

Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel

INTRODUCTION

Consistent with the UC Policy on Sexual Violence and Sexual Harassment (“SVSH Policy”), the following describes the University’s process for investigating and adjudicating alleged violations of the SVSH Policy in instances where the respondent is a University employee whose conduct is governed by Personnel Policies for Staff Members (“PPSMs”), and who is subject to disciplinary and termination procedures set for in [PPSM 62](#) (Corrective Action – Professional and Support Staff) and [PPSM 64](#) (Termination and Job Abandonment) or a non-faculty academic appointee who is subject to disciplinary procedures under the Academic Personnel Manual (“APM”) [APM-150](#) (Non-Senate Academic Appointees/Corrective Action and Dismissal).¹ A flow chart illustrating the process for complaints against PPSM covered employees can be found in Attachment 1. A flow chart illustrating the process for complaints against non-faculty academic appointees can be found in Attachment 2.

These documents should be read in conjunction with the SVSH Policy, as well as applicable PPSMs, including PPSM 62, [PPSM 63](#) (Investigatory Leave) and PPSM 64, and applicable provisions of the APM, including APM-150. The documents also incorporate recommendations issued by the Joint Committee of the Administration and the Senate, as accepted by President Napolitano.

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

The SVSH Policy is available at <http://policy.ucop.edu/doc/4000385/SVSH>. The PPSM manual is available at <http://policy.ucop.edu/manuals/personnel-policies-for-staff-members.html>. The APM is accessible at <http://www.ucop.edu/academic-personnel-programs/academic-personnel-policy/general-university-policy-regarding-academic-appointees/index.html>.

I. REPORTING OPTIONS AND RESOURCES (Stage 0)

A. Reporting Options

Any person may make a report, including anonymously, of conduct prohibited under the SVSH Policy (“Prohibited Conduct”) to the Title IX Office, which on the Berkeley campus is named the Office for the Prevention of Harassment and

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

Discrimination ([OPHD](#)). OPHD is responsible for receiving and responding to reports of Prohibited Conduct.

A person may also make a report to a Responsible Employee as defined by the SVSH Policy. The SVSH Policy requires a Responsible Employee who becomes aware of an incident of Prohibited Conduct to report it to the University by contacting OPHD.

Responsible Employees must share what they have learned with OPHD as soon as possible. Complainants may make a report to OPHD at any time; there is no time limit for a Complainant.

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

B. Confidential Resources

The University offers access to confidential resources for individuals who have experienced Prohibited Conduct and are seeking counseling, support or information about how to make a report to the University. Confidential Resources are defined pursuant to the SVSH Policy and include individuals who receive reports in their confidential capacity such as advocates in the [PATH to Care Center](#), as well as licensed counselors (e.g., [Be Well At Work/Employee Assistance](#), [Counseling and Psychological Services \(CAPS\)](#), and [Social Services](#)), the [Staff Ombuds Office](#), and the [Ombuds Office for Students and Postdoctoral Appointees](#).

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

II. INITIAL ASSESSMENT (Stage 1)

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

A. Interim Measures

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 orders; housing assistance; academic support; and counseling.

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

B. Written Rights & Options

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

1. How and to whom to report alleged violations;
2. Options for reporting to and/or notifying law enforcement and campus authorities;
3. Information regarding confidential resources;
4. The rights of complainants regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by criminal or civil courts;
5. The importance of preserving evidence that may assist in proving that a criminal offense occurred or in obtaining a protection order;
6. Counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, and other services available both within the institution and the community; 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 alleged conduct to law enforcement.

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

Provided the University has sufficient information to respond, and in accordance with the SVSH Policy, the University may resolve reports of Prohibited Conduct by Alternative Resolution or Formal Investigation. Throughout the resolution process, the complainant and the respondent may be accompanied by an advisor. In addition, the University will offer to provide access to resources and information for complainants and for respondents.

A. Alternative Resolution

After a preliminary inquiry into the facts, OPHD may initiate an Alternative Resolution in accordance with the [SVSH Policy](#).

B. Formal Investigation

In cases where Alternative Resolution is inappropriate or unsuccessful, OPHD may conduct a Formal Investigation, as contemplated in the SVSH Policy.

1. Notification

OPHD will notify the Chancellor's designee and the respondent's supervisor or other appropriate administrative authority when a Formal Investigation is commenced against a faculty respondent. OPHD will be sensitive in their communication to protect the neutrality of the Chancellor's designee and the neutrality of the supervisor or other appropriate administrative authority, as well as the privacy of the complainant and the respondent.

