

# University of California

## **Sexual Violence and Sexual Harassment: Non-Senate, Non-represented Faculty Investigation and Adjudication Procedures for the Berkeley Campus**

### **I. Introduction**

This document describes UC Berkeley’s process for investigating and adjudicating alleged violations of the [UC Policy on Sexual Violence and Sexual Harassment](#) (“SVSH Policy”) in instances where the respondent is a non-Senate, non-represented faculty member. The conduct of Non-Senate faculty is governed by Section 015 of the Academic Personnel Manual ([APM-015](#)), also known as The Faculty Code of Conduct (“Code of Conduct”), per APM 150-0.b. Violations of the SVSH Policy are considered violations of the Code of Conduct.

The procedures described in this document reflect the faculty adjudication framework developed in 2017 by the UC Office of the President, which incorporates a number of recommendations [accepted](#) by President Napolitano from the [2016 report](#) of the UC Joint Committee of the Administration and Academic Senate.

This document is intended to be read in conjunction with the SVSH Policy; applicable sections of the [APM](#), including [APM-015](#), [APM-140](#) (Non-Senate Academic Appointees/Grievances) and [APM-150](#) (Non-Senate Appointees/Corrective Action and Dismissal); UC Regents [Standing Order 103.9](#) (Tenure) and [Standing Order 103.10](#) (Security of Employment); and applicable [Senate Bylaws](#), including Senate Bylaw 336 (disciplinary cases) and 337 (early termination cases).

A flowchart illustrating the UC systemwide adjudication process for alleged SVSH violations by Non-Senate faculty can be found in Appendix 1.

Violations of the Faculty Code of Conduct, including those related to the SVSH policy, fall under the scope of the “Three-year rule,” 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.)

The goal of the faculty adjudication process is, as this document outlines, considerably more ambitious than this goal of initiating discipline within three years of the report of an allegation to the Title IX office. This framework specifies a time frame of 60 days to complete a Title IX investigation, and 40 days to initiate the subsequent faculty discipline process, where warranted. These time frames are designed to promote a prompt and effective response to alleged violations of the SVSH Policy. However, the process is complex, and the need to be fair and thorough means that it takes time, sometimes many months, to complete.

## II. Sources and definitions

This document is adapted from [the University of California Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty](#). Sources for the primary documents cited herein are listed below:

- SVSH Policy: <http://policy.ucop.edu/doc/4000385/SVSH>
- APM-015: <http://www.ucop.edu/academic-personnel-programs/files/apm/apm-015.pdf>
- APM-140: <http://ucop.edu/academic-personnel-programs/files/apm/apm-140.pdf>
- APM-150: <http://ucop.edu/academic-personnel-programs/files/apm/apm-150.pdf>
- Senate Bylaws 336 and 337: <http://senate.universityofcalifornia.edu/bylaws-regulations/bylaws/blpart3.html>
- UC Regents Standing Order 103.9: <http://regents.universityofcalifornia.edu/governance/standing-orders/so1039.html>
- UC Regents Standing Order 103.10: <http://regents.universityofcalifornia.edu/governance/standing-orders/so10310.html>
- UC Joint Committee of the Administration and Academic Senate report: [http://sexualviolence.universityofcalifornia.edu/files/documents/Joint-Committee\\_Report-Faculty-Discipline-Process.040416.pdf](http://sexualviolence.universityofcalifornia.edu/files/documents/Joint-Committee_Report-Faculty-Discipline-Process.040416.pdf)

Below are definitions for some key terms used in this document. Where appropriate, sources in the SVSH Policy, the APM, and/or Senate Bylaws are cited.

**Prohibited Conduct:** sexual violence and sexual harassment, retaliation, and other prohibited behavior that violates the SVSH Policy (see SVSH Policy, section II.B for full definition).

**Complainant:** As used in this document, “Complainant” refers to a person directly affected by the alleged Prohibited Conduct that is reported to the Title IX office, regardless of whether the Complainant or a third party made that report.

