



# Sexual Violence and Sexual Harassment

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Academic Officer:	Vice Provost – Academic Personnel and Programs
Academic Office:	APP – Academic Personnel and Programs
Student Officer:	VP – Student Affairs
Student Office:	SA – Student Affairs
Staff Officer:	VP – Human Resources
Staff Office:	HR – Human Resources
Issuance Date:	1/1/16
Effective Date:	1/1/16
Last Review Date	6/7/15
Scope:	This Policy applies to all University employees as well as undergraduate, graduate, and professional students (hereafter referred to as “students”). 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 assistance with incidents of sexual violence, sexual harassment, dating violence, domestic violence, and stalking, please contact your Title IX Officer. If you are a student and desire confidential assistance contact your local CARE Advocate. Local resource information can be found at <http://sexualviolence.universityofcalifornia.edu/get-help/index.html>.**

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## I. POLICY SUMMARY

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The University of California is committed to creating and maintaining a community dedicated to the advancement, application and transmission of knowledge and creative endeavors through academic excellence, where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Every member of the community should be aware that the University prohibits sexual violence and sexual harassment, retaliation, and other prohibited behavior (“Prohibited Conduct”) that violates law and/or University policy. The University will respond promptly and effectively to

reports of Prohibited Conduct and will take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates this policy on Sexual Violence and Sexual Harassment (hereafter referred to as *Policy*).

This *Policy* addresses the University of California’s responsibilities and procedures related to Prohibited Conduct in order to ensure an equitable and inclusive education and employment environment free of sexual violence and sexual harassment. The *Policy* defines conduct prohibited by the University of California and explains the administrative procedures the University uses to resolve reports of Prohibited Conduct.

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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 both persons 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 persons involved should 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 shall not provide a valid excuse 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. due to the influence of drugs, alcohol, or medication, unable to understand the fact, nature, or extent of the sexual activity; or
  - c. unable to communicate due to a mental or physical condition.

**B. Prohibited Conduct**

**1. Sexual Violence:**

- a. **Sexual Assault - Penetration:** Without the consent of the Complainant, penetration, no matter how slight, of the vagina, anus, or mouth by a penis; or the vagina or anus by any body part or object.
- b. **Sexual Assault - Contact:** Without the consent of the Complainant, touching an intimate body part (genitals, anus, groin, breast, or buttocks) (i) unclothed or (ii) clothed.

**Note:** As this definition encompasses a broad spectrum of conduct, not all of which constitutes sexual violence. The Title IX Officer will determine whether the allegation should be treated as sexual violence or sexual harassment. (See FAQ #4 for more information)

**Note:** Sexual Assault--Penetration and Sexual Assault - Contact are aggravated when it includes 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, to do or submit to something that they would not otherwise do).
  - deliberately causing a person to be incapacitated (through drugs or alcohol);
- Intentionally taking advantage of the other person's incapacitation (including voluntary intoxication).
- Recording, photographing, transmitting, or distributing intimate or sexual images without the prior knowledge and consent of the parties involved.

c. **Relationship Violence:**

i. **Dating Violence:** Conduct by a person who is or has been in a romantic or intimate relationship with the Complainant that intentionally, or recklessly, causes bodily injury to the Complainant or places the Complainant in reasonable fear of serious bodily injury. The nature of the relationship between the Complainant and Respondent is determined by the length, type, and frequency of interaction between them.

ii. **Domestic Violence:**

Conduct by a current or former spouse or intimate partner of the Complainant; or a person with whom the Complainant shares a child in common, that intentionally, or recklessly, causes bodily injury to the Complainant or another, or places the Complainant or another in reasonable fear of serious bodily injury.

d. **Stalking:** Repeated conduct directed at a Complainant (e.g., following, monitoring, observing, surveilling, threatening, communicating or interfering with property), of a sexual or romantic 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 of a non-sexual nature is addressed by other University policies including but not limited to the [Policy on Student Conduct and Discipline Section 102.10](#).

