



# Sexual Violence and Sexual Harassment

Para la traducción en Español, oprima aquí

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Sekswal na Kaharasan at Sekswal na Panliligalig

<b>Responsible Officer:</b>	Systemwide Title IX Director
<b>Responsible Office:</b>	Systemwide Title IX Office
<b>Issuance Date:</b>	
<b>Effective Date:</b>	January 1, 2022
<b>Last Review Date:</b>	
<b>Scope:</b>	This Sexual Harassment and Sexual Violence Policy (“Policy”) applies to all University employees as well as undergraduate, graduate, and professional students (“students”), and third parties. The Policy applies at all University campuses, the Lawrence Berkeley National Laboratory, Medical Centers, the Office of the President, Agriculture and Natural Resources, and to all University programs and activities.

***For non-confidential help with sexual violence, sexual harassment, relationship violence, and stalking, contact your Title IX Officer. For confidential help, contact your local CARE Advocate. You can find information on local resources at [Sexual Violence Prevention and Response](#)***

***(<http://sexualviolence.universityofcalifornia.edu/get-help/index.html>). Your options for reporting to agencies outside the University are in Section IV.E.***

**FOR QUESTIONS ABOUT THIS POLICY, PLEASE CONTACT:**

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## I. POLICY SUMMARY

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The University of California (“University”) is committed to maintaining a community dedicated to the advancement, application and transmission of knowledge and creative endeavors through academic excellence, where all people who participate in University programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation.

Sexual violence, sexual harassment, retaliation, and other behavior prohibited by this Policy interfere with those goals. The University will respond promptly and effectively to reports of such conduct. This includes action to stop, prevent, correct, and when necessary, discipline, behavior that violates this Policy.

This Policy addresses the University’s responsibilities and procedures related to sexual violence, sexual harassment, retaliation, and other prohibited behavior as those terms are defined in this Policy (together, “Prohibited Conduct”) in order to ensure an equitable and inclusive education and employment environment. The Policy defines Prohibited Conduct and explains the administrative procedures the University uses to resolve reports of Prohibited Conduct.

**Note on Federal Regulations:** The Title IX regulations issued by the U.S. Department of Education (“DOE”) that went into effect August 14, 2020 require the University to follow a specific grievance process (“DOE Grievance Process”) in response to conduct covered by the regulations (“DOE-Covered Conduct”). The University advocated strongly for DOE to change some components of the DOE Grievance Process before DOE issued the regulations; DOE did not. Because compliance with the regulations is a condition of federal funding, the University has nonetheless revised its policies to fully implement them. This Policy is more expansive than the regulations in both conduct prohibited (described in Section II) and its coverage (described in Section III.B). So, the University will apply the DOE Grievance Process only when required, in response to DOE-Covered Conduct. It will follow its existing processes for all other reports. [Appendix IV](#) describes how the University will determine whether it must apply the DOE Grievance Process.

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## II. DEFINITIONS

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### A. Consent

Consent is *affirmative, conscious, voluntary, and revocable*. Consent to sexual activity requires of each person an affirmative, conscious, and voluntary agreement to engage in sexual activity.

It is the responsibility of each person to ensure they have the affirmative consent of the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence do not, alone, constitute consent. Affirmative consent must be ongoing and can be revoked at any time during sexual activity.

The existence of a dating relationship or past sexual relations between the Complainant and Respondent will never by itself be assumed to be an indicator of

consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of consent to prior conduct).

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable. In making this determination, the factfinder will consider all of the facts and circumstances the Respondent knew, or reasonably should have known, at the time. In particular, the Respondent's belief is not a valid defense where:

1. The Respondent's belief arose from the Respondent's own intoxication or recklessness;
2. The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented; or
3. The Respondent knew or a reasonable person should have known that the Complainant was unable to consent because the Complainant was incapacitated, in that the Complainant was:
  - a. asleep or unconscious;
  - b. unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or
  - c. unable to communicate due to a mental or physical condition.

Note: Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.

## B. Prohibited Conduct

### 1. Sexual Violence:

- a. **Sexual Assault - Penetration:** Without the consent of the Complainant, penetration, no matter how slight, of:
  - the Complainant's mouth by a penis or other genitalia; or
  - the Complainant's vagina or anus by any body part or object.
- b. **Sexual Assault - Contact:** Without the consent of the Complainant, intentionally:
  - touching Complainant's intimate body part (genitals, anus, groin, breast, or buttocks);
  - making the Complainant touch another or themselves on any intimate body part; or
  - touching the Complainant with one's intimate body part,whether the intimate body part is clothed or unclothed.

**Note:** This definition encompasses a broad spectrum of conduct, not all of which is sexual violence. So, the Title IX Officer must sometimes determine

whether an allegation should be charged as sexual violence or sexual harassment. (See FAQ #4 for more information.)

Conduct that meets the definition of both *Sexual Assault—Contact* and *Sexual Assault—Penetration* will be charged as *Sexual Assault—Penetration*.

**Note:** *Sexual Assault—Penetration* and *Sexual Assault—Contact* are aggravated when they include any of the following:

- Overcoming the will of Complainant by:
  - *force* (the use of physical force or inducing reasonable fear of immediate or future bodily injury);
  - *violence* (the use of physical force to cause harm or injury);
  - *menace* (a threat, statement, or act showing intent to injure);
  - *duress* (a direct or implied threat of force, violence, danger, hardship, or retribution that is enough to cause a reasonable person of ordinary sensitivity, taking into account all circumstances including age and relationship (including a power imbalance), to do or submit to something that they would not otherwise do); or
  - deliberately causing the Complainant to be incapacitated (for example, through drugs or alcohol);
- Deliberately taking advantage of the Complainant's incapacitation (including incapacitation that results from voluntary use of drugs or alcohol);
- Recording, photographing, transmitting, or distributing intimate or sexual images of Complainant without Complainant's prior knowledge and consent; or
- Engaging in the conduct during or in connection with a clinical encounter (as defined in Appendix V) in which the Complainant was a patient and the Respondent was a health care provider or health care worker.

**c. Relationship Violence:**

i. Relationship Violence is:

- physical violence toward the Complainant or a person who has a close relationship with the Complainant (such as a current or former spouse or intimate partner, a child or other relative), or
- intentional or reckless physical or non-physical conduct toward the Complainant or someone who has a close relationship with the Complainant (such as a current or former spouse or intimate partner, a child or other relative) that would make a reasonable person in the Complainant's position fear physical violence toward themselves or toward the person with whom they have the close relationship,

that is by a person who is or has been in a spousal, romantic, or intimate relationship with the Complainant, or who shares a child with the Complainant, *and* that is part of a pattern of abusive behavior by the person toward the Complainant.

- ii. Physical violence is physical conduct that intentionally or recklessly threatens the health and safety of the recipient of the behavior, including assault.
  - iii. Patterns of abusive behavior may consist of or include non-physical tactics (such as threats, isolation, property destruction, abuse of pets, economic control, displaying weapons, degradation, or exploitation of a power imbalance).
  - iv. The nature of the relationship between the Complainant and Respondent is determined by the length and type of relationship, and the frequency of interaction between them. Relationship violence includes both “dating violence” and “domestic violence.”
  - v. Conduct by a party in defense of self or another is not Relationship Violence under this Policy. If either party asserts that they acted in defense of self or another, the Title IX Officer will use all available, relevant evidence to evaluate the assertion, including reasonableness of the defensive actions and which party is the predominant aggressor.
- d. Stalking:** Repeated conduct directed at a Complainant (for example, following, monitoring, observing, surveilling, threatening, communicating or interfering with property), of a sexual, romantic or other sex-based nature or motivation, that would cause a reasonable person to fear for their safety, or the safety of others, or to suffer substantial emotional distress. Stalking that is not sex-based is addressed by other University policies including but not limited to the [Policy on Student Conduct and Discipline Section 102.10](#).

**e. Sexual Exploitation:**

- i. Sexual Exploitation is taking sexual advantage of another, where the conduct is not otherwise addressed in this Policy. Specifically:
  - (a) The trafficking or prostituting of another without their consent: Inducing the Complainant to perform a commercial sex act through force, fraud, or coercion, or where the Complainant is under the age of 18;
  - (b) Knowingly making a material false representation about sexually transmitted infection, birth control, or prophylactic status with the specific intent and effect of inducing the Complainant to participate in a specific sexual act or encounter;
  - (c) Threatening to post or share photographs, video, or audio recordings depicting the Complainant’s nudity or sexual acts unless the Complainant takes a particular action;

- (d) Providing alcohol or drugs to the Complainant with the specific intent and effect of facilitating Prohibited Conduct; or
  - (e) Actively facilitating or assisting another person in committing an act of Prohibited Conduct.
- ii. In the context of Sexual Exploitation:
- (a) Coercion is overcoming the will of Complainant through:
    - credible threats of serious physical or non-physical harm to the Complainant or another person;
    - a plan intended to make the Complainant believe that failure to perform an act would result in serious physical or non-physical harm to the Complainant or another person; or
    - the abuse or credible threat of abuse of a legal or University policy process.
  - (b) A commercial sex act is any sex act for which anything of value is given to or received by any person.
  - (c) Force is physical conduct that would reasonably overcome the will of another.
  - (d) Fraud is intentional deception that would reasonably overcome the will of another.

## **2. Sexual Harassment:**

- a. Sexual Harassment is when:
- i. *Quid Pro Quo*: a person's submission to unwelcome sexual conduct is implicitly or explicitly made the basis for employment decisions, academic evaluation, grades or advancement, or other decisions affecting participation in a University program or activity; or
  - ii. *Hostile Environment*: unwelcome sexual or other sex-based conduct is sufficiently severe, persistent or pervasive that it unreasonably denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment or other programs or activities of the University, and creates an environment that a reasonable person would find to be intimidating or offensive.
- b. Sexual conduct includes sexual or romantic advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.
- c. Other sex-based conduct includes acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on gender, gender identity, gender expression, sex- or gender-stereotyping, or sexual orientation.
- d. Consideration is given to the totality of the circumstances in which the conduct occurred.

- e. This Policy will be implemented in a manner that recognizes the importance of the rights to freedom of speech and expression and will not be interpreted to prohibit expressive conduct that is protected by the free speech and academic freedom principles discussed in Section III.F.