**Respondent:** “A person alleged to have engaged in Prohibited Conduct” (excerpted from SVSH Policy, section II.D.5).

**Responsible Employee:** Those University employees who are required to report allegations of Prohibited Conduct pursuant to the SVSH Policy: “Any University employee who is not a Confidential Resource and who receives, in the course of employment, information that a student (undergraduate, graduate, or professional) has suffered sexual violence, sexual harassment or other prohibited behavior shall promptly notify the Title IX Officer or

designee ... In addition, the following who, in the course of employment, receive a report of Prohibited Conduct from any other person affiliated with the University shall notify the Title IX Officer or designee: Campus Police; Human Resource Administrators, Academic Personnel, and Title IX Professionals; Managers and Supervisors including Deans, Department Chairs, and Directors of Organized Research Units (ORU); Faculty members” (excerpted from SVSH Policy, section II.D.6).

**Confidential Resources:** Confidential Resources are exempt from Responsible Employee reporting requirements. These employees can provide counseling, emotional support and confidential information about how or whether to make a report to OPHD. They include licensed counselors and professional ombudspersons (based on SVSH Policy, section 2D). See also section IIIB, below.

**Advisor:** An Advisor is any individual accompanying a Complainant or Respondent during the investigation and resolution process. The Advisor may be any person who is not otherwise a party or witness involved in the process. A Complainant or Respondent may be accompanied by his or her Advisor at any meeting or proceeding that is part of the investigation and resolution process. While the Advisor may provide support, guidance and advice to the Complainant or Respondent that the Advisor is accompanying, the Advisor may not speak on behalf of the Complainant or Respondent or otherwise actively participate in, or in any manner disrupt any meetings or proceeding “The institution cannot limit the choice of an advisor, but may restrict the extent to which the advisor can participate in the proceedings as long as the restrictions apply equally to Complainants and Respondents” (SVSH Policy, section VII.1).

**Probable Cause:** A standard of proof requiring “that the facts as alleged in the complaint, if true, justify the imposition of discipline for a violation of the Faculty Code of Conduct and that the Chancellor is satisfied that the University can produce credible evidence to support the claim” (APM-015). Probable cause is a lower evidentiary standard than preponderance of the evidence.

**Preponderance of the Evidence:** “A standard of proof that requires that a fact be found when its occurrence, based on evidence, is more likely than not” (SVSH Policy, section II.D.4). Preponderance of the evidence is a lower evidentiary standard than clear and convincing evidence.

**Clear and Convincing Evidence:** A standard of proof requiring a firm belief or conviction that the alleged violation occurred.

### **III. If An Incident Has Occurred: Reporting Options And Resources**

#### **A. Reporting Options**

The Title IX Office, which at UC Berkeley is titled the Office for the Prevention of Harassment and Discrimination (OPHD), is responsible for receiving and responding to reports of conduct prohibited under the SVSH Policy (“Prohibited Conduct”; see section II, above). OPHD is directed by the campus Title IX Officer. Throughout this document, “Title IX Office” and “OPHD” refer to the same office.

Any person may make a report of Prohibited Conduct to OPHD by calling (510) 643-7985 or sending email to [ask\\_ophd@berkeley.edu](mailto:ask_ophd@berkeley.edu). It is possible to make reports anonymously. It is also possible for a person to report to a Responsible Employee (see section II, above). The SVSH Policy (section II.D.6) requires a Responsible Employee who becomes aware of an incident of Prohibited Conduct to report it to OPHD.

While there is no time limit for reporting, reports of Prohibited Conduct should be brought forward as soon as possible, in order to achieve the goal of preventing further occurrence of, and responding promptly to, alleged instances of Prohibited Conduct.

Regardless of who makes the report, as used in this policy the term ‘Complainant’ (see section II, above)) is designated for the affected party. OPHD will reach out to the Complainant once a report is made (see section IV, below).

It is the Complainant’s choice whether or not to make a report to OPHD; it is also the Complainant’s choice whether or not to make a report to law enforcement. A Complainant may pursue one or may pursue both options at the same time. Anyone who wishes to report to law enforcement can contact the UC Berkeley Police Department (UCPD) by sending an email to [police@berkeley.edu](mailto:police@berkeley.edu) or calling 510 642-6760. Where Prohibited Conduct occurs outside the jurisdiction of UCPD, for example, at an off-campus residence, the Complainant may also report the conduct to local law enforcement in the relevant jurisdiction.