2. **Sexual Harassment:**

a. Sexual Harassment is unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal or physical conduct of a sexual nature when:

i. *Quid Pro Quo*: a person's submission to such 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

ii. *Hostile Environment*: such conduct is sufficiently severe 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 and services of the University and creates an environment that a reasonable person would find to be intimidating or offensive.

b. Consideration is given to the totality of the circumstances in which the conduct occurred. Sexual harassment may include incidents:

i. between any members of the University community, including faculty and other academic appointees, staff, student employees, students, coaches, residents, interns, and non-student or non-employee participants in University programs (e.g., vendors, contractors, visitors, and patients);

ii. in hierarchical relationships and between peers; and

iii. between individuals of any gender or gender identity.

- c. This *Policy* shall be implemented in a manner that recognizes the importance of the rights to freedom of speech and expression and shall 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 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*.

**C. Retaliation** Retaliation includes threats, intimidation, reprisals, and/or adverse employment or educational actions against a person based on their report of Prohibited Conduct or participation in the investigation, report, remedial, or disciplinary processes provided for in this *Policy*.

**D. Other Definitions**

**1. Confidential Resources:**

The following employees who receive reports in their confidential capacity include:

- a. CARE Advocates,
- 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.

Designation as a “Confidential Resource” for purposes of this *Policy* only exempts a person from reporting to the Title IX office but not from 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.

2. **Complainant:** Any person who files a report of sexual violence or sexual harassment or other prohibited behavior or retaliation or any person who has been the alleged subject of such Prohibited Conduct or retaliation.
3. **Location:** “Location” is any University of California campus, the Lawrence Berkeley National Laboratory, Medical Centers, the Office of the President, and Agriculture and Natural Resources.
4. **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.
5. **Respondent:** A person alleged to have engaged in Prohibited Conduct and about whom a report of sexual violence, sexual harassment, other prohibited behavior, or retaliation is made.
6. **Responsible Employee:** Any University employee who is not a Confidential Resource and who receives, in the course of employment, information that a student (undergraduate, graduate, or professional) has suffered sexual violence, sexual harassment or other prohibited behavior shall promptly notify the Title IX Officer or designee. This includes Resident Assistants, Graduate Teaching Assistants, and all other student employees, when disclosures are made to any of them in their capacities as employees.

In addition, the following who, in the course of employment, receive a report of Prohibited Conduct from any other person affiliated with the University shall notify the Title IX Officer or designee:

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

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### III. POLICY STATEMENT

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#### A. **General**

The University of California is committed to creating and maintaining a community free of sexual violence and sexual harassment. Sexual violence and sexual harassment violate both law and University policy. Any member of the University community may report conduct that may constitute sexual violence, sexual harassment, retaliation, and other prohibited behavior (“Prohibited Conduct”). The University will respond promptly and equitably to such reports, and will take appropriate action to stop, prevent, and remedy the Prohibited Conduct, and when necessary, to discipline the Respondent.

In addition to sexual harassment, discrimination based on sex, gender, gender identity, gender expression, sex- or gender-stereotyping, and sexual orientation violates law and other University policies. Such discrimination may also contribute to the creation of a hostile work or academic environment based on sex and thus constitute or contribute to sexual harassment. Harassment that may not be sexual, but still contributes to a hostile work or academic environment, may also violate the University’s other non-discrimination policies.

**B. Prohibited Conduct**

This Sexual Violence and Sexual Harassment Policy (“*Policy*”) prohibits sexual violence, sexual harassment, retaliation and other prohibited behavior as defined in Section II.

**C. Consensual Relationships**

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

Because consensual romantic and sexual relationships between members of the University community may give rise to conflicts of interest, such relationships between a student and faculty member or other employees 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.

**D. Protection of Complainants, Respondents, and Witnesses**

1. **Immunity**: To encourage reporting, neither a Complainant nor witness in an investigation of sexual violence will be subject to disciplinary sanctions for a violation of the relevant University conduct policy at or near the time of the incident, unless the violation placed the health or safety of another at risk; involved plagiarism, cheating, or academic dishonesty; or was otherwise egregious.

Because alcohol, drugs, and other intoxicants are often involved, Complainants may be afraid to report Prohibited Conduct where they have also engaged in an activity that violated University policy or State law, such as a person under age 21 drinking alcohol. UC encourages the reporting of Prohibited Conduct and therefore generally does not hold Complainants and/or witnesses accountable for alcohol or drug-related student violations that may have occurred at the time of the Prohibited Conduct.