### 3. Other Prohibited Behavior:

- a. Invasions of Sexual Privacy.
  - i. Without a person's consent, watching or enabling others to watch that person's nudity or sexual acts in a place where that person has a reasonable expectation of privacy;
  - ii. Without a person's consent, making or attempting to make photographs (including videos) or audio recordings, or posting, transmitting or distributing such recorded material, depicting that person's nudity or sexual acts in a place where that person has a reasonable expectation of privacy; or
  - iii. Using depictions of nudity or sexual activity to extort something of value from a person.
- b. Sexual intercourse with a person under the age of 18.
- c. Exposing one's genitals in a public place for the purpose of sexual gratification.
- d. Failing to comply with the terms of a no-contact order, a suspension of any length, or any order of exclusion issued under this Policy.
- e. Engaging in Retaliation. Retaliation is an adverse action against a person based on their report or other disclosure of alleged Prohibited Conduct to a University employee, or their participation in, refusal to participate in, or assistance with the investigation, reporting, remedial, or disciplinary processes provided for in this Policy.

An adverse action is conduct that would discourage a reasonable person from reporting Prohibited Conduct or participating in a process provided for in this Policy, such as threats, intimidation, harassment, discrimination and coercion. Good faith actions lawfully pursued in response to a report of Prohibited Conduct (such as gathering evidence) are not, without more, retaliation.

**Note One:** To determine whether conduct is DOE-Covered Conduct the Title IX Officer will do the assessment and apply the definitions in [Appendix IV](#). The definitions here are broader than and encompass all conduct included in the Appendix IV definitions.

**Note Two:** When Prohibited Conduct allegedly occurs in the context of patient care, the Title IX Officer will refer to Appendix V and, when indicated, apply the definitions in that Appendix.

### C. Other Definitions:

1. **Complainant:** A person alleged, in a report to the Title IX Officer, to have experienced Prohibited Conduct.
2. **Confidential Resources:** The following employees who receive information about Prohibited Conduct in their confidential capacity:
  - a. CARE Directors and Advocates, and employees who directly or indirectly report to them,
  - b. Ombuds,
  - c. Licensed counselors in student counseling centers and in employee assistance programs,
  - d. Any persons with a professional license requiring confidentiality (including health center employees but excluding campus legal counsel), or someone who is supervised by such a person, and
  - e. Members of the clergy.

Designation as a “Confidential Resource” under this Policy only exempts a person from reporting to the Title IX Officer. It does not affect other mandatory reporting obligations under *UC CANRA (Child Abuse and Neglect Reporting Act) Policy*, the Clery Act as a Campus Security Authority (CSA), and other policies or laws that require reporting to campus or local law enforcement, or Child Protective Services.

### 3. Supportive and Remedial Measures.

- a. Supportive Measures include both Interim Measures and Mitigating Measures. The University provides Supportive Measures as appropriate and reasonably available, without fee or charge.
  - i. Interim Measures: Services, accommodations, or other measures put in place temporarily after the Title IX Officer receives a report of Prohibited Conduct to assist or protect the Complainant, the Respondent, or the University community; restore or preserve a party’s access to a University program or activity; or deter Prohibited Conduct. Interim measures may:
    - remain in place until the final outcome of a Resolution Process (see Section V.A.5) or a subsequent disciplinary or appeal process;
    - change or terminate depending on the parties’ evolving needs, as assessed by the Title IX Officer; or
    - become permanent as part of the resolution of a report.
  - ii. Mitigating Measures: Services, accommodations or other measures for a Complainant who is not in a Resolution Process (see Section V.A.5), including a Complainant who was previously in a Resolution Process that did not result in a finding of a policy violation. Mitigating measures may be



implemented to provide support, restore or preserve access to a University program or activity, or deter Prohibited Conduct.

- b. Remedial Measures:** Services, accommodations, or other measures put in place as a result of a completed Resolution Process (see Section V.A.5).

Examples of services, accommodations, and other measures are in Appendix III. The Title IX Officer will consult with the Complainant and, when appropriate, the Respondent, to identify suitable services, accommodations and other measures.

In matters involving DOE-Covered Conduct, the Title IX Officer will ensure Supportive Measures are non-disciplinary and non-punitive, and that they do not unreasonably burden a party.

Campuses may take other measures per other University policies.

- 4. Location:** “Location” is any University campus, the Lawrence Berkeley National Laboratory, Medical Centers, the Office of the President, and Agriculture and Natural Resources.
- 5. Preponderance of Evidence:** A standard of proof that requires that a fact be found when its occurrence, based on evidence, is more likely than not.
- 6. Respondent:** A person alleged, in a report to the Title IX Officer, to have engaged in Prohibited Conduct.
- 7. Responsible Employee:** Any University employee who is not a Confidential Resource. If a Responsible Employee learns, in the course of employment, that a student may have experienced Prohibited Conduct or that Prohibited Conduct may have occurred in the context of patient care, they must promptly notify the Title IX Officer or designee. This includes resident assistants, graduate teaching assistants, and all other student employees, when disclosures are made to them in their capacities as employees.

In addition, if any of the following people learn, in the course of employment, that any other person affiliated with the University may have experienced Prohibited Conduct, they must promptly notify the Title IX Officer or designee:

- Campus Police
- Human Resources Administrators, Academic Personnel Administrators, and Title IX Professionals
- Managers and Supervisors including Deans, Department Chairs, and Directors of Organized Research Units
- Faculty members

Despite the above, Responsible Employees need not report possible Prohibited Conduct they learn of while attending a public awareness event, such as “Take Back the Night” (see FAQ #9), or disclosed by someone while participating in human subjects research that has either been approved by an Institutional Review Board (IRB) or certified as exempt from IRB review (see FAQ #10).

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### **III. POLICY TEXT**

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#### **A. General**

The University is committed to maintaining a community free of sexual harassment, sexual violence, retaliation, and other behavior prohibited by this Policy (together, “Prohibited Conduct”). Prohibited Conduct violates this Policy and may violate law. Any person can report conduct that may be Prohibited Conduct. The University will respond promptly and equitably to such reports. This includes appropriate action to stop, prevent, and remedy the Prohibited Conduct and, when necessary, to discipline the Respondent.

Discrimination based on sex (including gender, gender identity, gender expression, sex- or gender-stereotyping, or sexual orientation) violates law and other University policies even when it is not Prohibited Conduct. The University will respond promptly and equitably to reports of such behavior. Such conduct may contribute to the creation of a hostile work or academic environment based on sex. So, when determining whether a Complainant experienced a hostile environment as defined in this Policy, the Title IX Officer will consider other sex-based discrimination in combination with incidents of sexual harassment.

#### **B. Policy Coverage**

This Policy covers acts of Prohibited Conduct committed by University students (as defined in Section 14.00 of the Policies Applying to Campus Activities, Organizations, and Students, and including applicants who become students and former students, as described in Section 101.00 of the Policy on Student Conduct and Discipline), employees, and third parties (such as Regents, contractors, vendors, visitors, guests, patients and volunteers), and acts of Prohibited Conduct committed against students, employees and third parties, when the conduct occurs:

1. on University property;
2. in connection with University employment or in the context of a University program or activity (including, for example, University-sponsored study abroad, research, on-line courses, health services, or internship programs); or
3. off University property and outside the context of a University program or activity, but has continuing adverse effects on—or creates a hostile environment for students, employees or third parties while on—University property or in any University program or activity.

Consistent with Section 101.00 of the Policy on Student Conduct and Discipline, if and as specified in implementing campus regulations, this Policy may cover additional Prohibited Conduct by students that occurs off campus.

Not every report of Prohibited Conduct will result in a Resolution Process described in Section V.A.5, even if it is covered by this Policy. Rather, the Title XI Officer will close some reports after making an initial assessment (see Section V.A.4).

### C. Conduct that Violates this Policy

This Policy prohibits sexual violence, sexual harassment, retaliation and other prohibited behavior as defined in Section II and Appendix V. Incidents that violate this Policy may occur between:

- any members of the University community, including faculty and other academic appointees, staff, student employees, students, coaches, doctors, residents, interns, and third parties;
- people in hierarchical relationships and peers;
- people of any gender, gender identity, or sexual orientation; and
- strangers and non-strangers.

People may engage in Prohibited Conduct in person or through other means. This includes electronic media, such as the internet, social networks, cell phones, texts, and other devices or forms of contact.

### D. Consensual Relationships

While romantic and sexual relationships between members of the University community may begin as consensual, Prohibited Conduct may occur within such relationships. So, the University will treat a report of Prohibited Conduct that occurs in the context of a consensual relationship as any other report.

Consensual romantic and sexual relationships between members of the University community may create conflicts of interest. So, such relationships between a student and a faculty member or other employee, or between employees, are also subject to other University policies, such as *The Faculty Code of Conduct*, APM-015.II.A.6 & 7 and local policies.

### E. Protection of Complainants, Respondents, and Witnesses

1. **Amnesty:** To encourage reporting, the University will not discipline Complainants or witnesses for student conduct policy violations that occur around the time of alleged Prohibited Conduct unless the University determines the violation was egregious. Examples of egregious violations include conduct that risked someone's health or safety, or involved plagiarism, cheating, or academic dishonesty.

Complainants may be particularly afraid to report Prohibited Conduct when alcohol, drugs, or other intoxicants were involved (for example, when there was underage drinking). This amnesty provision applies to alcohol- and drug-related student violations.

2. **Retaliation:** The University prohibits Retaliation against someone for reporting possible Prohibited Conduct or participating or not participating in a process under this Policy. (See Section II.B.3.e)
3. **Privacy and Confidentiality:** The University must balance the privacy interests of people involved in a report of Prohibited Conduct against the need to gather information, ensure a fair process, and stop, prevent and remedy Prohibited Conduct. In this context, the University tries to protect people's privacy to the

extent permitted by law and University policies. The University otherwise keeps confidential the identities of parties, witnesses and those who report Prohibited Conduct, except as required by law or permitted by FERPA, and protects the privacy of personally identifiable information per all applicable state and federal privacy laws, and University policies.

#### **F. Free Speech and Academic Freedom**

The faculty and other academic appointees, staff, and students of the University enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section I of the California Constitution. This Policy is intended to protect members of the University community from discrimination, not to regulate protected speech. This Policy will be implemented in a manner that recognizes the importance of rights to freedom of speech and expression.

The University also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this Policy will be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums (See APM-010, 011 and 015.)

However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or State anti-discrimination laws.

#### **G. Confidential Resources**

People who have experienced Prohibited Conduct may speak confidentially with a Confidential Resource (see Section II.C.2). Confidential Resources are not Responsible Employees and need not report information they receive while acting in their confidential capacity to the Title IX Officer. Disclosures to Confidential Resources while they are acting in their confidential capacity are not “reports” under this Policy and will not, alone, result in any formal University action. Confidential Resources will inform a person who discloses experiencing possible Prohibited Conduct of the discloser’s right to report directly to the Title IX Officer and how to do so.

