

# **PROCEDURES FOR HANDLING ALLEGATIONS OF DISCRIMINATION, HARASSMENT, OR RETALIATION**

**DISCRIMINATION PREVENTION OFFICE  
& TITLE IX OFFICE**

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## I. PURPOSE

The University of California, Los Angeles (UCLA) is committed to creating a community where everyone can work and learn together in an equitable and inclusive environment, free of discrimination, harassment, and retaliation. Accordingly, discrimination, harassment, and retaliation are prohibited under various systemwide and campus policies (“University policies”), such as:

- [University of California \(UC\) Policy on Discrimination, Harassment and Affirmative Action in the Workplace](#);
- [UC Policy on Sexual Violence and Sexual Harassment](#);
- [Faculty Code of Conduct \(APM 015\)](#);
- [University Policy on Faculty Conduct and The Administration of Discipline \(APM 016\)](#);
- [University Policy Regarding Academic Appointment \(APM 035\)](#); and
- [Policies Applying to Campus Activities, Organizations and Students \(PACAOS\) 20.00](#);
- [PACAOS 140.00](#).

On July 1, 2015, the [Office of Equity, Diversity and Inclusion](#) (EDI) was created with multiple missions, including prompt response to, and professional investigation of, reports of discrimination, harassment, and retaliation. Residing within EDI are two independent investigatory units that handle such reports: the [Discrimination Prevention Office](#) (DPO)<sup>1</sup> and the [Title IX](#) (T9) Office.<sup>2</sup> This document (the “Procedures”) describes the procedures used by the DPO in all cases and by the T9 Office when responding to allegations against non-students.

These Procedures are intended to be consistent with state and federal law. They should also be read in conjunction with applicable collective bargaining agreements as well as relevant University policies.

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<sup>1</sup> The DPO was created in September 2014. It was a crucial element of the Administration’s response to the findings of the *Moreno Report*, see [Independent Investigative Report on Act of Bias and Discrimination Involving Faculty at the University of California, Los Angeles](#) (Oct. 15, 2013) (“Moreno Report”), and the [system-wide measures adopted by President Janet Napolitano](#) (Jan. 24, 2014) on the basis of recommendations made in a [Report by the Senate-Administration Work Group on the Moreno Report](#) (Dec. 12, 2013). The first measure to be adopted was the creation of a lead discrimination officer, who “will designate the individuals responsible for . . . carrying out investigations . . . and refer[] cases to the Academic Senate or administrators as appropriate.”

<sup>2</sup> The T9 Office was reorganized under the Office of Equity, Diversity and Inclusion, when EDI was created on July 1, 2015.

## II. SCOPE

Given UCLA's size, scope, and decentralization, the DPO and the T9 Office are not the sole campus entities that respond to reports of discrimination, harassment, and retaliation. Responsibility and authority to investigate often depend on (1) the type of allegation and (2) the person or entity accused of that conduct (the "Respondent").

### Title IX

A complaint involving *gender* discrimination, including sexual violence and sexual harassment, as well as discrimination or harassment based on sexual orientation, gender (including transgender or non-binary) identity, and pregnancy status is handled by the T9 Office, or a T9 Office designee, regardless of the Respondent.

### Other Prohibited Conduct

A complaint involving *any other form of prohibited conduct* (i.e. discrimination, harassment, or retaliation) is handled by one of the following offices depending on the Respondent:

- If the Respondent is a *faculty member*, the complaint is handled by the DPO.
- If the Respondent is a *staff member*, the complaint is generally handled by the [Staff Diversity & AA/EEO Compliance Office](#) ("SD&C").
- If the Respondent is a *student*, the complaint is generally handled by the [Dean of Students](#), with two prominent exceptions:
  - Disability: complaints of disability discrimination made against a student Respondent are handled by the [ADA & 504 Compliance Office](#);
  - Campus climate: If the matter alleged against a student or group of students is reasonably likely to have a substantial negative impact on UCLA's campus climate on matters of equity, diversity, and inclusion, the Vice Chancellor for Equity, Diversity and Inclusion may decide to investigate the matter (typically through the DPO or the T9 Office).<sup>3</sup>

The following table summarizes which office has responsibility to respond.