2. **Retaliation**: Retaliation against someone for reporting or participating in an investigation and related processes is prohibited. (See Section II.B. Prohibited Conduct in this *Policy*.)
3. **Privacy**: The University will protect the privacy of individuals involved in a report of Prohibited Conduct to the extent permitted by law and by University policy and procedures. However, it should be recognized that an investigation may involve interviews with a number of persons to inquire if they have relevant evidence, and extremely sensitive information may be gathered. While such information is considered confidential, University policy may also require the disclosure of certain information during or following an investigation.

**E. Free Speech and Academic Freedom**

The faculty and other academic appointees, staff, and students of the University of California 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* shall 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* shall 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 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.

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## IV. COMPLIANCE / RESPONSIBILITIES

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### A. Implementation of the Policy

Executive Officers (the University President, Chancellor, Lawrence Berkeley National Laboratory Director, or Vice President of Agriculture and Natural Resources) and their designees, have the authority to develop procedures and supplementary information to support the implementation of this *Policy*. Responsible Officers (Vice Provost-Academic Personnel and Programs, the Vice President of Student Affairs and Vice President of Human Resources) will apply appropriate and consistent interpretations of this *Policy* that do not result in substantive changes to the *Policy*.

The Executive Officer, or their designee, 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 Responsible Officers may recommend revisions to the *Policy* consistent with approval authorities and applicable Bylaws, Standing Orders, and Policies of The Regents. The UC Provost and Executive Vice President of Academic Affairs, and the UC Executive Vice President – Chief Operating Officer shall 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, and sexual violence in employment. The U.S. Department of Education Office for Civil Rights (OCR) investigates reports of unlawful harassment and sexual violence by students in educational programs or activities. 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 OCR.

**F. Noncompliance with the Policy**

Engaging in Prohibited Conduct, defined in this *Policy*, is governed by this *Policy* and the [Policy on Student Conduct and Discipline](#); Personnel Policies for Staff Members [61](#), [62](#), [63](#), [64](#), [65](#), & [67](#) 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 \(APM-150\)](#); and as applicable, collective bargaining agreements, and other policies. See Section VI and Appendices I & II. Non-compliance with this *Policy*, other than violations of Prohibited Conduct, may result in educational efforts or employment or educational consequences up to and including informal counseling, adverse performance evaluations, corrective actions, and termination.

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## V. REQUIRED 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 general responsibility for oversight of the reporting process and investigation of a report, other offices at each location will be involved and consulted as necessary.

**1. Reporting**

Any person may make a report, including anonymously, of Prohibited Conduct to the Title IX Officer, or to any Responsible Employee, or to another appropriate office such as the Academic Personnel Office, Student Affairs, Office of the Provost, or to the Human Resources Office. The report shall be sent forward 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.

**Timelines for Making Reports**

While there is no time limit for reporting, reports of Prohibited Conduct should be brought forward as soon as possible; all incidents should be reported even if significant time has elapsed but prompt reporting will better enable the University to respond, investigate, provide an appropriate remedy, and impose discipline if appropriate.

**2. Initial Assessment of a Report**

As soon as practicable after receiving a report, the Title IX Officer will make an initial assessment of the report to determine whether (i) the report, on its face, alleges an act of Prohibited Conduct as defined in Section II; and (ii) such conduct has a sufficient nexus with the University for it to intervene. The Title IX Officer may consult with appropriate academic officers for faculty and other academic appointees' complaints, with Student Affairs Offices for student complaints, and with Human Resources, or Employee and Labor Relations Offices for staff complaints.

**a. Immediate Health and Safety:** The Title IX Officer, in coordination with the Case Management Team (see Section V.B.5.), shall make an immediate assessment concerning the health and safety of the individual and the campus community, implement temporary remedies immediately necessary (including no contact orders), and provide to the Complainant a written explanation of rights and reporting options (including the right to make reports to the police), and available campus and community resources. Also see Location Responsibilities in Section V and Appendix III.