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## **IV. COMPLIANCE / RESPONSIBILITIES**

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### **A. Policy Implementation**

Executive Officers (the University President, Chancellor, Lawrence Berkeley National Laboratory Director, Vice President of Agriculture and Natural Resources or Executive Vice President of UC Health) can develop supplementary information to support implementation of this Policy. The Systemwide Title IX Director will interpret this Policy consistently and in a way that does not substantively change the Policy.

The Executive Officer at each location must establish and implement local procedures consistent with this Policy. Exceptions to local procedures required by the Policy must be approved by the Executive Officer or designee.

## **B. Revisions to the Policy**

The President approves this Policy and any revisions. The Systemwide Title IX Director may recommend revisions to the Policy consistent with approval authorities and applicable Bylaws, Standing Orders, and Policies of The Regents. The Systemwide Title IX Director will ensure that the Policy is reviewed regularly and updated in a manner that is consistent with other University policies.

## **C. Approval of Actions**

Actions within the Policy must be approved according to local procedures.

## **D. Compliance with the Policy**

The Executive Officer at each location will designate the local management office that is responsible for monitoring, enforcing, and reporting policy compliance. The Senior Vice President – Chief Compliance and Audit Officer will periodically audit and monitor compliance with the Policy.

## **E. Additional Enforcement Information**

The U.S. Equal Employment Opportunity Commission ([EEOC](#)) and the California Department of Fair Employment and Housing ([DFEH](#)) investigate reports of unlawful harassment, including sexual violence, in employment. The U.S. Department of Education Office for Civil Rights (DOE-[OCR](#)) investigates complaints of sexual harassment, including sexual violence, of students and employees in University programs or activities. The U.S. Department of Health & Human Services Office for Civil Rights (HHS-OCR) investigates complaints of sexual harassment, including sexual violence, occurring in the context of clinical, health, research, education and employment programs. These agencies may serve as fact finders and attempt to facilitate the voluntary resolution of disputes. For more information, contact the nearest office of the EEOC, DFEH or DOE-OCR or HHS-OCR.

## **F. Noncompliance with the Policy**

Consequences of engaging in Prohibited Conduct are governed by the *Policy on Student Conduct and Discipline*; Personnel Policies for Staff Members 62, 63, & 64 pertaining to discipline and separation matters; *The Faculty Code of Conduct (APM - 015)* and *University Policy on Faculty Conduct and the Administration of Discipline (APM - 016)*; *Non-Senate Academic Appointees/Corrective Action and Dismissal (APM-150)*; collective bargaining agreements; policies governing competence and conduct of health professionals and trainees; and other policies and procedures. See Section VI and Appendices I & II. Other non-compliance with this Policy may result in educational efforts, employment consequences, or educational consequences up to and including informal counseling, adverse performance evaluations, corrective actions, and termination.

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## V. PROCEDURES

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### A. Procedures for Reporting and Responding to Reports of Prohibited Conduct

This section provides an overview of the procedures the University uses to respond to reports of Prohibited Conduct. While the Title IX Officer has responsibility for oversight of the reporting and response processes, other offices at each location will be involved and consulted as necessary. The specific procedures for investigating and resolving complaints of Prohibited Conduct depend on the Respondent's identity and relationship to the University. The Complainant and the Respondent are sometimes referred to together in this section as "the parties."

- Where the Respondent is a student, the procedures are in *Appendix E: Sexual Violence and Sexual Harassment Student Investigation and Adjudication Framework for Non-DOE-Covered Conduct* of the Policies Applying to Campus Activities, Organizations, and Students, and local implementing procedures, except that when the conduct is DOE-Covered Conduct the procedures are in *Interim Appendix F: Sexual Violence and Sexual Harassment Student Investigation and Adjudication Framework for DOE-Covered Conduct*.
- Where the Respondent is a faculty member, the procedures are in the *Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty*, and local implementing procedures.
- Where the Respondent is a staff member or non-faculty academic employee, including a post-MD resident, the procedures are in the *Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel*, and local implementing procedures.
- Where the Respondent is a physician or other health care provider credentialed and privileged by hospital medical staff, or a health professional training program student, resident or fellow, then in addition to the above frameworks they may be subject to investigation and adjudication of professional misconduct under other rules and policies (for example, medical staff bylaws and school-based policies), potentially resulting in corrective action or termination.
- Where the Respondent is a Regent, the procedures are in *Regents Policy 1112: Policy on Review of Allegations of Board Member Misconduct*.
- If there is a question about the predominant role of the Respondent, the Title IX Officer will determine which procedure applies based on the circumstances (such as which role predominates in the context of the Prohibited Conduct). Where a Respondent is both a student and an employee, the University will apply only one procedure to determine responsibility, but the Respondent may be subject to discipline applicable to both students and employees.
- Where the Respondent is a third party, the Title IX Officer will determine the appropriate manner of resolution consistent with the University's commitment to a prompt and equitable process and applicable law, federal guidance, and this Policy, which may be an Other Inquiry per Section V.A.5.d. The University's

ability to take appropriate responsive action depends on its relationship and level of control over the third party, if any.

- Where there is no identifiable, individual Respondent (such as where the Complainant alleges Prohibited Conduct by an organization or a Respondent whose identity is unknown, or conduct by multiple people that rises to the level of Prohibited Conduct only when considered in the aggregate), the Title IX Officer may respond through an Other Inquiry per Section V.A.5.d.

## **1. Reporting**

Any person can report Prohibited Conduct, including anonymously. They can report to the Title IX Officer, to any Responsible Employee, or to another appropriate office such as the Academic Personnel Office, Student Affairs, Office of the Provost, or Human Resources Office. The person or office that receives the report must forward it to the Title IX Officer. If the person to whom a report normally would be made is the Respondent, reports may be made to another Responsible Employee or office. Upon receipt of a report of Prohibited Conduct from a Responsible Employee, the Title IX Officer will attempt to contact the Complainant, if known, to inform them of their rights, options, and resources.

## **2. Timelines for Making Reports**

There is no time limit for reporting, and people should report incidents even if significant time has passed. However, the sooner the University receives a report, the better able it is to respond, investigate, remedy, and impose discipline if appropriate.

## **3. Initial Assessment of a Report / Immediate Health and Safety**

As soon as practicable after receiving a report, the Title IX Officer will make an initial assessment, including a limited factual inquiry when appropriate, to determine how to proceed.

The Title IX Officer will first assess the report to determine whether the alleged conduct is DOE-Covered Conduct and, if so, whether to begin a DOE Grievance Process or Alternative Resolution. This stage of the assessment is described in [Appendix IV](#).

If the alleged conduct is not DOE-Covered Conduct, then the Title IX Officer will next determine:

- whether the report on its face alleges an act of Prohibited Conduct as defined in Section II and Appendix V; and
- if so, whether the Prohibited Conduct is covered by this Policy, as described in Section III.B.

The Title IX Officer may consult with other offices as necessary. This may include Academic Personnel Offices for complaints involving faculty and other academic appointees, Student Affairs Offices for complaints involving students, Human

Resources or Employee and Labor Relations Offices for complaints involving staff, and health professionals for complaints stemming from a clinical encounter.

The Title IX Officer, in coordination with the Case Management Team (see Section V.B.5.), and in consultation with the Complainant when possible, will:

- make an immediate assessment of the health and safety of the Complainant and the campus community,
- determine and oversee Supportive Measures that are immediately necessary (including no-contact orders, with the parameters described in Appendix III), and
- outreach to the Complainant per a template issued by the Systemwide Title IX Office that includes, for example, an explanation of rights and reporting options (including the right to report to the police), a request to meet with the Title IX Officer, and available campus and community resources.

Also see Appendix III and Location Responsibilities in Section V.B.11. The Title IX Officer will also inform the Complainant of the range of possible outcomes of the report, including Supportive and Remedial measures and disciplinary actions, the procedures leading to such outcomes, and their right to make a DOE Formal Complaint.

#### **4. Closure After Initial Assessment**

Not all reports the Title IX Officer receives are reports of Prohibited Conduct that can be resolved through a Resolution Process described below. This includes reports for which the Title IX Officer determines that:

- even if true, the alleged conduct is not Prohibited Conduct (see Section II and Appendix IV);
- the conduct is not covered by this Policy (see Section III.B);
- there is not enough information to carry out a Resolution Process (for example, the identities of the people involved);
- a Complainant's request that no investigation occur can be honored (see Section IV.A.5.b); or
- there is not enough nexus between the conduct and the University to carry out a Resolution Process (for example, the conduct did not occur in the context of a University program or activity and involved only third parties).

The Title IX Officer will close such matters per written guidelines issued by the Systemwide Title IX Office. The Title IX Officer will still, when appropriate, take steps to stop the reported conduct, prevent its escalation or recurrence, and address its effects. Such steps may include, for example, offering resources and Mitigating Measures to the Complainant and providing targeted preventive education (including to the Respondent) and training programs.

When the reported conduct is not Prohibited Conduct (such as stalking or harassment that is not sex-based, or comments of a sexual nature during a clinical encounter that do not rise to the level of a Hostile Environment), the Title



IX Officer will, if appropriate, refer the matter to another office for review and resolution.

To determine whether there is enough nexus between the conduct and the University to carry out a Resolution Process, the Title IX Officer will consider factors such as:

- where and in what context the Prohibited Conduct allegedly occurred (meaning whether there is a connection between the conduct and University property or a University program or activity);
- whether the Complainant or Respondent were University community members when the Prohibited Conduct allegedly occurred;
- whether the Complainant or Respondent were University community members at the time of the report; and
- whether there is information indicating an ongoing threat to the University community.

## **5. Overview of Resolution Processes**

Reports of Prohibited Conduct that are not closed after the Title IX Officer's initial assessment may be addressed through Alternative Resolution, Formal Investigation, a DOE Grievance Process, a separate employee grievance or complaint process, or Other Inquiry. Each of these is described below.

Resolution Processes are non-adversarial proceedings in which all participants are expected to behave respectfully. At the beginning of any Resolution Process, the Title IX Officer will inform parties of the University's rules of conduct during the process.

### **a. Alternative Resolution**

Alternative Resolution is not available when the Complainant is a student and the Respondent is an employee. In other cases, after an initial assessment of the alleged facts, the Title IX Officer may—if the Complainant and Respondent agree in writing—begin an Alternative Resolution process. The Title IX Officer will, if appropriate, begin the process in consultation with other offices depending on whether the Complainant and Respondent are faculty, other academic appointees, staff, student employees, or students. Alternative Resolution may include, among other responses:

- separating the parties;
- providing for safety;
- referring the parties to counseling;
- mediation (except in cases of sexual violence);
- referral for disciplinary action;
- an agreement between the parties;
- conducting targeted preventive educational and training programs; and
- conducting a follow-up review to ensure that the resolution has been carried out effectively.

Alternative Resolution may be especially useful when:

- an investigation is not likely to lead to a resolution;
- both parties prefer an informal process; or
- a case involves less serious allegations.