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<sup>3</sup> See [UCLA Policy 240](#): Investigating Allegations of Student Conduct That Negatively Impacts Campus Climate (Feb. 3, 2017) (providing detailed procedure and standards).

Nature of Complaint		Office
Discrimination on the basis of sex, sexual orientation, gender, gender expression, gender identity, transgender status, pregnancy, sexual violence, sexual harassment, some denial of family and medical care leave	Against faculty Respondents →	T9 Office
	Against staff Respondents →	T9 Office and SD&C
	Against student Respondents →	T9 Office
Discrimination on the basis of race, color, ancestry, national origin, religion, age, disability, medical condition, genetic information, marital status, citizenship, military and veteran status	Against faculty Respondents →	DPO
	Against staff Respondents →	(generally) SD&C
	Against student Respondents →	(generally) Dean of Students, except disability handled by ADA & 504 Compliance Office, and climate matters (which could be handled by DPO or T9 Office)

Members of the UCLA community may also contact the [UCLA Office of Ombuds Services](#) for assistance in resolving conflicts, disputes, or complaints on an informal and **confidential** basis: (310) 825-7627.

Members of the UCLA community who have experienced sexual harassment or sexual violence may also contact **confidential** [CARE Advocates](#) for support and advocacy: (310) 206-2465.

This document outlines the procedures used by the T9 Office and the DPO (collectively, “Responding Office”) when the Responding Office receives a report that an individual, individuals, or entity has violated University policy by engaging in Prohibited Conduct. As described below, some of these reports will lead to a Formal Investigation, in which the Responding Office investigates the complaint to determine, by a preponderance of the evidence, what occurred and whether the Respondent violated University policy. The Responding Office’s findings are generally produced in an Investigation Report.

This document does *not* describe or govern the procedures used by EDI for a different type of inquiry called a “[Climate Assessment](#).” It does *not* describe or govern the procedures used by other units such as the Dean of Students or the ADA

& 504 Compliance Office. Furthermore, within the T9 Office's ambit of gender discrimination, a separate set of procedures applies to alleged *student* violations of the UC systemwide Sexual Violence and Sexual Harassment Policy. See [Student Conduct Procedures](#).

In sum, this document applies only to the following:

- Investigations conducted by the T9 Office of non-student Respondents;
- all DPO investigations;
- all investigations conducted under the authority of Policy 240<sup>4</sup> by the T9 Office or DPO.

### III. PROHIBITED CONDUCT

All members of the UCLA community, including students, faculty, staff, and certain third parties, are prohibited by University policies from engaging in the Prohibited Conduct described below. University policy will be interpreted with the goal of identifying, remediating, and preventing discriminatory behavior before it rises to the level of a legal violation. Accordingly, a finding of a policy violation does not necessarily mean that federal or state law has been violated.

#### 1. Discrimination

It is the policy of the University not to engage in discrimination, including harassment, of any individual or group of people on the basis of or for reasons of race, color, national origin, ethnic origin, ancestry, marital status, religion, age, sex, sexual orientation, gender, gender expression, gender identity, transgender status, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), marital status, age, sexual orientation, citizenship or service in the uniformed services. Such discrimination is prohibited by various systemwide and campus-level policies, including but not limited to: the [University of California \(UC\) Policy on Discrimination, Harassment and Affirmative Action in the Workplace](#), [APM 015](#), [APM 035](#), [PACAOS 20](#), and [PACAOS 140](#).

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<sup>4</sup> See *id.*

## 2. Harassment<sup>5</sup>

Harassment is unwelcome conduct—including verbal, nonverbal, or physical conduct—based on any of the protected categories set forth in the definition of Discrimination above. Harassment is prohibited when it is sufficiently severe, pervasive, or persistent that it adversely affects a person’s employment or education or creates an environment that a reasonable person would find to be intimidating, hostile, abusive, or offensive.