**b. Jurisdiction over Reports of Prohibited Conduct**

The University has jurisdiction over alleged violations of this *Policy* that occur on University property (such as offices and residence halls) or in connection with University activities, programs, or events. In addition, the University may exercise jurisdiction over conduct that occurs off-campus (i) but affects the learning or working environment; or (ii) that would violate other University Policies had it occurred on campus, (see [Section 101.00 of the Policy on Student Conduct and Discipline](#)).

**3. Required Notifications**

**a.** Individuals making reports shall be informed about:

- confidentiality of reports, including when reports cannot be kept confidential.
- the range of possible outcomes of the report, including Health and Safety measures, remedies, and disciplinary actions that may be taken against the Respondent, and information about the procedures leading to such outcomes.

**b.** If the report results in a Formal Investigation see Section V.4.b., after the conclusion of the investigation, the Complainant and Respondent will be simultaneously informed in writing of:

- the outcome of the investigation and its rationale;
- any available appeal rights and procedures; and
- how to obtain a copy of the Investigation Report, which may be redacted as necessary to protect privacy rights. (See APM-160 and other University policies governing privacy.)

**c.** If the matter results in a disciplinary proceeding, at the conclusion of that proceeding the Complainant and the Respondent will be simultaneously informed in writing of:

- the outcome of the disciplinary proceeding, including the final determination with respect to the alleged offense, any sanction that is imposed, and the rationale for the results;
- any available appeal rights and procedures; and
- any subsequent change to the results and when results will become final.

The Complainant will be sent a notice documenting any individual remedies offered to the Complainant, and other steps taken to eliminate the effects of the violation. The Respondent will be informed of no contact orders affecting them, but should not be notified of other individual remedies offered or provided to the Complainant.

#### **4. Overview of Resolution Processes**

Reports of Prohibited Conduct may be addressed through Alternative Resolution, Formal Investigation or, a separate employee grievance or complaint process.

##### **a. Alternative Resolution**

After a preliminary assessment of the facts, and, if useful, in consultation with other offices depending on whether the Complainant and Respondent are faculty, other academic appointees, staff, student employees, or students, the Title IX Officer may initiate an Alternative Resolution process, which may include:

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

Alternative Resolution may be especially useful when: a report is made by a third party or anonymously; a Formal Investigation is not likely to lead to a resolution; both parties prefer an informal process; or a case involves less serious violations. The Complainant has the right to request a Formal Investigation at any time, but the Title IX Officer has final authority for determining whether to initiate a Formal Investigation. Both the Complainant and Respondent may be accompanied by an advisor throughout the process.

##### **b. Formal Investigation**

If Alternative Resolution is inappropriate or unsuccessful, the Title IX Officer may initiate a Formal Investigation (“investigation”) in coordination with other offices, depending on whether the Complainant and Respondent are faculty, other academic appointees, staff, or students. A Complainant’s request for an investigation will be considered but is not determinative.

If the Complainant requests that no investigation occur, the Title IX Officer shall determine whether the allegations nonetheless require an investigation to mitigate a potential risk to the campus community. If proceeding with an investigation without the participation of a Complainant, the Title IX Officer shall attempt to maintain the identity of the Complainant confidential from the Respondent or inform the Complainant that such confidentiality cannot be maintained. If determining not to proceed with an investigation, the Title IX Officer shall inform the Complainant that the ability to provide remedies may be limited, but the Title IX Officer shall nonetheless afford such remedies as are consistent with maintaining confidentiality and the absence of an administrative finding.

When the Title IX Officer determines to conduct a Formal Investigation, the Complainant and Respondent will be provided with a written summary of the allegations, the procedures that will be followed, resources available to them, and a copy of the *Policy*.

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The investigation shall be completed promptly, typically within 60 business days of its initiation, unless extended by the Title IX Officer for good cause followed by written notice to the Complainant and Respondent of the reason for the extension and the projected new timeline. If the alleged conduct is also the subject of a criminal investigation, the Title IX Office will coordinate its investigation with the police but must nonetheless act promptly without delaying its investigation until the conclusion of the criminal investigation.

The investigation generally includes interviews with the Complainant, the Respondent, and witnesses, if available, and a review of documents as appropriate. Disclosure of facts to persons interviewed shall be limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation may be advised to maintain confidentiality when essential to protect the integrity of the investigation.