The Title IX Officer has discretion to determine whether the complaint is appropriate for Alternative Resolution, to determine the type of resolution to pursue, and to stop the process at any time before its conclusion and move to a Formal Investigation or (if it applies) DOE Grievance Process.

Participation in Alternative Resolution is voluntary, meaning both the Complainant and the Respondent must agree to participate. If Alternative Resolution is selected, the Title IX Officer will provide timely written notice to both parties that includes:

- the allegations;
- the Title IX Officer has begun the process;
- the process is voluntary and will end upon either party's request;
- termination may result in Formal Investigation or (if it applies) a DOE Grievance Process (see Section V.A.5.b);
- they may be accompanied by an advisor throughout the process;
- the Title IX Officer will notify both parties of the process's outcome; and
- the process is private but not confidential, the Title IX Officer will maintain a record of the process and may share information with others if needed to carry out the resolution, and information shared by parties may be considered in any subsequent Resolution Process.

The Title IX Officer will oversee the Alternative Resolution process and, if other campus officials are involved in the process, maintain an appropriate level of involvement.

The Title IX Officer will complete the Alternative Resolution process promptly, typically within 30 to 60 business days of notifying the parties in writing of starting the process. However, the Title IX Officer may extend past 60 days for good cause. The Title IX Officer will notify the parties in writing of the reason for any extension and the projected new timeline. The actual time required will depend on the specific circumstances, including the complexity of the allegations and the nature of the alleged conduct. The Title IX Officer will consider, approve, and communicate extensions per written guidelines from the Systemwide Title IX Office.

Once the parties have agreed to the terms of an Alternative Resolution, the University will not conduct a Formal Investigation or (if it applies) DOE Grievance Process unless the Title IX Officer determines that the Respondent failed to satisfy the terms of the Alternative Resolution, or that the Alternative Resolution was unsuccessful in stopping the Prohibited Conduct or preventing its recurrence.

The Title IX Officer will keep records of all reports and conduct addressed through Alternative Resolution.

**b. Formal Investigation or DOE Grievance Process**

The Title IX Officer will begin a DOE Grievance Process when they determine it is necessary per [Appendix IV](#). This may happen after an Alternative Resolution to address DOE-Covered Conduct that ends before the parties agree on terms. The DOE Grievance Process begins with an investigation.

The Title IX Officer will begin a Formal Investigation when they decide not to close a report after their initial assessment, the alleged conduct is not DOE-Covered Conduct, and either (i) Alternative Resolution and Other Inquiry are not appropriate, or (ii) the parties do not agree to participate in Alternative Resolution or it ends before they agree on terms. In both Formal Investigations and DOE Grievance Process investigations:

The Title IX Officer may coordinate the investigation with other offices, depending on the identities of the Complainant and Respondent (that is, faculty, other academic appointees, staff, or students).

If the Complainant does not want an investigation, the Title IX Officer will seriously consider this preference. However, the Title IX Officer may determine an investigation is necessary to mitigate a risk to the campus community. If the Title IX Officer decides to open an investigation despite the Complainant's request, the Title IX Officer will: tell the Complainant of the decision before beginning the investigation or otherwise notifying the Respondent of the Complainant's identity; tell the Respondent that the Complainant did not request an investigation but the Title IX Officer determined one was necessary; and provide the Complainant with all information required by this Policy unless the Complainant states in writing that they do not want it.

If the Title IX Officer does not begin an investigation, they will inform the Complainant that this limits possible remedies. The Title IX Officer will nonetheless provide Mitigating Measures as appropriate and consistent with Complainant's privacy and the absence of an investigation.

When the Title IX Officer begins an investigation, they will give the parties a written summary of the allegations, an explanation of their rights, the procedures that will be followed, available resources, and this Policy. While the parties have the right to identify evidence and witnesses, the University bears the burden of proof and of gathering evidence sufficient to reach a determination regarding responsibility.

- i. *Timeframe*. The Title IX Officer will complete the investigation promptly, typically within 60 to 90 business days of notifying the parties in writing of the charges. However, the Title IX Officer may extend the timeframe past 90 days for good cause. The Title IX Officer will update parties periodically on the status of the investigation and notify them in writing of the reason for any extension and the projected new timeline. The actual time required

depends on the specific circumstances, including the complexity of the matter and the severity and extent of the alleged conduct. The Title IX Officer will consider, approve, and communicate extensions per written guidelines from the Systemwide Title IX Office.

If the police are also investigating the alleged conduct, the Title IX Officer will coordinate with the police but must nonetheless act promptly without delaying the investigation until the end of the criminal investigation.

- ii. *Disclosure of Information.* The investigation generally includes interviews with the parties and any witnesses, and a review of evidence. The Title IX Officer will share information with witnesses only as reasonably necessary to conduct a fair and thorough investigation. They will also counsel witnesses about keeping information learned through the investigation private to protect both the people involved and the integrity of the investigation. They will inform witnesses that directly related information they provide and their identities will likely be disclosed to the Complainant and Respondent.
- iii. *Right to an Advisor.* The Complainant and Respondent may have an advisor present when they are interviewed and at meetings. They may have other support persons present under other policies. Other witnesses may have an advisor present at the discretion of the Title IX Officer or as required by University policy or a collective bargaining agreement.
- iv. *Academic Freedom/Merit.* When the investigation implicates academic merit or academic freedom, the Title IX Officer will consult with the appropriate academic officer for relevant academic judgment.
- v. *Initiation of Investigation by University.* The Title IX Officer may choose to begin and conduct an investigation without a Complainant when there is, for example:
  - information indicating an ongoing threat to the University community;
  - a pattern of alleged sexually harassing conduct toward multiple people by the same Respondent that would, in the aggregate, create a hostile environment (as defined in this Policy) for a reasonable person; or
  - allegations of Prohibited Conduct covered by this Policy in the public realm (such as reports in the news or social media).
- vi. *Administrative Closure.* The Title IX Officer may close an investigation before completing it if they determine that a significant change in circumstances has so substantially impaired the investigation that they cannot reach reasonably reliable conclusions about whether the alleged conduct occurred. The Title IX Officer will still, when appropriate, take steps to stop the reported conduct, prevent its escalation or recurrence, and address its effects. They will also offer as appropriate resources to the parties and Mitigating Measures to the Complainant.

**c. Grievance/Complaint Procedures for Employees**

Instead of, or in addition to, reporting to the Title IX Officer or other Responsible Employee, a University employee may file a grievance or complaint. That grievance or complaint must meet all of the requirements, including time limits for filing, under the applicable complaint resolution or grievance procedure listed in *Appendix I: University Complaint Resolution and Grievance Procedures*. Any such grievance or complaint will be forwarded to the Title IX Officer for processing under this Policy, and the grievance or complaint procedure will be held in abeyance pending resolution under this Policy, unless the applicable collective bargaining agreement provides otherwise. After completion of the process under this Policy, the grievance or complaint may be reactivated under the applicable grievance or complaint procedure.

**d. Other Inquiry**

When a report is not closed after initial assessment yet is not appropriate for Alternative Resolution, Formal Investigation or a DOE Grievance Process because there is no individual identifiable Respondent over whom the Title IX Officer has jurisdiction, the Title IX Officer will:

- conduct an inquiry to try to determine what occurred, and
- take prompt steps reasonably calculated to stop any substantiated conduct, prevent its recurrence, and, as appropriate, remedy its effects.

Such an inquiry may be appropriate when, for example, the Complainant alleges Prohibited Conduct by an organization, a person whose identity is unknown, or a third party, or alleges conduct by multiple people that rises to the level of Prohibited Conduct only when considered in the aggregate.

The extent of the inquiry and responsive steps will depend on the specific circumstances. This includes, for example:

- the nature and location of the alleged conduct,
- the University's relationship to the Complainant, and
- the University's relationship to and level of control over the organization or person alleged to have engaged in the conduct.

The Title IX Officer will complete the inquiry promptly (typically within 60 days, unless extended for good cause), and notify the Complainant of the outcome.

**e. Notifications and Documentation**

When engaging in a Resolution Process provided for in this Section V.A.5, the Title IX Officer will provide written notices to the parties and keep records per guidelines issued by the Systemwide Title IX Office. The guidelines will address, for example:

- information provided to the parties about their rights and options;
- notices provided to the parties at the beginning and end of a process;
- documentation of the parties' agreement to engage in Alternative Resolution;

- documentation of resolutions reached through Alternative Resolution, including documentation to be obtained from any other campus officials involved in the resolution; and
- the types of documentation to be kept at the end of a process.

## 6. The Investigation Report and Outcome

If either a Formal Investigation or DOE Grievance Process investigation is conducted, the Title IX Officer will prepare a written report that includes:

- the factual allegations and alleged policy violations;
- statements of the parties;
- a summary of the evidence;
- an explanation of why any proffered evidence was not relied upon;
- credibility determinations when appropriate;
- findings of fact; and
- an analysis of whether this Policy was violated.

The report will also include the Title IX Officer's determination of whether the Respondent violated this Policy. However, in a DOE Grievance Process, and any time the Respondent is a student, the determination is only preliminary. In determining whether this Policy was violated, the Title IX Officer will apply the preponderance of evidence standard.

At the end of the investigation, the Title IX Officer will simultaneously provide the parties the Investigation Report. The report may be redacted to protect privacy (see APM-160 and other University policies governing privacy). The Title IX Officer will also inform the parties in writing of the outcome of the investigation and its rationale, and of any available appeal rights.

In a DOE Grievance Process, and any time the Respondent is a student, the Title IX Officer will inform the parties of their right to contest or not accept the investigator's preliminary determination and have a hearing to determine whether this Policy was violated. If they do, the next stage of the DOE Grievance Process or Formal Investigation is a hearing. (See *Appendix E: Sexual Violence and Sexual Harassment Student Investigation and Adjudication Framework for Non-DOE-Covered Conduct*, *Interim Appendix F: Sexual Violence and Sexual Harassment Student Investigation and Adjudication Framework for DOE-Covered Conduct*, *Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty*, and *Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel*.)

## 7. Remedy

- a. If the University finds Prohibited Conduct, the University will take prompt and effective steps reasonably calculated to stop the violation, prevent its recurrence, and, as appropriate, remedy its effects. For examples of available remedial measures, see Appendix III.

- b. If the remedy has not already been provided, the Title IX Officer will oversee its implementation in consultation with appropriate administrators. The Title IX Officer will consider whether any systemic remedies, such as enhanced training or improved security, are also appropriate.