Thereafter, OPHD will ensure that the Chancellor's designee and/or supervisor or other appropriate administrative authority are regularly updated regarding the status of the Formal Investigation.

2. Notice of Charges

When a Formal Investigation will be conducted, OPHD will send written notice of the charges to the complainant and respondent.

The written notice will include:

- a. A summary of the allegations and potential violations of the SVSH Policy;
- b. The purpose of the investigation;
- c. A statement that the investigative report, when issued, will make factual findings and a determination whether there has been a violation of the SVSH Policy;
- d. A statement that the findings under the SVSH Policy will be based on the preponderance of the evidence standard and that a finding of a violation of the SVSH Policy will establish probable cause under APM-015;
- e. A summary of the Title IX and faculty discipline process, including the expected timeline;
- f. A summary of the rights of the complainant and respondent, including the right to an advisor;
- g. A description of the resources available to complainant and respondent;
and
- h. An admonition against intimidation or retaliation.

3. Investigative Process

OPHD will designate an investigator to conduct a fair, thorough, and impartial investigation.

a. Overview:

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

The investigator will meet separately with the complainant, the respondent, and the third party witnesses who may have relevant information, and will gather other available and relevant information. The investigator may follow up with the complainant or the respondent as needed to clarify any inconsistencies or new information gathered during the course of the investigation.

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

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

b. Coordination with Law Enforcement:

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

Following the conclusion of its investigation, OPHD will prepare a written report. The written investigation report will include a statement of the allegations and issues, the positions of the parties, and a summary of the evidence.

If the complainant or the respondent offered witnesses or other evidence that was not relied upon by the investigator, the investigation report will explain why it was not relied upon.

The investigation report will include findings of fact and a determination regarding whether, applying the preponderance of the evidence standard, there is sufficient evidence to conclude that the respondent violated the SVSH Policy.

5. Notice of Investigation Outcome

Upon completion of the OPHD investigation report, OPHD will send to the complainant and the respondent a written notice of investigation outcome regarding whether a violation of the SVSH Policy was found. The notice of investigation outcome will generally be accompanied by a copy of the investigation report, which may be redacted as necessary to protect privacy rights.

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

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 and/or in person to the Chancellor's designee 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 the faculty respondent violated the SVSH Policy, the notice of investigation outcome will also include:

- a. For matters involving PPSM-covered respondents, a description of the process for deciding whether and what discipline to impose, including a statement that the supervisor will propose a resolution, which may include corrective action as defined by PPSM-62 or termination in accordance with PPSM-64, and that the proposal will be subject to review and approval by the Chancellor's designee;
- b. For matters involving non-faculty academic respondents, a description of the process for deciding whether and what discipline to impose, including a statement that the supervisor or other appropriate administrative authority will propose a resolution, which may include corrective action or dismissal as described in APM-150, and that the proposal will be subject to review and approval by the Chancellor's designee;

- c. A statement of the anticipated timeline and a statement that both complainant and respondent will be informed of the final resolution of the matter.

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

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

OPHD will keep the complainant and the respondent regularly informed concerning the status of the investigation.

IV. ASSESSMENT AND CONSULTATION (Stage 2)

The respondent's supervisor or other appropriate administrative authority has the responsibility to propose and implement action in response to the findings of the OPHD investigation report. The proposed decision by the supervisor or other appropriate administrative authority will be reviewed and approved by the Chancellor's designee. The supervisor or other appropriate administrative authority may determine that additional investigation is required to determine whether violations of other policies occurred, but will not reinvestigate the allegations of Prohibited Conduct investigated by OPHD. The Chancellor's designee, as well as the supervisor or other appropriate administrative authority, may consult with OPHD, Staff Human Resources, or the Academic Personnel Office, or any other appropriate entities at any time during the decision-making process.

A. Opportunity to Respond

The complainant and the respondent will have an opportunity to respond to the notice of investigation outcome and accompanying investigation report through a written statement that will be submitted to the respondent's supervisor or other appropriate administrative authority and the Chancellor's designee.

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

B. Decision Proposal and Submission for Approval

In the event that the OPHD investigation finds the respondent responsible for violating the SVSH Policy, the respondent's supervisor or other appropriate administrative authority will propose a decision regarding how to resolve the matter. The proposal must be submitted to the Chancellor's designee for review and approval. (For academic appointees, the Chancellor's designee is the Vice

Provost for the Faculty; for non-academic staff, the Chancellor's designee is the Assistant Vice Chancellor, Human Resources/Chief People & Culture Officer.)