The Complainant or Respondent may have an advisor present when personally interviewed and at any related meeting. Other support persons may be allowed under other policies. Other witnesses may have an advisor present at the discretion of the investigator or as required by University policy or collective bargaining agreement.

In cases where the investigation contemplates issues of academic merit or academic freedom, the investigator shall consult with the appropriate academic officer for relevant academic judgment.

**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 who believes they have been subjected to Prohibited Conduct 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*. After completion of the process under this *Policy*, the grievance or complaint may be reactivated but *only* as a means of appeal.

**5. The Investigation Report**

In the event that a Formal Investigation is conducted, the investigator will prepare a written report that includes a statement of the allegations and issues, the positions of the Complainant and Respondent, a summary of the evidence, an explanation why any proffered evidence was not investigated, and findings of fact and an analysis of whether a violation has occurred. When both parties are students, the report will include a recommendation to the Student Conduct Officer regarding whether there are any policy violations. (See [Appendix E: Sexual Violence and Sexual Harassment Student Adjudication Framework](#).) For all other matters the report will include an analysis and determination by the investigator of whether this *Policy* has been violated. The investigator will apply the preponderance of evidence standard.

**6. Remedy**

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- a. If the Report finds Prohibited Conduct in violation of this *Policy*, the University shall take prompt and effective steps reasonably calculated to stop the violation, prevent its recurrence, and, as appropriate, remedy its effects. For a list of available remedies, see Appendix III.
- b. To the extent that the remedy has not already been provided, the Title IX Officer, in consultation with appropriate administrators, will oversee the implementation of this remedy.

**7. Discipline**

- a. The Title IX Officer shall forward the Investigation Report (with attachments and any necessary redactions) to the appropriate administrator responsible for discipline. The specific procedures for imposing discipline depend upon the nature of the Respondent's relationship to the University (student, faculty, other academic appointee, staff, or third party). If there is a question about the Respondent's relationship to the University, the Title IX Officer should indicate which role predominated when the Respondent engaged in the Prohibited Conduct. When a Respondent is both a student and an employee (such as a Teaching Assistant or Graduate Student Researcher), the Respondent may be subject to both the sanctions applicable to students and to employees.
- b. Any member of the University community who is found to have engaged in Prohibited Conduct (Section II) may be subject to disciplinary action, up to and including dismissal in accordance with the applicable University disciplinary procedure (Appendix II: University Disciplinary Procedures) or other policy.

**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 Title IX, including investigations, reports and remedies.
  - b. 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*.
  - c. Provide educational materials to promote compliance with the *Policy* and familiarity with local reporting procedures.
  - d. Provide training for University employees who are responsible for reporting or responding to reports of Prohibited Conduct.
  - e. Provide prompt and equitable response to reports of Prohibited Conduct according to the *Policy*.
  - f. Maintain records of reports of Prohibited Conduct at the location, as well as any actions taken in response to reports, including records of investigations, resolutions, and disciplinary action, in accordance with University records management policies.
  - g. Identify and address any patterns or systemic problems that arise during the review of Prohibited Conduct reports.



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encouraging a safe environment for bystanders to intervene in a potential case of dating violence, domestic violence, sexual assault, or stalking.

7. Follow University established and approved processes for investigation, adjudication, and sanctioning.
8. Provide comprehensive, regular training with a trauma-informed perspective for individuals 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.
9. Publicize a location-specific process for reporting incidents of Prohibited Conduct.
10. 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 reporting to and/or notifying law enforcement and campus authorities; the right to be assisted by campus authorities in notifying law enforcement authorities, 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 the crime to campus police or local law enforcement.
  - g. Applicable procedures for institutional disciplinary action.
11. Distribute and post this *Policy*. Each location is required to distribute this *Policy* to students, faculty, other academic appointees and staff, 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. [Nondiscrimination Policy Statement for University of California Publications Regarding Student-Related Matters](#)
- B. [Personnel Policies for Staff Members 12 \(Nondiscrimination in Employment\)](#)
- C. [Business and Finance Bulletin RMP-2: Records Retention and Disposition: Principles, Processes, and Guidelines](#)
- D. [Policy on Student Conduct and Discipline](#)
- E. [Student-Related Policy Applying to Nondiscrimination on the Basis of Sex](#)
- F. [University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment](#)
- G. [UC Business and Finance Bulletin RMP-8, Legal Requirements on Privacy of and Access to Information](#)
- H. [University of California Policies Applying to Campus Activities, Organizations, and Students](#)
- I. [University of California Non-Discrimination Policy](#)