## **B. Confidential Resources**

Confidential Resources are exempt from Responsible Employee reporting requirements. These employees can provide counseling, emotional support and confidential information about how or whether to make a report to OPHD. At UC Berkeley, a variety of Confidential Resources are available:

- Advocates in the [PATH to Care Center](#) (serving students, postdoctoral scholars, staff and faculty)
- Licensed counselors at [Counseling and Psychological Services \(CPS\)](#), serving students
- Licensed counselors at the [Employee Assistance Program \(EAP\)](#), serving faculty and staff
- Ombuds at the [Ombuds Office for Students and Postdoctoral Employees](#), serving students and postdoctoral scholars
- Ombuds at the [Staff Ombuds Office](#) (serving staff)

Confidential Resources do not share information with OPHD or law enforcement, unless there is a threat of serious harm to the disclosing individual or others, or a legal obligation that requires disclosure (such as suspected abuse of a minor).

## **IV. Initial Assessment by Title IX Office**

The University has the responsibility for responding promptly and equitably to reports of Prohibited Conduct, and for taking appropriate action to stop, prevent, and remedy that conduct. Accordingly, under the SVSH Policy, upon learning of an allegation of Prohibited Conduct, the Title IX Officer makes an initial assessment of the health and safety of the Complainant and the campus community, (A) informing Complainants of their rights and (B) determining whether Interim Measures are warranted.

### **A. Written Rights & Options**

The Title IX Officer provides the Complainant, if that person's identity is known, with written explanation of rights and available options. These include the following (citations in square brackets are to the SVSH Policy):

- Reporting options, including the right to make reports to law enforcement, [V.A.3.a, VII.8]
- Information about confidentiality of reports, including when reports cannot be kept confidential [V.A.3.a]
- Information about Interim Measures that can be taken to protect the Complainant's safety and work/study environment (see section II.A, above)
- Options for, and assistance with, changes to academic living, transportation, and working situations, if the complainant requests and if such options are reasonably available [V.B.10.f]
- The range of possible outcomes of the report, including Alternative Resolution and/or disciplinary actions that could be taken against the Respondent, as well as an explanation of the procedures leading to such outcomes [V.A.3.a]
- Information about Confidential Resources available on campus (see section I.B, above)
- Information about other available campus and community resources, including but not limited to health assistance, mental health assistance, victim advocacy, legal assistance, and visa and immigration assistance [V.B.10.e]

### **B. Interim Measures**

Interim measures are protective actions that the University can take, depending on circumstances, to ensure the safety and well-being of its students and employees and guarantee their continued access to University programs and activities. Interim measures can include, but are not limited to:

- no-contact directives
- housing and/or transportation assistance
- academic support
- counseling
- removing a faculty member from the classroom

- placing a non-Senate faculty member on involuntary leave, in accordance with APM-150.

Interim measures may be imposed directly by the Title IX Officer or, on the advice of the Title IX Officer, by the Vice Provost for Faculty (VPF), who on the Berkeley campus is the Chancellor's designee in these matters. Interim measures that directly affect academic matters (*e.g.*, removal from the classroom) can only be imposed by the VPF. At the discretion of the University, interim measures may remain in effect until the matter is fully resolved; *i.e.*, for the duration of the investigation and any subsequent disciplinary process.

## **V. Investigating And Resolving Reports Of Prohibited Conduct**

Provided the University has sufficient information to respond to a report of Prohibited Conduct, the SVSH Policy (section V.A.4) provides two paths for the Title IX Office (OPHD) to address the allegations: Alternative Resolution and Formal Investigation. Although the wishes of both Complainant and Respondent can be taken into account, the choice between these options is ultimately made by the Title IX Officer, after a preliminary investigation into the facts. Alternative Resolution is more likely when insufficient evidence means that a Formal Investigation is not likely to lead to a resolution, or when both parties prefer a less formal process. In cases where Alternative Resolution is inappropriate or unsuccessful, the Title IX Officer may conduct a Formal Investigation, as contemplated in the SVSH Policy the Title IX Officer may consult with the VPF when the decision is made to go to Alternative Resolution or Formal Investigation.

