

# University of California

## **Sexual Violence and Sexual Harassment: Non-Faculty Academic Personnel 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-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). A flowchart illustrating the process for complaints against non-faculty academic appointees can be found in Attachment 1.

This document is intended to be read in conjunction with the [SVSH Policy](#), as well as 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, as accepted by President Napolitano.

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

This framework specifies a time frame of 60 days to complete a Title IX investigation, and 40 days to initiate the subsequent non-faculty academic appointee 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**

Sources for the primary documents cited in these procedures can be found here:

- SVSH Policy: <http://policy.ucop.edu/doc/4000385/SVSH>
- APM-140: [http://ucop.edu/academic-personnel-programs/\\_files/apm/apm-140.pdf](http://ucop.edu/academic-personnel-programs/_files/apm/apm-140.pdf)
- APM-150: [http://ucop.edu/academic-personnel-programs/\\_files/apm/apm-150.pdf](http://ucop.edu/academic-personnel-programs/_files/apm/apm-150.pdf)

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

**Prohibited Conduct:** sexual violence and sexual harassment, retaliation, and other prohibited behavior that violates law and/or University policy [SVSH II.D.4] (See SVSH Policy for full details)

**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 2D)

**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 2D).

**Confidential Resources:** Employees in confidential resource offices are exempt from Responsible Employee reporting requirements. These offices can provide confidential counseling, emotional support. They can also provide information or resource referrals related to making an administrative report to OPHD or a criminal report to the police. Certain confidential offices can provide advocacy services, including resources and referrals for safety, legal issues, academic and work-related accommodations, medical care and housing assistance. They include campus-provided survivor advocates, licensed counselors, and professional ombudspersons (based on SVSH Policy, section 2D). See Section IIIB.

**Advisor:** In the context of interviews conducted by the Title IX Office at which Advisors may be present, “Advisor” means “any individual except a potential witness who provides the Complainant or Respondent with support, guidance, or advice (including attorneys). The institution cannot limit the choice of an advisor, but may restrict the extent to which the advisor can participate in the proceedings as long as the restrictions apply equally to Complainants and Respondents” [VII.1]. For example, 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. An Advisor may overhear, learn or be given access to confidential and/or private information (e.g., student-related records, other academic or personnel records, and health information). The Advisor must not distribute, post, or make public any such information, and this obligation continues after the completion of the investigation, adjudication and appeal process.

**Preponderance of the Evidence:** A standard of proof requiring it to be more likely than not that an alleged violation occurred. Preponderance of the evidence is a lower evidentiary standard than clear and convincing evidence, and higher than probable cause.

### **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).

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).

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) is designated for the affected party. OPHD will reach out to the Complainant once a report is made (see Section IV).

It is the Complainant’s choice whether or not to make a report to OPHD; it 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**

Employees in confidential resource offices are exempt from Responsible Employee reporting requirements. These offices can provide confidential counseling, emotional support. They can also provide information or resource referrals related to making an administrative report to OPHD or a criminal report to the police. Certain confidential offices can provide advocacy services, including resources and referrals for safety, legal issues, academic and work-related accommodations, medical care and housing assistance. 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 all non-academic staff, non-faculty academic staff, non-senate faculty, and senate faculty who perform management functions.)

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 SVSH Policy charges the University with 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, 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.

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 and employees. Interim measures include, but are not limited to, the following: no contact directives; temporary work/research reassignments; certain kinds of leaves; and employee assistance.

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 his or her 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; and
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 the crime to law enforcement.

## **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 [V.A.4] provides two paths for resolution by the Title IX Office: 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 a case involves less serious allegations, when insufficient evidence means that a Formal Investigation is not likely to lead to a resolution, when a report is made anonymously, or when both parties prefer a less formal process. Formal Resolution is indicated for more serious, well-substantiated allegations, or when Alternative Resolution is unsuccessful. The Title IX officer consults 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 will offer to refer Complainants and Respondents to support services, including but not limited to [PATH to Care](#) (for all) and [Respondent Services \(specifically for students\)](#).

### **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's Designee  
The Title IX Officer notifies the Chancellor's Designee, the Vice Provost for the Faculty ("VPF") that a Formal Investigation of a faculty respondent is commencing. The Title IX Officer reveals information judiciously, in order to protect the neutrality of the VPF, as well as, to the extent possible, the privacy of the Complainant and the Respondent.
2. Notice of Allegations 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 summary of the investigative and subsequent discipline process
- e. A summary of the rights of the Complainant and Respondent, including the right to have an Advisor present at interviews;
- f. A description of the resources available to Complainant and Respondent; and
- g. 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. Independent investigators will have the 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.

b. 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 will include:

- a. A statement of whether a preponderance of the evidence demonstrated that respondent violated the SVSH Policy;
- b. An admonition against intimidation or retaliation;
- c. An explanation of any interim measures that will remain in place;
- d. A statement that the complainant and respondent have an opportunity to respond in writing to the VPF and supervisor or other appropriate administrative authority; and
- e. 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.

In addition, if the investigation determined that respondent violated the SVSH Policy, the notice of investigation outcome will also include:

- a. 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 VPF;
- b. 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.

#### 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. However, the respondent's supervisor or other appropriate administrative authority has the responsibility to propose and implement the action decided by the VPF.

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 re-investigate allegations of Prohibited Conduct investigated by the Title IX Office.