### Federal and State Regulations

- A. [Government Code 12950.1](#)
- B. [Violence Against Women Reauthorization Act \(VAWA\) of 2013](#)

## VII. FREQUENTLY ASKED QUESTIONS

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

An advisor includes any individual except a potential witness who provides the Complainant or Respondent with support, guidance, or advice (including attorneys). The institution cannot limit the choice of an advisor, but may restrict the extent to which the advisor can participate in the proceedings as long as the restrictions apply equally to Complainants and Respondents.

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 **sanctions** imposed and **the rationale for the result and the sanctions**.

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 breast at or below the areola thereof of any female person.

4. **Why might Sexual Contact constitute sexual violence in some cases but sexual harassment in others?**

Sexual contact encompasses a broad spectrum of conduct, some of which constitutes sexual assault, but some of which is treated as sexual harassment. One example of sexual contact that could be considered as sexual assault is when a Respondent is accused of groping the Complainant's breast under the Complainant's clothing and without consent. By contrast, an allegation that the Respondent patted the Complainant's buttocks over the Complainant's clothing could be considered under the sexual harassment definition. While the example of groping might be resolved through a Formal Investigation, the patting example would generally be handled through Alternative Resolution. The Title IX Officer will review all sexual contact allegations to determine the best procedure for resolving the report based on the totality of the circumstances.

5. **Does Sexual Assault also 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 Penal Code. This Policy also prohibits additional types of nonconsensual sexual contact. For additional assistance with any 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. **If an incident of sexual harassment or sexual violence is reported to the Title IX Officer by a third party who was not the subject of the alleged conduct, must that party be notified of the outcome of an investigation or disciplinary proceeding?**

No. The disclosure of the outcome should be given to the Respondent and the individual who was the subject of the alleged conduct.

**7. Once the outcome of an investigation or disciplinary proceeding under this *Policy* is disclosed to the Complainant, can the Complainant be asked to keep this information confidential?**

The Complainant can be advised of the confidential and sensitive nature of personnel and student disciplinary matters that arise under this *Policy*, and in appropriate circumstances, such as in connection with a settlement of a matter, may be asked not to further disclose it.

**8. 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 an individual violated criminal law; and, if at the conclusion of the investigation, the individual is tried and found guilty, the individual 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 students, free from sexual harassment and sexual violence. Because the purposes and the standards for pursuing and completing criminal investigations are different from those used for Title IX investigations, the termination of a criminal investigation without an arrest or conviction does not affect the location'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 a Complainant from doing so either during or after the location's internal Title IX investigation. Title IX does not require a location to report alleged incidents of sexual violence to law enforcement, but the University has reporting obligations under federal, State, or local laws, such as the Clery Act and the California Child Abuse and Neglect Reporting Act (CANRA), and may report alleged incidents of sexual violence to law enforcement pursuant to memoranda of understandings between the University and the police.

**9. 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 alleged conduct by the Respondent is also the subject of a criminal investigation, the Title IX Office will coordinate its investigation with the police. The fact-finding portion of a Title IX investigation may be delayed temporarily while the police are gathering evidence. During this delay in the Title IX investigation, appropriate interim measures may be put in place to protect the Complainant. The length of time for evidence gathering by criminal investigators will vary depending on the specific circumstances of each case.

**10. 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 become aware of while attending a public awareness event, such as “Take Back the Night” and statements made about incidents during such events will not require an investigation unless the survivor initiates a complaint.

**11. Why is the University mandating annual training and education in the areas of sexual violence and sexual harassment?**

One of the seven recommendations from the President’s Task Force on Preventing and Responding to Sexual Violence and Sexual Assault was to develop a comprehensive training and education plan for students, faculty, other academic appointees, and staff in order to encourage behavioral change to help reduce violence, build a culture of trust, and increase the safety of all populations on campus. In addition, there have been changes to this Policy, as well as local procedures, for responding to complaints of Prohibited Conduct that all members of our community need to be aware of. Based on the advice and experience of prevention education staff on each campus, the Task Force recommended training at regular intervals. The University intends to implement annual training and education for a five-year period, then evaluate its effectiveness and whether the training interval should be adjusted.

