summary of the process undertaken by the Appeal Body;
 - c. A summary of the information considered by the Appeal Body; and
 - d. The decision of the Appeal Body and the rationale for the decision including, where the findings or sanctions are overturned or modified, an explanation of why the findings were not reasonable or the sanctions were disproportionate, either at the time they were made or in light of the evidence considered by the Appeal Body.
5. The Hearing Coordinator will send the Appeal Body's written decision to complainant and respondent.
 - a. If the findings and the sanctions are upheld, the Hearing Coordinator will inform the respondent and complainant that the matter is closed with no further right to appeal.
 - b. If the findings or sanctions are overturned or modified, the Hearing Coordinator will inform the respondent and complainant of the right to submit a written appeal to the Chancellor's designee within five (5) business days based on:
 - i. Procedural error that materially affected the outcome, or

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- ii. A sanction that is disproportionate to the findings.
 - c. If an appeal is submitted, the other party will receive a copy of the written appeal and may submit a written statement as well.
- 6. The Chancellor's designee will issue a written decision to the complainant and respondent, normally within ten (10) business days. There is no further right to appeal.

The appeal process described above, including the appeal hearing and any appeal to the Chancellor's designee, will normally be completed within 60 business days of the date of the notice of decision and sanctions (where imposed).

**PROCEDURES FOR
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APPENDIX: DISCIPLINARY PROCESS FOR STUDENT SANCTIONS**

I. INTRODUCTION

These standards are intended to ensure the consistent application of disciplinary sanctions by the University of California in responding to conduct that violates the University's *Policy on Sexual Violence and Sexual Harassment* and the University's *Policies Applying to Campus Activities, Organizations, and Students* (PACAOS) Section 100 (Policy on Student Conduct and Discipline).² The following describes the University's procedures for assigning disciplinary sanctions when the respondent is a student.

II. PRINCIPLES

- A. The administration of student discipline will be consistent with the UC PACAOS Policy on Student Conduct and Discipline.
- B. When a student is found responsible for violating the University's Policy on Sexual Violence and Sexual Harassment and the UC PACAOS Policy on Student Conduct and Discipline, the University will assign disciplinary sanctions that are appropriate to the violation, taking into consideration the context and seriousness of the violation.
- C. When a student is found not responsible for violating the University's Policy on Sexual Violence and Sexual Harassment and the UC PACAOS Policy on Student Conduct, the University is committed to taking reasonable efforts to assist any student who has been disadvantaged with respect to employment or academic status as a result of the unsubstantiated allegations.
- D. Disciplinary sanctions are designed to hold a student accountable for violating University standards of conduct and to promote personal growth and development.

² This supplements the Policies Applying to Campus Activities, Organizations and Students (PACAOS, 5/10/2012). In the event of any conflict this document shall take precedence.

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Disciplinary sanctions also serve the purpose of stopping the behavior that violated this policy and preventing its recurrence.

- E. The University of California recognizes that acts of sexual violence and sexual harassment are contrary to its goals of providing an educational environment that is safe and equal for all students.
- F. University of California campuses are permitted to inform other UC campuses of a student's disciplinary record for violating the University's Sexual Violence and Sexual Harassment Policy and the UC PACAOS Policy on Student Conduct and Discipline.

II. DISCIPLINARY SANCTIONS

- A. University disciplinary sanctions include, but are not limited to:
 - 1. Dismissal from the University of California,
 - 2. Suspension from the campus,
 - 3. Exclusion from Areas of the Campus or from Official University Functions,
 - 4. Loss of Privileges and Exclusion from Activities,
 - 5. Restitution,
 - 6. Probation
 - 7. Censure/Warning, and/or
 - 8. Other actions as set forth in University policy and campus regulations.
- B. The definitions of disciplinary sanctions are found in University of California PACAOS Section 105.00 (Types of Student Disciplinary Action) and local campus regulations.
- C. The posting of disciplinary sanctions on academic transcripts will follow University policy as defined in University of California PACAOS, Section 106.00.

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II. PROCESS

- A. When a respondent has been found in violation, the University will provide written notice of the assigned disciplinary sanctions and a brief rationale for the sanctions.
- B. Disciplinary sanctions will be assigned as follows:
1. Sexual assault, domestic/dating violence, or stalking in which one or more of the following factors are present will result in a minimum sanction of Suspension for at least two years, up to dismissal:
 - i. force, violence, menace, or duress;
 - ii. deliberately causing a person to become incapacitated or deliberately taking advantage of a person's incapacitation; or
 - iii. recording, photographing, transmitting, viewing, or distributing intimate or sexual images without consent.
 2. Sexual assault involving penetration, domestic/dating violence, or stalking will, absent exceptional circumstances, result in a minimum sanction of Suspension for two years, up to dismissal.
 3. Other sexual contact in violation of policy will, absent exceptional circumstances, result in a minimum sanction of Suspension for one year.
- C. Assigned disciplinary sanctions and the factors considered for each case will be documented and reported to the University of California Office of the President on a quarterly basis. The report is to ensure a reasonable level of consistency from campus to campus.