### **A. Consultation with the Academic Personnel Office and Others**

In the event that the Title IX investigation finds a non-faculty academic 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 supervisor's recommendation, the response to the Title IX investigation report by the Complainant and Respondent, and by consultation with OPHD as appropriate.

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 VPF for review and approval.

If the VPF does not approve the proposed decision, he or she will send it back to the supervisor or other appropriate administrative authority for reconsideration and submission of a revised proposed decision.

If the VPF approves the proposed decision, he or she will inform the supervisor or other appropriate administrative authority who will take steps to implement the approved decision.

## **B. Decision on Sanctions**

In accordance with APM-150, the VPF generally decides on 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 supervisor or other appropriate administrative authority (such as a dean) 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 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 VPF for approval. Informal resolution can be achieved at any time prior to the final imposition of dismissal or corrective action.

2. 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 VPF 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 Decision: Extension for Good Cause**

The supervisor or other appropriate administrative authority should implement the 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 Vice Provost for the Faculty for good cause with written notice to the Complainant and the Respondent stating the reason for the extension and the projected new timeline.

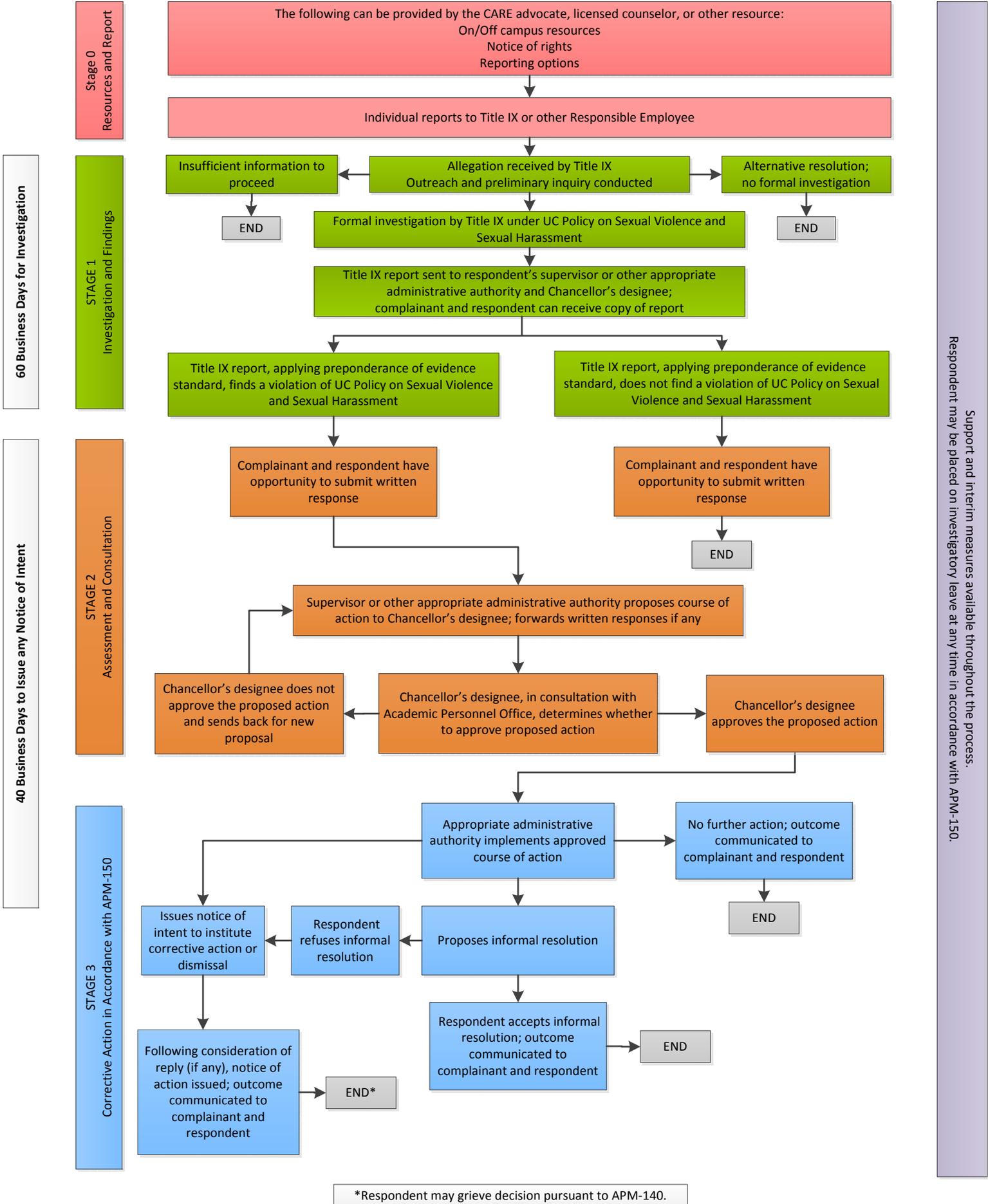
#### **D. Process Following the Action Taken**

In the event that a non-faculty academic appointee Respondent submits a grievance under [APM-140](#), the VPF will ensure that both the Complainant and the Respondent receive regular updates regarding the status of the grievance.

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

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.

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NON-FACULTY (NON-REPRESENTED) ACADEMIC PERSONNEL ADJUDICATION MODEL – PROCESS FLOW CHART**



\*Respondent may grieve decision pursuant to APM-140.

Support and Interim measures available throughout the process. Respondent may be placed on investigatory leave at any time in accordance with APM-150.