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**VIII. REVISION HISTORY**

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

June 17, 2015 – The policy was updated on an Interim basis effective until December 31, 2015. The interim issuance brings the policy into compliance with federal and state regulations, while the Policy undergoes full review and vetting. Once the review process is complete, the policy will be reissued at the start of 2016.

February 25, 2014 - This policy was reformatted into the standard University of California policy template effective.

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

**APPENDIX I: Applicable Complaint Resolution and Grievance Policies**

Academic Personnel:

Members of the Academic Senate

[Senate Bylaw 335](#)

Non-Senate Academic Appointees

[APM - 140](#)

Exclusively Represented Academic Appointees

Applicable collective bargaining agreement

Students:

[Policies Applying to Campus Activities, Organizations and Students, Section 110.00](#)

Staff Personnel:

Senior Managers

[PPSM II-70](#)

Managers and Senior Professionals,  
Salary Grades VIII and IX

[PPSM 71](#)

Managers and Senior Professionals,  
Salary Grades I – VII

[PPSM 70](#)

Professional and Support Staff

[PPSM 70](#)

Exclusively Represented Staff Personnel

[Applicable collective bargaining agreement](#)

Lawrence Berkeley National Laboratory Employees

[Applicable Laboratory policy](#)

All members of the University community:

The [University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities \(Whistleblower Policy\)](#) governs 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 Procedures

The following are the University's disciplinary 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 constitute 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.
- 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 or dismissal for conduct which violates University policy.
- C. [Appendix E: Sexual Violence and Sexual Harassment Student Adjudication Framework](#) 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 where the parties are both 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 of Career Employees – Professional and Support Staff](#)
  - [PPSM-65: Termination of Career Employees - Managers & Senior Professionals, Salary Grades I through VII](#)
  - [PPSM-67: Termination of Career Employees – Managers & Senior Professionals, Salary Grades VIII and IX](#)
  - [PPSM II-64: Termination of Appointment](#)

# Sexual Violence and Sexual Harassment

## APPENDIX III – Interim Measures and Remedies

Remedies include:

- i. *Campus Services Generally*: academic support including tutoring, counseling, disability services, health and mental health services, family planning services, survivor advocacy, housing assistance, legal assistance, 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. *Campus Services Modified For Students*:
  - 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.
- iii. *Additional Educational Remedies for Students*:
  - Change advisors, class sections and similar schedule adjustments.
  - Arrange extra time to complete academic requirements of a class or program, to re-take a class or withdraw from a class and to do 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.
- iv. *Remedies Available to Employees, Including 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.
- v. *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.
- vi. *No Contact Remedies*:
  - Complainant and Respondent Options:
    - a) The Title IX Officer will ensure the Complainant and Respondent have been notified of options to avoid contact and assist the Complainant and Respondent to change academic and extracurricular activities or living, transportation, dining, and working situations as appropriate,
    - b) Assist the Complainant and Respondent to apply for no contact orders; and,

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- c) When appropriate, arrange for effective escort services to ensure that the Complainant and Respondent can move safely between classes and activities.
  - Respondent's Restrictions (some of which may be recommended by Title IX Officer, all of which may be implemented by agreement, and the more serious of which may be imposed only pursuant to Discipline):
    - a) Allow the Complainant to take the regular sections of courses while arranging for the Respondent to take the same courses online or through independent study;
    - b) Moving the Respondent to a different residence hall;
    - c) Forbidding the Respondent to participate in specific athletic or extracurricular events or social clubs (including fraternities or sororities);
    - d) 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 scheduling or class changes;
    - e) Prohibiting the Respondent from attending classes for a period of time, or transferring the Respondent to another campus; and
    - f) If a Respondent presents an ongoing safety risk, excluding the Respondent from campus.
- vii. Other Remedies devised by the Title IX Officer or Other Administrator.**