Throughout the Alternative Resolution or Formal Investigation processes, the Complainant and the Respondent may each be accompanied by an Advisor (as defined above) at interviews or meetings. The University provides resources to Complainants and Respondents for support services, including but not limited to [PATH to Care](#) (for complainants) and the [Employee Assistance Program](#) (for faculty and staff).

### **A. Alternative Resolution**

Alternative Resolution can take a number of forms, including (but not limited to) mediation (except in cases of sexual violence); separating the parties; referring the parties to counseling; a settlement agreement; conducting targeted preventive educational and training programs for one or both parties. Alternative Resolution outcomes will be documented. A follow-up review may be conducted to ensure that the agreed-upon resolution has been implemented effectively.

### **B. Formal Investigation**

The Formal Investigation process occurs in a number of ordered stages, as follows:

1. Notification to Chancellor

The Title IX Officer notifies the Chancellor that a Formal Investigation of a faculty respondent is commencing. The Title IX Officer reveals information judiciously, in order to protect the Chancellor's ability to engage in objective decisions based on the outcome of the formal investigation, as well as, to the extent possible, to protect the privacy of the Complainant and the Respondent.

2. Notice of Charges to Complainant and Respondent

Upon deciding to conduct a Formal Investigation, the Title IX Officer sends a written notice to both the Complainant and Respondent.

This written notice includes:

- a. A summary of the allegations and potential violations of the SVSH Policy;
- b. The purpose of the investigation;
- c. A statement that the Title IX investigative report, when issued, will make factual findings and will determine, using the preponderance of the evidence standard, whether there has been a violation of the SVSH Policy;
- d. A statement that a finding of a violation of the SVSH Policy establishes probable cause regarding a Faculty Code of Conduct violation.
- e. A summary of the Title IX and subsequent non-Senate faculty discipline process
- f. A summary of the rights of the Complainant and Respondent, including the right to have an Advisor present at interviews;
- g. A description of the resources available to Complainant and Respondent; and
- h. An admonition against intimidation or retaliation.

3. Investigative Process

The Title IX Officer designates an investigator (usually an OPHD Complaint Resolution Officer, but occasionally an independent investigator, from outside the campus) to conduct a fair, thorough, and impartial investigation. Investigators will have requisite qualifications and training, as outlined in the SVSH Policy and applicable federal guidance.

**a. Overview:**

During the investigation, the Complainant and the Respondent each have an opportunity to meet individually with the investigator (accompanied by an Advisor if desired), and to submit information.

The Complainant and Respondent can suggest witnesses to be interviewed for information relevant to the allegations. The investigator will determine which witness to interview, depending on the potential relevance of information they may have to the allegations. The investigator may also interview witnesses not suggested by either the Complainant or Respondent. The investigator may also gather and review documentary evidence. 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.

Disclosure of allegations and facts of the case to persons interviewed in the course of an investigation is limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation may be asked to maintain confidentiality when essential to protect the integrity of the investigation.

Witnesses may have a representative present when interviewed, at the discretion of the investigator, or as required by University policy or collective bargaining agreement.

**a. Coordination with Law Enforcement:**

If a law enforcement agency is conducting its own criminal investigation into the alleged conduct, OPHD strives to coordinate the timeline of administrative fact-finding efforts with the law enforcement investigation. At the request of law enforcement, the OPHD investigation may be delayed temporarily to meet specific needs of the criminal investigation.

4. Investigation Report and Finding

Upon the conclusion of the OPHD investigation, the Title IX investigator prepares a written report containing a statement of the allegations and issues, a summary of the evidence, findings of fact and analysis, and a determination regarding whether, applying the preponderance of the evidence standard, sufficient evidence exists to support the conclusion that the Respondent violated the SVSH Policy.