## 3. Sexual Harassment

Sexual Harassment is a form of gender discrimination, defined in the [UC Policy on Sexual Violence and Sexual Harassment](#) (“SVSH Policy”) as:

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.

## 4. Sexual Violence

Sexual Violence is a form of gender discrimination, which includes “Sexual Assault,” “Relationship Violence,” and “Stalking,” as those terms are defined in the [SVSH Policy](#).

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<sup>5</sup> This definition is informed by the definitions of Harassment used by the Equal Employment Opportunity Commission and the United States Department of Education, Office for Civil Rights. See *Dear Colleague Letter: Harassment and Bullying*, OCR, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf> (Oct. 26, 2010) (Title VI obligations); *Types of Discrimination: Harassment*, EEOC, <https://www.eeoc.gov/laws/types/harassment.cfm> (last visited Apr. 4, 2019) (Title VII obligations). See also *Sexual Harassment Guidance*, OCR, <https://www2.ed.gov/about/offices/list/ocr/docs/sexhar00.html> (last visited Apr. 3, 2019).

## 5. Retaliation

Retaliation includes threats, intimidation, reprisals, and/or adverse employment or educational actions against a person based on their report of Discrimination, Harassment, Sexual Harassment, or Sexual Violence, or participation in the investigation, report, remedial or disciplinary processes arising from these Procedures. Retaliation against someone for reporting or participating in an investigation and related processes constitutes Prohibited Conduct.

Retaliation is prohibited in the [University of California \(UC\) Policy on Discrimination, Harassment and Affirmative Action in the Workplace and APM 035](#) as follows:

[The University] prohibits retaliation for bringing a complaint of discrimination or harassment pursuant to this policy against any person employed; seeking employment; providing services pursuant to a contract; or applying for or engaged in a paid or unpaid internship, volunteer capacity, or training program leading to employment with the University of California. This policy also prohibits retaliation against a person who assists someone with a complaint of discrimination or harassment, or participates in any manner in an investigation or resolution of a complaint of discrimination or harassment. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment.

Retaliation is prohibited in the [SVSH Policy](#) and is defined as follows:

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.

## IV. APPLICABILITY

These Procedures apply to Prohibited Conduct alleged to have occurred on University property (such as offices, grounds, and residence halls) or in connection with UCLA activities, programs, or events. In addition, the Responding Office may apply these Procedures to conduct that occurs online or off-campus when that conduct (i) affects the University learning or working environment; or (ii) would pose a threat to the safety or security of any member(s) of the UCLA community.

## V. ACADEMIC FREEDOM AND FREEDOM OF SPEECH

These Procedures fully recognize and promote the University's commitment to academic freedom and freedom of speech, as described in the [SVSH Policy](#):

The faculty and other academic appointees, staff, and students of UCLA 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 UCLA 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.

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.

## VI. DEFINITIONS

### 1. Advisor

An "Advisor" is any individual accompanying a Complainant or Respondent throughout the investigation and resolution process. The Advisor may be any person, including an advocate, attorney, friend, or relative who is not a party, witness, or potential witness involved in the investigation and resolution process. The Complainant or Respondent may be accompanied by an Advisor at any meeting or proceeding that is part of the investigation and resolution process. While the Advisor may provide support, guidance, and advice to the Complainant or Respondent whom the Advisor is accompanying, the Advisor may not speak on behalf of a Complainant or Respondent, or otherwise actively participate in, or in any manner disrupt any meetings or proceeding. If the Advisor is disruptive, the investigator may exercise his or her discretion to ask the Advisor to leave or to terminate the interview or meeting because of the disruption. In Title IX matters the University offers support services for [Complainants](#) and [Respondents](#).