## **8. Discipline**

- a. The Title IX Officer will forward the Investigation Report (with attachments) to the appropriate administrator responsible for possible further action, including discipline.
- b. Any member of the University community who is found to have engaged in Prohibited Conduct may be subject to disciplinary action, up to and including dismissal per the applicable University disciplinary procedure (Appendix II: University Disciplinary Procedures) or other policy.
- c. At the end of any disciplinary proceeding the Complainant and the Respondent will be contemporaneously informed in writing of:
  - the outcome, including the final determination regarding the alleged offense, any discipline, and the rationale for the results;
  - any available appeal rights and procedures; and
  - any subsequent change to the results and when results become final.

The University tries to finalize and notify parties of disciplinary decisions reasonably promptly per applicable procedures, depending on the severity and extent of the Prohibited Conduct and the complexity of the matter.

## **B. Location Responsibilities**

Each Location must do the following:

1. Designate and provide adequate resources and independence to a Title IX Officer. The responsibilities of the Title IX Officer include, but may not be limited to, the following duties:
  - a. Coordinate compliance with this policy, including investigations, reports and remedies.
  - b. Coordinate with other responsible units to ensure that Supportive and Remedial measures determined necessary by the Title IX Officer are provided.
  - c. Coordinate with other responsible units to ensure that local sexual violence and sexual harassment prevention education and training programs are offered and provided, as required by the Policy.
  - d. Provide educational materials to promote compliance with the Policy and familiarity with local reporting procedures.
  - e. Ensure University employees and contractors responsible for reporting or responding to reports of Prohibited Conduct, including those with responsibility in the investigation, adjudication and appeal processes, have proper training. Provide and track training for employees who are

- investigators, other key members of the Title IX Officer's staff, and hearing officers and coordinators per guidelines issued by the Systemwide Title IX Office. Ensure University training materials promote impartial investigations and adjudications. Make training materials publicly available on the campus website if required by law.
- f. Implement measures to help ensure University employees and contractors who are responsible for investigating, resolving, and adjudicating reports of Prohibited Conduct do not have a conflict of interest or bias for or against any individual party, or for or against complainants or respondents generally.
  - g. Respond promptly and equitably to reports of Prohibited Conduct according to the Policy.
  - h. Keep records of reports of Prohibited Conduct, and any actions taken in response to reports, including records of decisions regarding Supportive and Remedial Measures, investigations, resolutions, and disciplinary action, per University records management policies and guidelines issued by the Systemwide Title IX Office.
  - i. Identify and address any patterns or systemic problems that arise during the review of Prohibited Conduct reports.
  - j. Post on the sexual violence website the names and contact information of the Title IX Officer and of additional designated, trained, sexual harassment or sexual violence advisors.
2. Designate persons who can offer confidential consultations, without reporting the incident to the Title IX Officer, to any member of the University community seeking information, or advice about making a report of Prohibited Conduct. Each location will post information about how and where to contact confidential resources on its web site.

People who consult with such confidential resources will be advised that their discussions in these settings are not considered actual reports of Prohibited Conduct and that without additional action by the person, these discussions will not result in any formal action by the University to resolve their concerns.
  3. Establish an independent, confidential Advocacy Office for addressing Sexual Violence called *CARE: Advocacy Office for Sexual and Gender-Based Violence and Misconduct*.
  4. Provide a "Respondent Services Coordinator" who facilitates fair and equitable services for the Respondent.
  5. Establish a response team model consisting of two teams:
    - a. A Case Management Team (CMT) which maintains consistent coordination of reported sexual violence cases, ensures all cases are addressed promptly and equitably, and ensures the response is trauma-informed; and
    - b. A Coordinated Community Review Team (CCRT) responsible for a campus collaborative approach to preventing and addressing sexual violence. The



CCRT serves in an advisory capacity to campus leadership and community members about best practices in policies, education, prevention and response to sexual violence.

**Note:** The requirements of #3, 4, and 5 above are for locations with students only. However, ANR, UCOP, and LBNL should coordinate delivery of these services with associated campuses or affiliated organizations.

6. Provide mandatory annual training and education about Prohibited Conduct and how such conduct can be reported, to all students, faculty, other academic appointees, and staff per applicable State and federal law, and University policies.
7. Offer primary prevention programs and awareness campaigns to the University community to promote ongoing awareness of Sexual Violence. These campaigns will include, but are not limited to, education about the definition of consent, consensual relationships, options for bystander intervention, trauma-informed approaches, and risk reduction awareness information. These programs are to promote behaviors that foster healthy and respectful relationships while also encouraging a safe environment for bystanders to intervene in a potential case of Sexual Violence.
8. Follow University established and approved processes for investigation, adjudication, and discipline.
9. Provide comprehensive, regular training with a trauma-informed perspective for people responsible for responding to reports of Prohibited Conduct, including Advocacy and Respondent services, Alternative Resolution and Formal Investigation processes, and the hearing, remedy, discipline and appeal processes.
10. Publicize a location-specific process for reporting incidents of Prohibited Conduct.
11. Provide written explanation of rights and available options as outlined in this Policy including:
  - a. How and to whom to report alleged violations.
  - b. Options for notifying law enforcement and campus authorities; the right to be assisted by campus authorities in notifying law enforcement, if the Complainant so chooses; and the right to decline to notify such authorities.
  - c. The rights of Complainants regarding orders of protection, no-contact orders, restraining orders, or similar orders issued by criminal or civil courts, as well as the University's responsibilities to comply with such orders.
  - d. The importance of preserving evidence that may assist in proving that a criminal offense occurred or in obtaining a protection order.
  - e. Counseling, health assistance, mental health assistance, victim advocacy, legal assistance, visa and immigration assistance, and other services available within both the University and the community.

- f. Options for, and available assistance to change 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.
- g. Applicable procedures for institutional disciplinary action.
- h. Distribute and post this Policy. Each location is required to distribute this Policy to students, faculty, other academic appointees, staff, volunteers who regularly interact with students, and contractors who provide services involving regular interaction with students, by such means as websites, student information boards, student handbook, faculty handbook and staff websites and information boards and during training and student orientation.

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## VI. RELATED INFORMATION

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- A. University of California Standards of Ethical Conduct
- B. University of California Statement of Ethical Values

### Academic Personnel Manual

- A. Academic Personnel Manual (APM) Section 015, The Faculty Code of Conduct
- B. Academic Personnel Manual (APM) Section 016, University Policy on Faculty Conduct and the Administration of Discipline
- C. Academic Personnel Manual (APM) Section 035, Affirmative Action and Nondiscrimination in Employment
- D. Academic Personnel Manual (APM) Section 140, Non-Senate Academic Appointees/Grievances
- E. Academic Personnel Manual (APM) Section 150, Non-Senate Academic Appointees/Corrective Action and Dismissal
- F. Academic Personnel Manual (APM) Section 160, Academic Personnel Records/Maintenance of, Access to, and Opportunity to Request Amendment of

### Presidential Policies and Guidelines

- A. University of California Corrective Action PPSM 62
- B. University of California Investigatory Leave PPSM 63
- C. University of California Termination and Job Abandonment PPSM 64
- D. University of California Termination Appointment PPSM II-64
- E. University of California Complaint Resolution (Senior Managers) PPSM II-70
- F. University of California Complaint Resolution (Staff Personnel) PPSM 70
- G. University of California Discrimination, Harassment, and Affirmative Action in the Workplace

- H. [Policy on Student Conduct and Discipline](#)
- I. [University of California Policies Applying to Campus Activities, Organizations, and Students](#)
- J. [Student-Related Policy Applying to Nondiscrimination on the Basis of Sex](#)
- K. [Nondiscrimination Policy Statement for University of California Publications Regarding Student-Related Matters](#)
- L. [Business and Finance Bulletin RMP-2: Records Retention and Disposition: Principles, Processes, and Guidelines](#)
- M. [University of California Reporting Child Abuse and Neglect](#)
- N. [University of California Clery Act Policy – Campus Safety and Security Reporting](#)

### **Federal and State Regulations**

- A. [Fair Employment and Housing Act, Gov't Code section 12952](#)
- B. [Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e](#)
- C. [Title IX of the Education Amendments Act of 1972, 20 U.S.C. section 1681](#)
- D. [Violence Against Women Reauthorization Act \(VAWA\) of 2013](#)
- E. The Affordable Care Act, 18 U.S.C. section 18116

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## **VII. FREQUENTLY ASKED QUESTIONS**

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### **1. Who can be considered an advisor as described in this Policy?**

An advisor may be any person, except another party or 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 and manner of the advisor's participation in the proceedings as long as the restrictions apply equally to Complainants and Respondents. At the beginning of any Resolution Process, the Title IX Officer will inform parties of the University's rules of conduct during the process, and potential consequences if an advisor does not meet those standards, including disqualification from further services as the advisor.

### **2. What is a “result” or “outcome” of a disciplinary proceeding?**

A result or outcome includes a written description of any initial, temporary, and final decision made by any authorized person, which aims to resolve a disciplinary matter. The result must disclose any discipline imposed and the rationale for the result and the discipline.

### **3. How is “nudity” defined for the purposes of this Policy?**

“Nudity” means the absence of an opaque covering which covers the genitals, pubic hair, buttocks, perineum, anus or anal region of any person or any portion of the breasts at or below the areola.

**4. Why might some conduct prohibited by this Policy be sexual harassment in some cases but sexual violence or other prohibited behavior in others?**

This Policy prohibits a broad spectrum of conduct which may, depending on the circumstances, be appropriately charged as Sexual Harassment, Sexual Violence, or Other Prohibited Behavior. In deciding whether alleged conduct rises to the level of a Policy violation, and which Policy provision to charge, the Title IX Officer may consider both the specific conduct alleged and the surrounding circumstances, like:

- the severity of the conduct;
- where the conduct occurred (for example, a confined space or a public one);
- duration of the conduct;
- any contemporaneous statements or other behavior by the Respondent (for example lewd or threatening gestures, gender-based nonsexual conduct);
- whether contact occurred over or under clothing;
- the relationship between the parties (for example, whether there is a power imbalance);

and other relevant factors. For example, whether the Title IX Officer will charge a Respondent's alleged touching of a Complainant's buttocks as either Sexual Harassment or Sexual Assault – Contact will depend on the specific nature of the touching, and the context in which it occurred. Similarly, a Respondent's alleged publication of sexually explicit photos of a Complainant that is not an Invasion of Sexual Privacy as defined in this Policy might still, depending on the circumstances, be charged as Sexual Harassment.

**5. Does Sexual Assault include “rape” and “sexual battery” as those terms are used in the criminal law context?**

Yes. The types of conduct prohibited by this Policy include “rape” and “sexual battery” as defined in the California Penal Code. For additional questions about whether a specific type of conduct violates this Policy or the law, please contact your local CARE Advocate, UC Police, or Title IX Officer.