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III. FACTORS CONSIDERED IN DETERMINING DISCIPLINARY SANCTIONS

- A. In determining the appropriate sanction, the following factors may be taken into account:
1. Seriousness of violation: location and extent of touching; duration of conduct; single or repeated acts; multiple policy violations in connection with the incident; verbal or physical intimidation; presence of weapons, use of force, violence, physical injury.
 2. Intent or motivation behind violation: no intent to cause harm; passive role in violation; pressured or induced by others to participate in the violation; use of authority to abuse trust or confidence; planned or predatory conduct; deliberately causing a person to become incapacitated or deliberately taking advantage of a person's incapacitation; recording, photographing, transmitting, viewing, or distributing intimate or sexual images without consent; hate or bias based on the complainant's membership or perceived membership in a protected group as defined in UC PACAOS Section 104.90.
 3. Response following violation: voluntarily acknowledged wrongdoing at early stage of the process; failure to follow no contact order; attempt to influence witnesses; obstructed or disrupted the process.
 4. Disciplinary history: prior violations unrelated, prior violations related.
 5. Impact on others: input from the complainant, protection or safety of the community.

University of California, Berkeley
Notice of Rights and Options in the Investigation and
Adjudication of Sexual Violence and Sexual Harassment Cases

The University of California is committed to creating and maintaining a community free of sexual violence and sexual harassment for every individual. Sexual violence and sexual harassment violate both law and University policy. Any member of the University community may report conduct that may constitute sexual violence or sexual harassment. When a complaint, involving conduct on or off campus, is made the University will respond promptly and equitably to such reports, and will take appropriate action to stop, prevent, and remedy the sexual violence and sexual harassment, which may include disciplinary action against the respondent.

UC Berkeley takes all complaints of sexual violence very seriously. The safety and well-being of our students, faculty, and staff are among the University's highest priorities. UC Berkeley strictly prohibits all acts of sexual assault, dating violence, domestic violence, and stalking.

In responding to reports of sexual violence and sexual harassment, the University is committed to providing a fair and balanced process for adjudicating cases. The University wants to ensure that you understand the process as well as your rights.

The University has formal procedures that provide for investigation of reports of sexual violence and sexual harassment by the Title IX office, review of the investigative findings and recommendations by the Center for Student Conduct, and imposition of discipline by the Center for Student Conduct in appropriate cases. Both the complainant and the respondent may appeal the decision or sanctions. Links to these policies and procedures are provided below.

The University's procedures for sexual harassment and sexual violence will:

- Provide a prompt, fair and impartial investigation and resolution.
- Be conducted by officials who have received annual training on how to conduct an investigation, and conduct a proceeding in a trauma-informed manner
- The investigation will be conducted within 60 business days or less, unless there are mitigating circumstances in which case both the complainant and respondent shall be notified and provided with an explanation.
- Be conducted using the preponderance of the evidence standard.

Both the complainant and the respondent have the right to:

- Opt to not participate, or discontinue participation, in the process. However, the University may still investigate, reach a conclusion as to whether there has been a violation of policy and assess sanctions, or take other action to maintain a safe community.
- To be accompanied by a support person and an advisor of their choice, including an attorney, at any stage of the process.
- Have an opportunity to present information, respond to information submitted by the other party, and identify witnesses who may have relevant information.

- Be informed in writing of the outcome of any disciplinary action.
- Be informed of the procedures and deadline for appealing the outcome.
- Be informed of any change to the results that occurs prior to the time they become final.
- To be informed of when such results become final.

When the reported conduct might be criminal conduct as well, whether you are the complainant or a respondent, you may wish to seek legal counsel before making any written or oral statements, and seek advice about how your participation in a campus administrative process could affect any criminal case in which you might become involved.

RESOURCES

Office for the Prevention of Harassment and Discrimination (OPHD) (510) 643-7985 | <http://ophd.berkeley.edu> | ask_ophd@berkeley.edu

Confidential Care Advocate: (510) 642-1988 | <http://bit.ly/careadvocate>

The Center for Student Conduct: (510) 643-9069 | <http://sa.berkeley.edu/conduct>

Student Affairs case management:
(510) 664-4218 | deansofstudents@berkeley.edu

Ombudsperson for Students & Postdoctoral Appointees: (510) 642-5754 | sa.berkeley.edu/ombuds

Student Legal Services: (510) 664-7487 | sa.berkeley.edu/legal

ADDITIONAL INFORMATION

Related University Policies:
[UC Sexual Violence and Sexual Harassment Policy](#)
[UC Berkeley Student Code of Conduct](#)
[UC Procedures for Investigation, Adjudication and Sanctions](#)

VISA AND IMMIGRATION RESOURCES

If you are a non-citizen, you may need specialized assistance with concerns related to your immigration status. These resources may be able to help:

[Berkeley International Office \(BIO\)](#)