## 2. Complainant

A “Complainant” is any person—including UCLA students, staff, faculty members, or individuals unaffiliated with UCLA—who makes a report of Prohibited Conduct, except that a person who makes a report in the capacity of a Responsible Employee under the SVSH Policy or in order to discharge similar reporting obligations under law or University policy shall not be deemed a Complainant. The Responding Office may also consider the alleged victim of Prohibited Conduct to be a Complainant whether or not that person makes a report or participates in the investigation and resolution process outlined in these Procedures. A Complainant who is not the alleged victim of Prohibited Conduct shall be known as a **third-party Complainant**.

## 3. Days

“Days” means University business days. It does not include Saturdays, Sundays, or days on which the campus is closed.

## 4. Preponderance of the Evidence

“Preponderance of the evidence” is the standard applied in all stages of investigations under these Procedures, including the determination of whether Prohibited Conduct occurred. This means that the totality of the evidence demonstrates that it is *more likely than not* that the alleged conduct occurred in violation of the applicable policy.

## 5. Respondent

A “Respondent” is the person or entity accused of Prohibited Conduct.

# VII. REPORTING PROHIBITED CONDUCT

## A. PROCESS FOR REPORTING

UCLA strongly encourages anyone who experiences or becomes aware of Prohibited Conduct to report the matter immediately.

For matters involving Prohibited Conduct based on sex, sexual orientation, gender, gender expression, gender identity, transgender status, or pregnancy, including sexual harassment and sexual violence, contact the Title IX Director in the T9 Office.

- 2255 Murphy Hall (regular office hours);
- [titleix@conet.ucla.edu](mailto:titleix@conet.ucla.edu) (email);
- (310) 206-3417 (telephone).

For matters involving Prohibited Conduct based on race, color, national origin, ancestry, religion, age, disability, medical condition, genetic information, marital status, citizenship, or military and veteran status, contact the Investigations Coordinator, in the DPO.

- 3148 Murphy Hall (regular office hours);
- [dpo@equity.ucla.edu](mailto:dpo@equity.ucla.edu) (email);
- (310) 794-1232 (telephone).

In accordance with the [University of California \(UC\) Policy on Discrimination, Harassment, and Affirmative Action in the Workplace](#) and [SVSH Policy](#), and to allow the University to fulfill its responsibility to prevent and correct discrimination and harassment, **supervisors are required** to inform the DPO, the T9 Office, or the [Staff Diversity & AA/EEO Compliance Office](#) (“SD&C”) of any allegations of Prohibited Conduct. Employees are not required to report complaints to their direct supervisor; instead, they can directly contact the appropriate office. Simple instructions on reporting an incident are available at:

[<https://equity.ucla.edu/report-an-incident/>](https://equity.ucla.edu/report-an-incident/).

## B. RESPONSIBLE EMPLOYEE REPORTING FOR SEXUAL VIOLENCE OR SEXUAL HARASSMENT

Although all members of the community are strongly encouraged to report Prohibited Conduct, there are specific obligations placed on “responsible employees” regarding sexual violence and sexual harassment. As provided in the SVSH Policy, **any UCLA employee** who is not officially designated as a Confidential Resource (as specifically defined by the SVSH Policy or other University Policy) 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 under the SVSH Policy, shall promptly notify the Title IX Director or designee. This requirement applies to 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 categories of employees** (which includes all faculty members) who, in the course of employment, receive a report of Prohibited Conduct under the SVSH Policy from **any person** affiliated with UCLA (not only students) shall notify the Title IX Director 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); and
- Faculty members.

## C. SPECIAL PROTECTION OF THOSE REPORTING SEXUAL VIOLENCE

To encourage reporting of sexual violence, neither a Complainant nor witness of sexual violence will generally be subject to disciplinary sanctions for a violation of University policy at or near the time of the incident, unless the violation placed the health or safety of another person at risk, involved academic dishonesty, or was otherwise egregious. For example, a person who witnessed or experienced sexual violence while illegally consuming alcohol or other drugs will not be subject to discipline for the alcohol or drug consumption that is discovered as a result of reporting the sexual violence.