In the event that the Complainant or the Respondent offered witnesses that the investigator elected not to interview, or evidence that the investigator elected not to rely on, the investigation report provides an explanation as to why these proffered resources were not utilized.

5. Timeframe for Completion of Investigation; Extension for Good Cause

Formal Investigations will be completed as promptly as possible, typically within sixty (60) business days from the date of issue of the Notice of Allegations. The Title IX Officer can extend this deadline for good cause, followed by a written notice to the Complainant and the Respondent of the reason for the extension and the projected new timeline. The investigator will provide updates to the Complainant and the Respondent concerning the status of the ongoing investigation.

6. Notice of Investigation Outcome

Upon completion of the Title IX investigation report, the Complainant and the Respondent receive a written notice of investigation outcome regarding whether or not a violation of the SVSH Policy was found. The notice of investigation outcome is accompanied by a copy of the investigation report, which may be redacted as

necessary to protect the privacy rights of individuals who are named, or who are identifiable from context, in the investigation report.

The notice of investigation outcome includes:

- a. A statement of whether a preponderance of the evidence demonstrated that respondent violated the SVSH Policy;
- b. In the event of a SVSH violation finding, a statement that probable cause is established regarding a Faculty Code of Conduct violation, and a description of the subsequent non-Senate faculty discipline process;
- c. An admonition against intimidation or retaliation;
- d. An explanation of any interim measures that are in place, and for how long they will remain;
- e. A statement that the Complainant and Respondent have an opportunity to respond to the report, by meeting with the VPF in person or by submitting a written response;
- f. A statement indicating whether there is any indication that other violations of the Code of Conduct may have occurred, separate from the allegations of Prohibited Conduct that were investigated under the SVSH Policy, and a description of the process by which the University may respond to these other potential violations.
- g. If there are indications of non-SVSH Code violations, a statement to the effect that the VPF will notify the Complainant and Respondent as to whether the process for deciding on sanctions for the SVSH violations will be initiated immediately or whether it will be delayed until the investigation into the non-SVSH violations is complete.

#### 7. Opportunity to respond

Upon receipt of the investigation report, the VPF offers the Complainant and the Respondent an opportunity to respond to the notice of investigation outcome and accompanying investigation report. At the VPF's discretion, the responses may take place through individual in-person meetings with the VPF, written statements provided to the VPF, or both.

The purpose of this response is to provide the Complainant and the Respondent with an opportunity to express their perspectives and address what outcome they think is appropriate.

## **VI. Consultation and Assessment**

The VPF decides what action to take in response to the findings of the Title IX investigation report. This decision is informed by the response to the Title IX investigation report by the Complainant and Respondent.

## **A. Consultation with Academic Personnel Office**

In the event that the Title IX investigation finds a non-Senate faculty respondent responsible for violating the SVSH Policy, the VPF consults with the Academic Personnel Office on what action to take to resolve the matter. The VPF's decision is also informed by the response to the Title IX investigation report by the Complainant and Respondent, and by consultation with OPHD as appropriate.

## **B. Decision on Sanctions**

In accordance with APM-150, the VPF generally pursues one of two main options: Informal Resolution (APM-150) or a notice of intent to institute dismissal or other corrective action (APM-150).

Under highly specific and unusual circumstances (such as an irrevocable separation by the Respondent from the University), the VPF may determine that no disciplinary action is necessary or possible. In this event, the VPF will promptly communicate this decision and its rationale to both the Complainant and the Respondent. In the great majority of cases, however, a case with Title IX findings proceeds either to Informal Resolution (#1) or a Notice of Intent (#2).

### **1. Informal Resolution**

The VPF 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 VPF will promptly inform the Complainant of those terms, including any discipline or other corrective or remedial measures, and the rationale for these terms.

### **2. Notice of Intent**

The VPF can issue a notice of intent instituting dismissal or other specific corrective actions in accordance with APM-150.

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

The VPF should strive to resolve the decision on sanctions 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 VPF 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 VPF will promptly inform the Complainant and the Respondent of the decision, including any final decision on discipline and its rationale.