**6. Can parties be asked not to discuss the allegations under investigation? Once the outcome of an investigation or disciplinary proceeding under this Policy is disclosed to the parties, can they be asked to keep this information confidential?**

The Complainant and Respondent can be advised of the private and sensitive nature of the allegations, personnel and student discipline, and other matters that arise under this Policy but should not be restricted from discussing the allegations or gathering evidence (provided their conduct is not Retaliation as defined in Section II), or from further disclosing information about outcomes.

**7. Does the University need to conduct a Title IX investigation if a criminal investigation is taking place?**

A criminal investigation is intended to determine whether someone violated criminal law. At the end of the criminal process the person may be imprisoned or subject to

criminal penalties. The University has a duty under Title IX to resolve complaints promptly and equitably and to provide a safe and nondiscriminatory environment for all community members.

Because the purposes and the standards for criminal and Title IX investigations are different, the termination of a criminal investigation without an arrest or conviction does not affect the University's Title IX obligations. Even if a criminal investigation is ongoing, the University must still conduct its own Title IX investigation.

The University should notify Complainants of the right to file a criminal complaint and should not dissuade Complainants from doing so. Title IX does not require the University to report alleged conduct to law enforcement, but the University may have reporting obligations under laws such as the Clery Act and the California Child Abuse and Neglect Reporting Act (CANRA), and may report alleged conduct per memoranda of understandings between the University and the police.

**8. How should the University proceed when campus or local law enforcement agencies (“police”) are conducting a criminal investigation while the University is conducting a parallel Title IX investigation?**

If the Respondent's alleged conduct is also the subject of a criminal investigation, the Title IX Officer will coordinate its investigation with the police. The fact-finding portion of a Title IX investigation may be delayed temporarily during the evidence-gathering stage of the criminal investigation. During this delay, the University may put Interim Measures in place. The length of time for evidence gathering by criminal investigators will vary depending on the specific circumstances of each case.

**9. Is the University required to investigate information regarding sexual violence incidents shared by survivors during public awareness events, such as “Take Back the Night”?**

Responsible employees are not required to report incidents that they learn of while attending public awareness events, such as “Take Back the Night,” and the University is not required to open investigations based on statements made during such events.

**10. Are Responsible Employees required to report disclosures about Prohibited Conduct received in the course of conducting Institutional Review Board–approved or certified exempt human subjects research?**

Responsible Employees are not required to report disclosures of Prohibited Conduct made by someone when participating in human subjects research that has either been approved by an Institutional Review Board (IRB) or certified as exempt from IRB review under one or more of the categories in 45 CFR 46.104. When conducting research that is designed, or likely, to elicit information about sexual violence or sexual harassment, researchers are strongly encouraged to provide information about University and community resources to research participants.

Disclosures of incidents of alleged Prohibited Conduct made during a person's participation as a subject in an IRB–approved or certified exempt human subjects research protocol will not be considered notice to the University for purposes of

triggering its obligation to investigate. The reporting exemption that this section describes (for disclosures made by a person when participating in IRB-approved or certified exempt human subjects research) does NOT apply to disclosures made to research personnel outside of the course of the research protocol (for example, to faculty during office hours or while providing academic advising).

This reporting exemption does not affect mandatory reporting obligations under federal, state, or local laws, such as the Clery Act and the California Child Abuse and Neglect Reporting Act (CANRA), and other policies or laws that require reporting to campus or local law enforcement, or Child Protective Services.

**11. I am covered by a collective bargaining agreement. Does this Policy apply to me?**

Yes. However, please note that consequences of non-compliance with this Policy, and relevant complaint resolution, grievance and disciplinary procedures, for employees who are covered by a Memorandum of Understanding with an exclusive bargaining agent are governed by the appropriate collective bargaining agreement.

**12. What is the significance of the Title IX regulations issued by the U.S. Department of Education in 2020?**

The federal Title IX regulations that went into effect August 14, 2020 cover certain forms of sexual misconduct, if the conduct occurred in a University program or activity, while the Complainant was in the United States. They require the University to follow a specific grievance process that includes a live hearing with direct questioning by parties' advisors before disciplining a Respondent for conduct covered by the regulations. Though the University would prefer not to implement some components of the process, compliance with the regulations is a condition of receiving federal funds such as Federal Pell Grants for students. So, the University will implement the DOE Grievance Process, but only when required (in response to DOE-Covered Conduct). To investigate conduct not covered by the regulations, the University will continue following the Formal Investigation process in place before the regulations were issued. The Formal Investigation process may include a live hearing, but only when the respondent is a student—and the hearing does not include direct questioning by advisors. Though administering two separate processes for similar conduct is more difficult, the University believes this provides the most protection for our community. Alternative Resolution is also available in some cases, even if they are covered by the regulations. More information about DOE-Covered Conduct is in [Appendix IV](#).

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## **VIII. REVISION HISTORY**

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**January 1, 2022:** This Policy was updated to comply with Senate Bill 493, which amended Section 66262.5 and added Section 66281.8 of the California Education Code. Provisions specifically addressing Prohibited Conduct in the clinical setting were also added.

**August 14, 2020:** This Policy was updated on an interim basis to comply with federal Title IX regulations effective August 14, 2020.

**July 31, 2019:** Revised version reflecting comprehensive, systemwide review issued

**August 14, 2018:** Addition of FAQ #10 regarding the obligations of Responsible Employees when conducting Institutional Review Board—approved or certified exempt human subject research.

**June 5, 2018:** Technical revision: updated contact information.

**September 1, 2017:** Technical revisions:

- updated the Policy responsible office and contact information
- added links of the Staff and Faculty Adjudication Frameworks to Appendix II: University Disciplinary Procedures.

This Policy was remediated to meet Web Accessibility Content Guidelines (WCAG) 2.0.

**November 7, 2016:** Deleted the rescinded PPSMs #65, #67 and #71 from the Policy document and updated the FAQs and the links on Appendix I under Academic and Staff Personnel.

**January 1, 2016:** This Policy updated the processes for reporting and responding to complaints and added a new definition of “responsible employees.”

**June 17, 2015:** This Policy was updated on an Interim basis effective until December 31, 2015.

**February 25, 2014:** This Policy was reformatted into the standard University policy template.

As a result of the issuance of this Policy, the following documents are rescinded as of the effective date of this Policy and are no longer applicable:

- *University of California Policy on Sexual Harassment*, dated February 10, 2006
- *University of California Procedures for Responding to Reports of Sexual Harassment*, dated December 14, 2004
- *University of California Policy on Sexual Harassment and Complaint Resolution Procedures*, dated April 23, 1992
- *University of California Policy on Sexual Harassment and complaint Resolution Procedures*, dated March 10, 1986

Future revisions to this Policy will be circulated under standard procedures for Presidential Policies. The review will include circulation under the standard Academic Personnel Manual (APM) process, with final authority resting with the President.

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## IX. APPENDICES

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### Appendix I: Applicable Complaint Resolution and Grievance Policies

**Academic Personnel:**

Members of the Academic Senate	<u>Senate Bylaw 335</u>
Non-Senate Academic Appointees	<u>APM - 140</u>
Exclusively Represented Academic Appointees	<u>Bargaining Units &amp; Contracts</u>

**Students:**

Policies Applying to Campus Activities, Organizations and Students, Section 110.00

**Staff Personnel:**

Complaint Resolution (Senior Managers)	<u>PPSM II-70</u>
Complaint Resolution (Staff Personnel)	<u>PPSM 70</u>
Exclusively Represented Staff Personnel	<u>Bargaining Units &amp; Contracts</u>
Lawrence Berkeley National Laboratory Employees	<u>Applicable Laboratory policy</u>

**All members of the University community:**

The University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (Whistleblower Policy) protects the reporting and investigation of violations of state or federal laws or regulations, including sexual harassment.

**All University employees and applicants for employment:**

The University's Whistleblower Protection Policy provides a complaint resolution process for employees and applicants for employment who have been subjected to retaliation as a result of having made a protected disclosure under the Whistleblower Policy or refused to obey an illegal order.

**Appendix II: University Disciplinary Policies and Procedures**

The following are the University's disciplinary policies and procedures:

- A. The Faculty Code of Conduct (APM - 015) (as approved by the Assembly of the Academic Senate and by The Regents) Establishes the ethical and professional standards which University faculty are expected to observe.

Because the forms of unacceptable behavior listed in The Faculty Code of Conduct also apply to sexual violence or sexual harassment, a violation of the University's Policy on Sexual Harassment and Sexual Violence may be a violation of the Faculty Code of Conduct. The University Policy on Faculty Conduct and the Administration of Discipline (APM - 016), as approved by the Assembly of the Academic Senate and by The Regents, outlines sanctions and disciplinary procedures for faculty.

The Sexual Violence and Sexual Harassment Senate and Non-Senate Faculty Adjudication Framework sets forth the University's procedures for resolving



complaints of sexual violence and sexual harassment where the Respondent is a member of the University faculty.

- B. Provisions of the policy on *Non-Senate Academic Appointees/Corrective Action and Dismissal (APM - 150)* (non-exclusively represented academic appointees) and collective bargaining agreements (exclusively represented academic appointees) allow for corrective action, investigatory leave, or dismissal for conduct which violates University policy.

The *Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel* sets forth the University's procedures for resolving complaints against non-Senate academic appointees subject to APM-150.

- C. *Appendix E: Sexual Violence and Sexual Harassment Student Investigation and Adjudication Framework for Non-DOE-Covered Conduct* and *Interim Appendix F: Sexual Violence and Sexual Harassment Student Investigation and Adjudication Framework for DOE-Covered Conduct* of the Policies Applying to Campus Activities, Organizations, and Students sets forth these procedures when DOE-Covered Conduct of the Policies Applying to Campus Activities, Organizations, and Students sets forth the University's procedures for resolving complaints of sexual violence and sexual harassment against students, including the discipline of students found in violation of University policy. See also, the policy on Student Conduct and Discipline.

- D. Provisions of the *Personnel Policies for Staff Members*, and the Lawrence Berkeley National Laboratory personnel policies (applicable to non-exclusively represented staff employees), and collective bargaining agreements (applicable to exclusively represented staff employees) prohibit conduct that violates University policy for sexual violence or sexual harassment and provide for disciplinary action for violating University policy.

- *PPSM-62: Corrective Action*
- *PPSM-63: Investigatory Leave*
- *PPSM-64: Termination and Job Abandonment*
- *PPSM II-64: Termination of Appointment*

The *Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel* sets forth the University's procedures for resolving complaints where the Respondent is University personnel other than faculty.

### **Appendix III: Supportive and Remedial Measures**

When determining Supportive and Remedial Measures (as defined in [Section II](#)), the Title IX Officer will assess how much the University can protect the parties' privacy while also ensuring the measures are effective. The Title IX Officer will explain to the parties any limits on protecting their privacy.