## D. CONFIDENTIALITY

UCLA will protect the privacy of individuals involved in a report of Prohibited Conduct to the extent required by law and by University policies and procedures. The Responding Office may ask witnesses or parties to maintain confidentiality of a pending investigation to protect its integrity—including protecting witnesses or parties from retaliation, preventing witnesses from colluding, preventing destruction of evidence, and preventing intentional withholding of evidence.

Complete confidentiality can never be guaranteed. The Responding Office will share information as reasonably necessary to conduct a fair and thorough investigation or to resolve a complaint using Alternative Resolution. An investigation may involve interviews with many people to inquire if they have relevant evidence, and extremely sensitive information may be gathered. University policies or the law may require disclosure of certain information during or after an investigation. For example, the Responding Office may be required to share information disclosed during an investigation to comply with a judicial order, subpoena, or public records request.

The results of an investigation, including the Investigation Report itself, will be shared with UCLA decision-makers empowered to provide remedies or initiate any disciplinary process. In addition, a redacted copy of the Investigation Report will be made available to both Complainant and Respondent upon request; however, in the case of third-party Complainants, the information provided may be limited to information relevant to the third-party Complainant.

Although each party may be cautioned about the Investigation Report's sensitivity, the Responding Office cannot and does not provide legal advice on potential civil liability that could arise from disclosing the Report, its outcome, or its contents more broadly. That said, the Responding Office informs the parties that any sharing of the redacted Report or its contents should not amount to retaliation, which remains Prohibited Conduct.

Finally, a party's public discussion or sharing of the investigation process, outcome, and contents of the Investigation Report may constitute a waiver of that party's privacy interests over the matters so disclosed. Where appropriate, the

Responding Office and the Office of Equity, Diversity and Inclusion may publicly respond after considering various factors including but not limited to: avoiding mischaracterization or misunderstanding; correcting the factual record; protecting against retaliation; protecting the learning and working environment of other parties and witnesses involved in the investigation; and legal and policy constraints.

## VIII. INITIAL RESPONSE AND ASSESSMENT

### A. REQUIRED NOTIFICATIONS

Complainants shall be informed about:

- these Procedures;
- the limited confidentiality of Investigation Reports;
- admonitions against retaliation;
- resources available and, if applicable, other options for reporting (e.g., police);
- if applicable, the importance of preserving evidence that may assist in proving that a criminal offense occurred or in obtaining a protection order; and
- the decisionmakers responsible for institutional disciplinary action and/or basic information about the procedures used by these decisionmakers in the disciplinary process.

If the report of Prohibited Conduct results in a “Formal Investigation,” after the conclusion of the investigation, the Complainant and Respondent will be informed in writing of:

- the outcome of the investigation and its rationale;
- next steps and any available appeal rights and procedures, if applicable; and
- how to obtain a copy of the Investigation Report, which will be redacted as necessary.

Such information shall be provided to third-party Complainants only at the discretion of the Responding Office.

### B. INITIAL ASSESSMENT

Upon receiving a report of Prohibited Conduct, the Responding Office will conduct an “Initial Assessment.” The purpose of an Initial Assessment is to (1) clarify the Complainant’s allegations, (2) determine whether the report plausibly alleges an act of Prohibited Conduct, and (3) determine whether there is sufficient information to proceed to an Alternative Resolution or Formal Investigation.

To conduct an Initial Assessment, the Responding Office will collect information from the Complainant through an intake interview and/or complaint form. As appropriate, the Responding Office may also contact and interview other

relevant individuals, such as witnesses and/or additional Complainants. Finally, in certain cases, the Responding Office may also contact and conduct an initial interview with the Respondent. In communicating with witnesses or the Respondent, the Responding Office will seek to minimize the possibility of retaliation and destruction of evidence by sharing only as much information as is necessary for the Office to complete its Initial Assessment.