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

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

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

V. CORRECTIVE OR OTHER ACTIONS (Stage 3)

A. PPSM Covered Staff: Decision Approval and Implementation

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

1. No Further Action

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

2. Action Not Requiring Notice of Intent

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

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

3. Notice of Intent

The supervisor may propose to issue a notice of intent to institute corrective action in accordance with PPSM-62 or notice of intent to terminate in accordance with PPSM-64. The proposed terms of the notice of intent will be

reviewed by the Chancellor's designee for approval. In the event it is approved, the decision will be implemented by the supervisor and the notice of intent will issued.

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

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

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

1. No Further Action

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

2. Informal Resolution

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

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

3. Notice of Intent

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

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

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

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

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

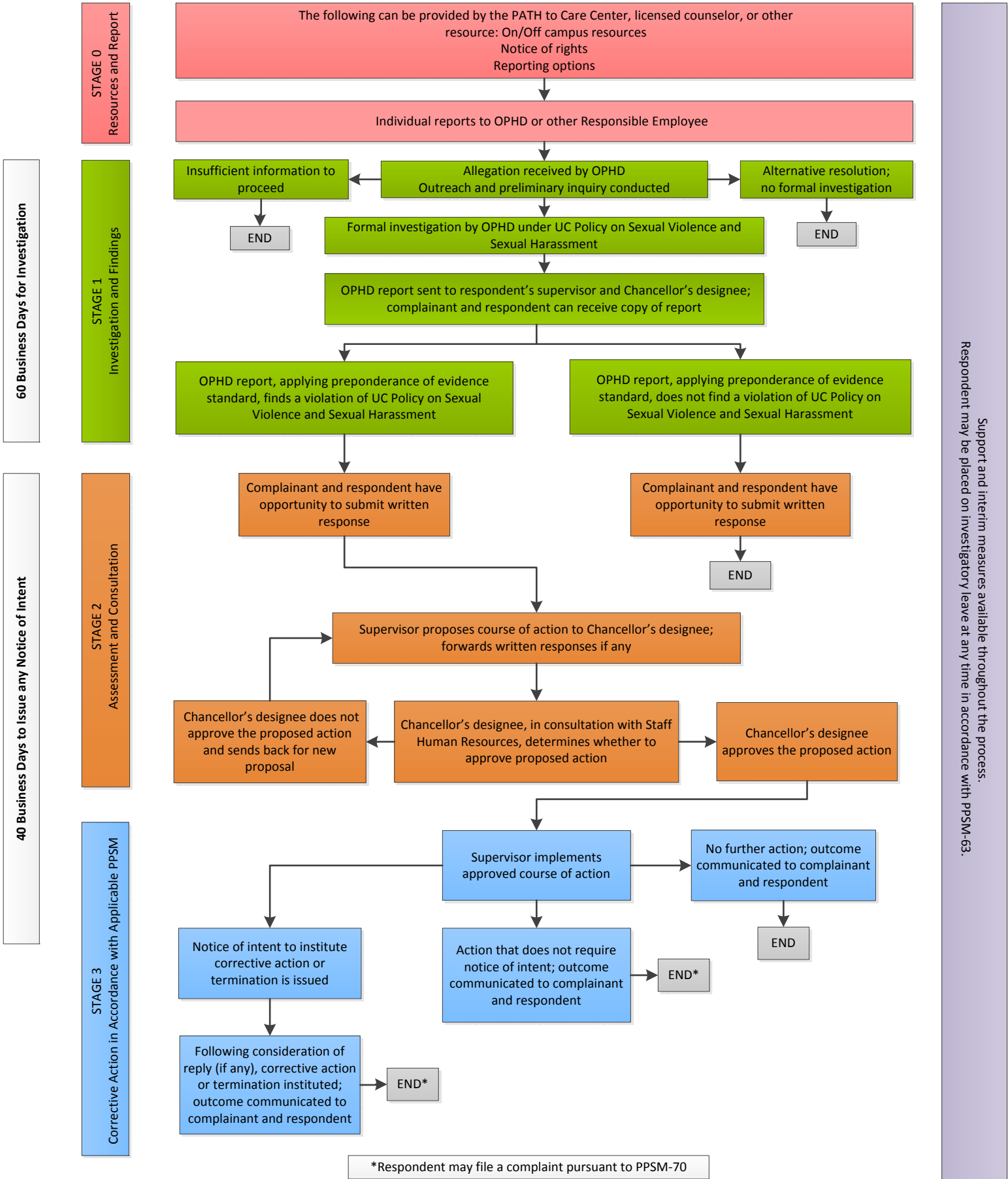
VI. PROCESS FOLLOWING ACTION TAKEN

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

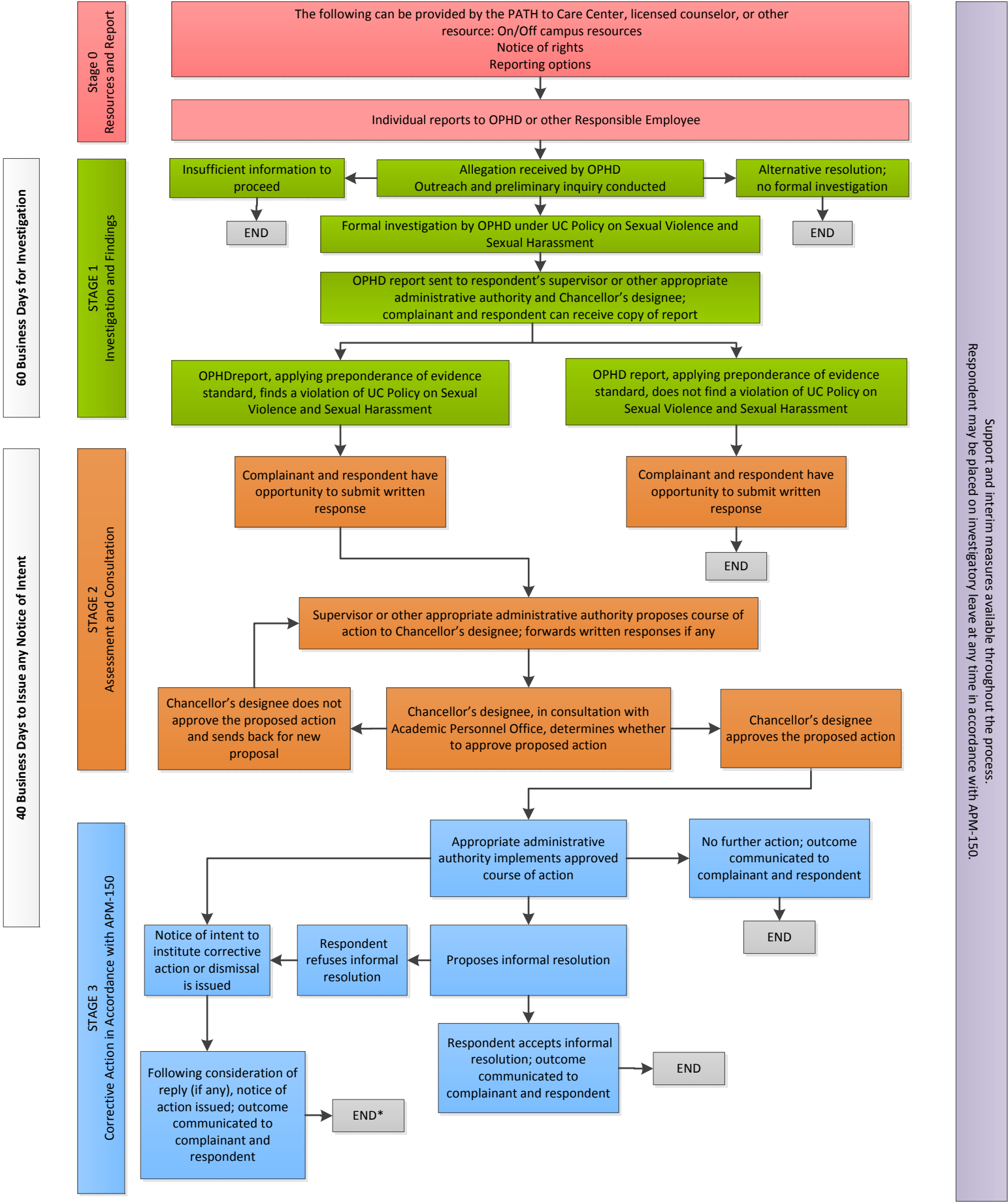
The complainant may follow processes appropriate to their own personnel or student policies.

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

UNIVERSITY OF CALIFORNIA
PPSM-COVERED STAFF ADJUDICATION MODEL – PROCESS FLOW CHART



UNIVERSITY OF CALIFORNIA
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.