In determining Supportive Measures, the Title IX Officer will tailor the measures to the circumstances of each case, minimize burdens on the parties, and avoid depriving the parties of educational and employment opportunities as much as practicable.

In matters involving DOE-Covered Conduct, the Title IX Officer will ensure Supportive Measures are non-disciplinary and non-punitive, and that they do not unreasonably burden a party.

When determining limitations on parties' contact, the Title IX Officer will follow the parameters in paragraph vi (No-Contact Options) below.

In addition to Supportive and Remedial measures, the Title IX Officer may take other actions to stop reported conduct, prevent its escalation or recurrence, and address its effects.

Examples of services, accommodations, and other available measures include:

**i. *Campus Services Generally:***

Academic, employment, and other support including tutoring, counseling, disability services, health and mental health services, family planning services, survivor advocacy, housing assistance, legal assistance, referral to employee assistance program, information about the right to report a crime to campus or local law enforcement, and written materials prepared by the Title IX Officer pursuant to V.B of the Policy.

**ii. *Measures Available to Employees, Including Academic, Staff and Student Employees:***

Change to a different workstation, schedule, work location, unit, department, or position for which the employee is qualified provided that, in the case of a Complainant the change is voluntary and equitable.

**iii. *Training and Education of the Respondent:***

The Respondent may be required to undergo training, including sexual harassment prevention training, anger management training, and periodic refresher classes.

**iv. *Campus Services Modified:***

- If a campus service is not generally available or a fee is imposed, access may be arranged or fees waived when appropriate.
- Comprehensive, holistic survivor services including additional medical, counseling and academic support services.
- Any other accommodations or Interim Measures that are reasonably available once a Complainant has requested them.

**v. *Additional Educational Measures for Students:***

- Change advisors, composition of dissertation committee, class sections and similar schedule adjustments.

- Arrange extra time to complete academic requirements of a class or program, or to re-take a class or withdraw from a class, without an academic or financial penalty if the University delayed such accommodations after it reasonably should have known of the violation.
- Review any disciplinary actions taken against the Complainant subsequent to the alleged violation to determine whether there is a causal connection between the violation and the Complainant's misconduct.

vi. *No-Contact Options:*

- Complainant and Respondent Options. The Title IX Officer will:
  - Ensure the parties have been notified of options to avoid contact;
  - Assist the parties in changing, as appropriate, living, transportation, dining, and working situations, or academic and extracurricular activities;
  - Assist the parties in requesting and understanding the terms, parameters and consequence of violating no-contact orders; and
  - Arrange for escort services to ensure that the parties can move safely to work, classes, and activities.
- Parameters for No-Contact Orders Between Parties:
  - A no-contact order restricting a party from contacting the other party may be appropriate as a Supportive Measure (Interim or Mitigating) or a Remedial Measure (see Section II.C.3). No-contact orders may also be appropriate under other University policies.
  - A no-contact order issued as an Interim Measure may be unilateral (prohibiting one party from contacting the other) or mutual (prohibiting both parties from contacting each other). However, the University will not prohibit the Complainant from contacting the Respondent unless the specific circumstances indicate the restriction is necessary or justifiable to protect the Respondent's safety or well-being, or to respond to interference with a Resolution Process.
  - A no-contact order issued as a Remedial Measure will restrict only a party found in violation of University policy.
- A no-contact order issued as an Interim or Remedial Measure will include an explanation of its terms, including what conduct could violate it and result in corrective action. If the no-contact order is mutual, then the notice will also explain why it is mutual.
- Respondent's Restrictions:
  - Allowing the Complainant to take regular sections of courses while arranging for the Respondent to take the courses online or through independent study;
  - Moving the Respondent to a different residence hall or work space;

- Forbidding the Respondent to participate in specific athletic or extracurricular events or social clubs (including fraternities or sororities);
- Requiring that the Respondent observe no-contact orders from the Complainant for a period of time (up to the Complainant's graduation or other departure from the campus) via work scheduling or class changes;
- Prohibiting the Respondent from attending classes for a period of time, transferring the Respondent to another campus, or putting the Respondent on investigatory leave; and
- Excluding the Respondent from the campus or workplace.

**vii. *Other Measures Devised by the Title IX Officer or Other Administrator.***

## Appendix IV: DOE-Covered Conduct

**Summary:** Per the federal Title IX regulations effective August 14, 2020 (DOE Regulations), the University cannot discipline a Respondent for DOE-Covered Conduct unless it follows the DOE Grievance Process. The DOE Grievance Process is triggered only by a DOE Formal Complaint that alleges DOE-Covered Conduct. Only a qualified Complainant (Section A.1, below) or the Title IX Officer (Section A.4, below) can make a DOE Formal Complaint. Instead of a DOE Grievance Process, the Title IX Officer could in some cases potentially open an Alternative Resolution in response to such a complaint. The DOE Grievance Process and Alternative Resolution are described in Section V.A.5 of this Policy.

When allegations of DOE-Covered Conduct in a DOE Formal Complaint and allegations of other Prohibited Conduct or of violations of other University policies arise out of the same facts or circumstances, then the University will address all allegations together through either the DOE Grievance Process procedures or Alternative Resolution.

When allegations do not include DOE-Covered Conduct, then the Title IX Officer will determine whether to open a different Resolution Process per the Initial Assessment process in Section V.A.3 of the Policy.

To ensure the University provides a DOE Grievance Process when (and only when) required, and otherwise complies with the DOE Regulations, the Title IX Officer will follow the Initial Assessment process outlined in Section A upon receiving a report. The Title IX Officer will document their decision-making per written guidelines issued by the Systemwide Title IX Office.

### Process:

- A. Initial Assessment. The Title IX Officer will assess the report to determine whether to open a DOE Grievance Process, Alternative Resolution, or other Resolution Process.
  1. *Formal Complaint from a Qualified Complainant*. The Title IX Officer will first determine whether they received a DOE Formal Complaint from a qualified Complainant. To be such, the report must:
    - allege conduct that occurred on or after August 14, 2020;
    - be in writing;
    - be made by the person who allegedly experienced the harassment, and not by a third party;
    - be made by a person qualified to make it under the DOE Regulations, meaning someone participating or attempting to participate in a University program or activity;
    - be against an identified Respondent;
    - request an investigation; *and*
    - allege DOE Sex-Based Misconduct, as defined in Section B (DOE-Covered Conduct) below.

Yes DOE Formal Complaint: If the report is a DOE Formal Complaint from a qualified Complainant, the Title IX Officer must next determine whether they are required to “dismiss” it (*Required Dismissal of Formal Complaint*, below).

No DOE Formal Complaint: If the report is not a DOE Formal Complaint from a qualified Complainant, the Title IX Officer must still determine whether the alleged conduct is DOE-Covered Conduct (*DOE-Covered Conduct*, below); if it is, the Title IX Officer may need to themselves “sign” a DOE Formal Complaint (*Decision to Open or Close*, below). Note: Before signing themselves, the Title IX Officer will inform a qualified Complainant of how to make a DOE Formal Complaint, and give them that opportunity.

2. *Required Dismissal of Formal Complaint.* If the report is a DOE Formal Complaint from a qualified Complainant, the Title IX Officer will next determine whether they must “dismiss” the complaint or any of its allegations. They must “dismiss” the complaint if the conduct, even if true, is not DOE-Covered Conduct, as defined in Section B (*DOE-Covered Conduct*, below).

This “dismissal” is required by the DOE regulations, and means the Title IX Officer will no longer consider the allegations DOE-Covered Conduct. It does not necessarily mean the Title IX Officer will close the matter. Rather, the Title IX Officer will decide whether and how to continue resolution of the dismissed allegations, as explained in Section C, below.

No Dismissal: If dismissal is not required, the Title IX Officer will begin either a DOE Grievance Process or Alternative Resolution.

Yes Dismissal: If dismissal is required, the Title IX Officer will “dismiss” the complaint per Section C (*Required Dismissal of Formal Complaint*, below).

3. *DOE-Covered Conduct.* If the report is not a DOE Formal Complaint from a qualified Complainant, the Title IX Officer will determine whether the report is nonetheless of DOE-Covered Conduct, as defined in Section B (*DOE-Covered Conduct*, below).

No DOE-Covered Conduct: If the conduct is not DOE-Covered Conduct, this is the end of the DOE process. The Title IX Officer will continue their assessment under Section V.A.3 of the Policy and decide whether to open a different Resolution Process.

Yes DOE-Covered Conduct: If the conduct is DOE-Covered Conduct, the Title IX Officer will decide whether to close the matter or, instead, open a DOE Grievance Process, Alternative Resolution, or Other Inquiry (*Decision to Close or Open*, below).

4. *Decision to Close or Open.* If the Title IX Officer did not receive a DOE Formal Complaint from a qualified Complainant, yet the alleged conduct is DOE-Covered Conduct, then they must either:
- close the matter,
  - “sign” a DOE Formal Complaint themselves and open either a DOE Grievance Process or Alternative Resolution, *or*
  - open an Other Inquiry (if it applies).

Decision to Close. The Title IX Officer may decide to close the matter when, for example, the Complainant does not want an investigation and the Title IX Officer determines one is not necessary.

Decision to Sign. The Title IX Officer may decide to sign a DOE Formal Complaint themselves when, for example:

- the Complainant does not want an investigation, but the Title IX officer determines one is necessary (see Section V.A.5.b)
- the Complainant does want an investigation, but is not qualified to make a DOE Formal Complaint themselves because they are not participating or attempting to participate in a University program or activity (for example, they are a former employee or student, or third party)
- the Complainant’s identity is unknown (for example, when the Complainant reported anonymously or a third party report did not identify the Complainant)

Decision to Open Other Inquiry. The Title IX Officer may decide to open an Other Inquiry when the University cannot discipline the Respondent—for example, when the Respondent is not an employee or a student.

Complainant Rights. If the Title IX Officer signs the DOE Formal Complaint, they will notify the person who allegedly experienced the conduct, if known, who will be and have all rights of a Complainant in the Resolution Process.