Because the Initial Assessment happens at the preliminary stage of the complaint handling process, the Respondent is not provided formal notice. Accordingly, unless the Respondent is contacted for further information by the Responding Office, the Respondent may be unaware that any complaint has been filed. During the Initial Assessment, if the Respondent inquires, the Responding Office ordinarily will confirm whether a complaint has been filed against the Respondent but will provide only general information about the allegations. In exceptional cases, for example if there are serious concerns of retaliation or destruction of evidence, the Responding Office may not give the Respondent any information about the complaint, including the fact that a complaint has been filed. If and when a Formal Investigation is launched, the Respondent will receive a written Notice of Investigation as explained below.

### C. INTERIM MEASURES

During an Initial Assessment, the Responding Office may arrange interim measures to protect the health and safety of the Complainant and the campus community, limit the effects of the alleged Prohibited Conduct, and/or protect the Complainant or other individuals from retaliation pending any investigation. These measures may include, but are not limited to, separating the parties, limiting contact between the parties, or making alternative working or academic arrangements. Involuntary leave of an Academic Senate faculty Respondent may be imposed in accordance with [APM 016](#). Investigatory leave of a non-Senate faculty or academic Respondent may be imposed in accordance with [APM 150](#). Investigatory leave of a PPSM-covered employee may be imposed in accordance with [PPSM 63](#).

A Respondent's failure to comply with interim measures may be considered a separate violation of University policy. Whenever interim measures are implemented, the goal is to minimize the impact on the Complainant and others who may be affected by the alleged conduct. A decision about interim measures does not, however, constitute evidence or a finding of a policy violation.

### D. CLOSING A MATTER WITHOUT FORMAL INVESTIGATION

Following an Initial Assessment, if the Responding Office determines that the report or complaint does not adequately allege Prohibited Conduct, or there is insufficient information to proceed, the matter may be closed without further action, after giving notice to the Complainant. If the Responding Office has previously informed the Respondent of the Initial Assessment, the Responding Office will notify the Respondent in writing that the matter is closed.

## IX. OVERVIEW OF RESOLUTION PROCESSES

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

### A. ALTERNATIVE RESOLUTION

After an Initial Assessment, before a Formal Investigation has begun, and, if useful, in consultation with others (e.g., Chairs, Deans, Equity Advisors, Program Directors, or senior administrators), the Responding Office may initiate an Alternative Resolution. Alternative Resolution may, without limitation, include:

- mediation (unless prohibited under policy);
- separating the parties;
- safety measures;
- referring the parties to counseling;
- a settlement agreement;
- targeted preventive educational and training programs;
- follow-up review to ensure the resolution has been implemented effectively; and
- outcome letter.

Alternative Resolution may be especially useful when a report is made anonymously or by a third-party Complainant, when a Formal Investigation is not likely to lead to a satisfactory outcome, when both parties prefer an informal process, or in matters involving less serious misconduct.

If the Complainant requests that no Formal Investigation occur, the Responding Office shall credit this request but shall also consider whether the allegations nonetheless require a Formal Investigation to mitigate potential risks to the campus community. The Responding Office may consider, among other things:

- the seriousness of the alleged Prohibited Conduct;
- the effect on the campus community including health and safety;
- the Responding Office’s ability to gather information, including statements of witnesses;
- whether the conduct may be part of a pattern of ongoing conduct or is likely to recur; and
- the Respondent’s rights to receive information about the report.

If a Formal Investigation is conducted when the Complainant requests anonymity, the Responding Office will attempt to keep the Complainant’s identity confidential and/or will inform the Complainant that such confidentiality cannot be strictly maintained. Further, the Responding Office will inform the Complainant who wishes to remain anonymous that its ability to engage in a thorough investigation as well as UCLA’s ability to provide remedies may be limited.

The Complainant and Respondent may request a Formal Investigation at any time before the Alternative Resolution is finalized, but any such request is not binding on the Responding Office. Instead, the Responding Office makes the final decision whether to proceed with a Formal Investigation.

Both the Complainant and Respondent may be accompanied by an Advisor throughout the Alternative Resolution process.

## B. FORMAL INVESTIGATION

If Alternative Resolution is inappropriate or unsuccessful, the Responding Office may initiate a Formal Investigation (“Formal Investigation” or “Investigation”).

### 1. SELECTION OF INVESTIGATOR

When the Responding Office decides to conduct a Formal Investigation, the Responding Office will designate an investigator to conduct a fair, thorough, and timely investigation. In designating an investigator, the Responding Office will avoid selecting a person who is so related to a Complainant, Respondent, witnesses, or the allegations such that the relationship is reasonably likely to create bias, partiality, or the appearance thereof. Prior investigatory experience with the parties or the unit in which the matter arose, in and of itself, shall not be deemed evidence of bias or partiality. If the entire Responding Office has a conflict of interest, the Responding Office may outsource the case to an external investigator or another appropriate office. Outsourcing may also take place if the Responding Office determines that additional resources are necessary to complete the investigation in a timely manner.

### 2. NOTICE OF INVESTIGATION

The Responding Office will send the Respondent a written Notice of Investigation (“NOI”). The NOI will include a summary of the allegations; potential violations of University policies; the purpose of the investigation; a statement that the Investigation Report, when issued, will make factual findings and a determination whether Prohibited Conduct has occurred; the procedures that will be followed; the expected timeline for the investigation; a statement that the Responding Office investigates matters using a preponderance of the evidence standard; a description of resources available to the parties; and a copy of or links to applicable University policies.

In matters involving a reported SVSH Policy violation against a faculty Respondent, the NOI will also state that a finding of a violation of the SVSH Policy will establish probable cause under the Faculty Code of Conduct (APM 015).

In Title IX matters, the T9 Office will send the NOI to the Respondent, the Complainant, and the administrator(s) with the authority to administer discipline or remedies, typically the following (“Report Recipients”):

- for student Respondents: Dean of Students, Office of Student Conduct;
- for staff Respondents: Chancellor's designee and other appropriate administrators and/or personnel;
- for faculty / non-faculty academic personnel Respondents: Chancellor and Vice Chancellor-Academic Personnel, or Chancellor and Vice Chancellor, UCLA Health Sciences.

In matters handled by the DPO, the DPO will send the NOI to the Respondent and the administrator(s) with the authority to administer discipline or remedies, typically the Vice Chancellor-Academic Personnel.

If the Respondent is an entity, the Responding Office will send the NOI to the entity's highest administrator (e.g., Chair) on behalf of the entity, and the NOI will identify the entity as the Respondent. Typically, the Responding Office will also send the NOI to the Dean.

In certain circumstances, the Responding Office may add additional Complainants or Respondents after an investigation has begun. In such cases, the Responding Office will follow the same process for NOIs for the additional parties.

For any notice issued pursuant to these Procedures, sending the notice to the electronic and/or physical mailing address most recently provided by the Complainant or Respondent to the University will give rise to a presumption that notice has been given as of the date of the electronic mailing or within three business days of a physical mailing.

### 3. LENGTH OF INVESTIGATION

For a SVSH Policy violation, a Formal Investigation typically should be completed within the time period designated within the SVSH Policy (90 Days as of July 31, 2019). For all other matters, a Formal Investigation typically should be completed within 120 Days of issuing the NOI. The timeline may be extended by the Responding Office for good cause. If the Investigation Report is not completed within the time frames noted above, the Investigator will notify the Complainant and the Respondent with the reason for the delay and an estimated completion date. The Responding Office will regularly update the Complainant and Respondent on the status of the investigation.

When a law enforcement agency is conducting its own investigation into the alleged conduct, the Responding Office will make every effort to coordinate fact-finding efforts with the law enforcement investigation. At the request of law enforcement, the investigation may be delayed temporarily to meet specific needs of a criminal investigation.