- B. DOE-Covered Conduct. Conduct is DOE-Covered Conduct if all of the below are true:

1. *Date:* The alleged conduct occurred on or after August 14, 2020.
2. *Territoriality.* The Complainant was in the United States when the conduct allegedly occurred.
3. *Program or Activity.* The conduct occurred in a University program or activity, meaning the location was either:
  - on-campus, *or*
  - off-campus, and the conduct occurred:
    - in the context of University operations;

- at a location, event or circumstance over which the University exercised substantial control over the Respondent and the context in which the conduct occurred; *or*
  - at a building owned or controlled by a student organization that is officially recognized by the University.
4. *DOE Sex-Based Misconduct*. The alleged conduct is DOE Sex-Based Misconduct, meaning it is any of the following:
- a. conduct by an employee that meets the definition of *Quid Pro Quo* Sexual Harassment in Section II of the Policy;
  - b. unwelcome sexual or other sex-based conduct (as defined in Section II of the Policy) that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denied the Complainant equal access to the University’s programs or activities;
  - c. conduct that meets the definition of Sexual Assault-Penetration;
  - d. intentionally touching Complainant’s intimate body part (genitals, anus, groin, breast, or buttocks) without the Complainant’s consent (as defined in Section II of the Policy);
  - e. conduct that meets the definition of Relationship Violence in Section II of the Policy;
  - f. conduct that meets the definition of Stalking in Section II of the Policy;
  - g. sexual intercourse with a person under the age of 18; *or*
  - h. conduct that meets the definition of Invasion of Sexual Privacy in Section II of the Policy, and that a reasonable person would determine was so severe, pervasive, and objectively offensive that it effectively denied the Complainant equal access to the University’s programs or activities.
- C. Required Dismissal of Allegations. The Title IX Officer must “dismiss” allegations in a DOE Formal Complaint if:
- they determine during the Initial Assessment that the alleged conduct, even if true, is not DOE-Covered Conduct, as defined in Section B (*DOE-Covered Conduct*, below), *or*
  - they determine during the investigation that the alleged conduct, even if true, did not occur in a University program or activity or that the Complainant was not in the United States at the time of the alleged conduct.
1. *Significance of Dismissal*. As noted above, “dismissal” means the Title IX Officer will no longer consider the allegations DOE-Covered Conduct. It does not necessarily mean the Title IX Officer will close the matter. Rather, the Title IX Officer will decide whether and how to continue resolution of the dismissed allegations.



If as a result of dismissal there are no allegations of DOE-Covered Conduct, then any further investigation will be as Formal Investigation (see Section V.A.5 of this Policy).

If after the dismissal there are still other allegations of DOE-Covered Conduct, then the Title IX Officer will continue following the procedures in the DOE Grievance Process for all allegations, per Section D.2 (*Consolidation of DOE-Covered Conduct Allegations with other Prohibited Conduct Allegations*); that is, the Title IX Officer will notify the parties that the dismissed allegations are not covered by the DOE Regulations, but will still process all allegations under the DOE Grievance Process for clarity and consistency.

If the matter is in Alternative Resolution, the Title IX Officer may continue with that process, but will notify the parties which allegations were dismissed and which (if any) continue to be considered DOE-Covered Conduct.

2. *Notice of Dismissal.* If the Title IX Officer is required to “dismiss” allegations from a DOE Formal Complaint, they will notify the parties in writing:
  - a. of the allegations dismissed and the reasons;
  - b. whether they will continue resolution of the dismissed allegations and, if so, under what Resolution Process;
  - c. that the parties can appeal the dismissal on the grounds listed below;
  - d. that the parties will be notified in writing if the other party appeals;
  - e. that the parties will have equal rights during any appeal process, including the opportunity to submit a written statement in support of, or challenging, the dismissal;
  - f. that a written decision on the appeal and the rationale will be issued simultaneously to both parties;
  - g. contact information for the appeal officer; and
  - h. that this Policy prohibits Retaliation.
3. *Grounds for Appeal of Dismissal.* The appeal should identify the reason the party is challenging the dismissal on one or more of the available grounds:
  - a. there was procedural error that affected the decision to dismiss; procedural error refers to alleged deviations from University policy, and not challenges to policies or procedures themselves;
  - b. there is new evidence that was not reasonably available at the time of the decision to dismiss that could affect the decision; or
  - c. the Title IX Officer or investigator had a conflict of interest or bias that affected the decision.
4. *Commencing an Appeal of Dismissal.* An appeal must be submitted to the appeal officer within 5 business days after notice of dismissal. The appeal must identify the grounds for appeal and contain specific arguments supporting each ground. The appeal officer will notify the other party of the appeal and that the other party can submit a written statement in response to the appeal, within three business days.

5. *Standards for Deliberation.* The appeal officer will decide whether the appealing party has proven the asserted grounds for appeal. They will consider the notice of dismissal, the appeal statements of the parties, and any additional information from the Title IX Officer.
  6. *Decision by Appeal Officer.* The appeal officer may:
    - a. uphold the dismissal;
    - b. overturn the dismissal; or
    - c. in appeals alleging new evidence, send the case back to the Title IX Officer with a request to determine whether the new evidence affects the dismissal and report back to the appeal officer.
  7. *Notice of Decision.* Within 10 business days of receiving the appeal, the appeal officer will provide their written decision to the parties and the Title IX Officer, to include:
    - a. a statement of the grounds identified on appeal;
    - b. a summary of the information considered by the appeal officer; and
    - c. the decision of the appeal officer and the rationale for the decision.
- D. Case Consolidation. The following provisions apply when the University opens a DOE Grievance Process.
1. *Consolidation of DOE Formal Complaints.* The Title IX Officer may consolidate allegations of DOE-Covered Conduct against multiple respondents, by multiple complainants, or by one party against the other party, when the allegations arise out of the same facts or circumstances.
  2. *Consolidation of DOE-Covered Conduct Allegations with other Prohibited Conduct Allegations.* When allegations of DOE-Covered Conduct and allegations of other Prohibited Conduct or of violations of other University policies arise from the same facts or circumstances, the Title IX Officer will process all allegations under the DOE Grievance Process procedures for clarity and consistency. The Title IX Officer will clearly document and inform the parties of which allegations are and are not DOE-Covered Conduct.

## **Appendix V: Prohibited Conduct in the Context of Patient Care.**

There are many circumstances in which a health care provider or health care worker may touch or penetrate a patient's body as a legitimate part of the patient's health care. On the other hand, conduct that a health care provider or health care worker engages in with a sexual purpose is never a legitimate part of a patient's health care. So when Prohibited Conduct allegedly occurs in the context of patient care, the Title IX Officer will refer to this Appendix V and, when indicated, apply its definitions.

**A. Application.** The Title IX Officer will apply the definitions in Section B of this Appendix V to allegations of Prohibited Conduct if:

- a. the alleged conduct occurred during or in connection with a clinical encounter in which the Complainant was a patient and the Respondent was a health care provider or health care worker; and
- b. the allegation is that the Respondent, for a sexual purpose:
  - o penetrated the Complainant's vagina or anus with either (a) any part of the Respondent's hand or (b) a medical device (Sexual Assault – Penetration);
  - o touched the Complainant's intimate body part (Sexual Assault – Contact);
  - o made the Complainant touch themselves on an intimate body part (Sexual Assault – Contact);
  - o engaged in Sexual Harassment (Quid Pro Quo or Hostile Environment);
  - o watched or enabled others to watch Complainant's nudity or sexual acts (Invasion of Sexual Privacy); or
  - o made or attempted to make photographs (including videos) or audio recordings, or posted, transmitted or distributed such recorded material, depicting the Complainant's nudity or sexual acts (Invasion of Sexual Privacy).

For all other allegations (such as that Respondent penetrated Complainant's mouth with Respondent's genitalia, used depictions of Complainant's sexual activity to extort Complainant, or exposed their genitals), the Title IX Officer will apply the definitions in Section II (not this Appendix V).

## **B. Definitions.**

### **1. Prohibited Conduct.**

- a. **Sexual Assault – Penetration.** Penetration, no matter how slight, of the Complainant's vagina or anus by any part of the Respondent's hand or by a medical device, if the Respondent engaged in the conduct for a sexual purpose.
- b. **Sexual Assault – Contact.** Intentionally --
  - touching Complainant's intimate body part (genitals, anus, groin, breast, or buttocks), or
  - making the Complainant touch themselves on an intimate body part,

whether the intimate body part is clothed or unclothed, if the Respondent engaged in the conduct for a sexual purpose.

**c. Invasions of Sexual Privacy.** For a sexual purpose:

- watching or enabling others to watch the Complainant's nudity or sexual acts; or
- making or attempting to make photographs (including videos) or audio recordings, or posting, transmitting or distributing such recorded material, depicting the Complainant's nudity or sexual acts.

**d. Sexual Harassment.** Conduct that meets the definition of Pro Quo Sexual Harassment or Hostile Environment Sexual Harassment as defined in Section II of the SVSH Policy, if Respondent engaged in the conduct for a sexual purpose.

**Note on Sexual Purpose:** In determining whether the Respondent engaged in conduct for a sexual purpose, the Title IX Officer will consider all relevant facts and circumstances, such as whether the conduct was Clinically Indicated. Whether the conduct was Clinically Indicated is typically relevant to but not determinative of whether Respondent engaged in Prohibited Conduct. A Respondent has a "sexual purpose" if, for example, they engage in conduct with any sexual motivation, for sexual gratification, or as an expression of dominance.

**2. Clinical Encounter:** An inpatient visit, medical office visit, or ancillary service visit during which a patient has a direct interaction with a health care provider or worker, where a health care provider has responsibility for diagnosing, evaluating, or treating the patient's condition, or a health care worker is tasked with delivering a health care item or service (for example, a test or procedure) prescribed by a health care provider.

**3. Clinically Indicated:** Health care services are clinically indicated in either of the following circumstances.

**a. Clinical Care:**

- a health care provider, exercising prudent clinical judgment, would provide them to a patient for the purpose of preventing, evaluating, diagnosing, or treating an illness, injury, disease, condition, or its symptoms;
- as performed, they meet the applicable Standard of Care (as defined below);
- as performed, they are appropriate, in terms of type, frequency, extent, site, and duration; and
- as performed, they are considered effective for the patient's illness, injury, disease, condition, or symptoms.

**b. Research or Clinical Trial:** They are required for the performance of a clinical trial approved by an IRB with jurisdiction, and are provided consistent with the IRB-approved protocol and with the IRB-approved consent process.

**Note on Informed Consent:** “Informed consent” of a patient or the patient’s legally authorized representative to an examination or procedure the health care provider knows or should know is not Clinically Indicated, or to the making or distribution of media involving an examination or procedure for purposes unrelated to Clinically Indicated patient care, or legitimate research or education activities, is not a defense to an allegation of Prohibited Conduct under the SVSH Policy.

4. **Standard of Care:** The reasonable degree of skill, knowledge and care, based on credible scientific evidence published in current peer-reviewed medical literature, and ordinarily possessed and exercised by members of a person’s profession and specialty under similar circumstances. The Standard of Care encompasses whether and under what circumstances a procedure is performed; the way it is performed; and whether and if so in what manner informed consent should be obtained prior to performance (for example, whether consent must be obtained in writing, whether documentation of consent in the medical record is required, or whether it may be implied under the circumstances, and the required content of the consent discussion, form, or both).