### 4. INVESTIGATION PROCEDURES

The investigation's purpose is to find out what happened, and to determine whether it is more likely than not that Prohibited Conduct occurred.

### a. Interviews<sup>6</sup>

In the course of a Formal Investigation, the Investigator will typically interview separately the Complainant(s), the Respondent(s), and relevant witnesses so that the Investigator can determine whether the alleged conduct occurred and violated University policies. The Investigator may consider other evidence, such as documents and electronic communications, as appropriate. The Complainant and Respondent will be given an equal opportunity to meet with the Investigator, submit information, and identify witnesses who may have relevant information.

Disclosure of facts to witnesses interviewed shall be limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation may be advised that maintaining confidentiality is essential to protect the integrity of the investigation.

### b. Participation

The investigator will not draw any adverse inferences from a Complainant's or Respondent's decision not to participate or to remain silent during the investigation or resolution process. The investigator may, however, draw adverse inferences when a Complainant or Respondent selectively participates in the process, such as: choosing to answer some but not all questions posed; participating in some parts of the investigation but declining others; submitting favorable evidence in their possession but omitting relevant unfavorable evidence also in their possession. In addition, if a Complainant or Respondent is uncooperative, non-responsive, or otherwise unwilling or unable to speak to the Investigator, the Investigator may provide clear notice to the party, then proceed with the investigation without that person's input and make determinations based on the facts available.

### c. Documents

The Responding Office may request documents and other files under the control of the administration, including personnel files. Such documents shall remain confidential unless disclosure is required by law or University policy.

### d. Prior or Subsequent Conduct

Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of Prohibited Conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Policy violation, may be relevant to the current investigation.

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<sup>6</sup> Special interview procedures may apply when the witnesses or Respondents are members of the Academic Senate's Council on Academic Personnel (CAP). Such procedures will be provided as an appendix if and when they become available.

### e. Relevance

The investigator may determine the relevance of any witness or other evidence to the findings and may exclude certain types of evidence or information that is irrelevant, immaterial, or not otherwise necessary to complete the investigation.

## 5. INVESTIGATION REPORT AND NOTICE OF OUTCOME

If a Formal Investigation is conducted, the investigator will prepare a written report (“Investigation Report”). The preparation of the Investigation Report typically involves multiple stages of review within the Responding Office and may also include review by the Vice Chancellor for Equity, Diversity and Inclusion.

Before completing the Investigation Report, the Responding Office will ensure that the Complainant and Respondent have had a reasonable opportunity to respond to any material allegations or evidence against them. However, the evidence shared with a third-party Complainant may be limited to information relevant to that third-party Complainant.

An Investigation Report will ordinarily contain the following elements:

- summary of allegations;
- applicable policies and standard of review;
- description of the investigation and any relevant procedural history;
- summary of parties’ statements, witness statements, and evidence reviewed;
- relevant factual findings, including resolving disputed facts and credibility findings;
- analysis of whether Prohibited Conduct in violation of University policies has occurred;
- determination as to whether a preponderance of the evidence supports the conclusion that there is a violation of University policies.

In making this determination, the Responding Office’s goal is to identify, remediate, and prevent discriminatory behavior before it rises to the level of a legal violation. A finding of a policy violation does not mean that federal or state law has been violated.

In certain cases, the Investigation Report will also include recommendations about corrective action; recommendations may also be issued in a separate memorandum.

The Investigation Report will be accompanied by a written Notice of Outcome regarding whether violations of University policies were found. The Notice of Outcome will include:

- a statement of whether a preponderance of the evidence demonstrated that Respondent violated University policies;
- an admonition against retaliation;

- an explanation of any interim measures that will remain in place;
- in Title IX matters, a statement that the Complainant and Respondent have an opportunity to respond, preferably in writing, to
  - the Vice Chancellor-Academic Personnel (in faculty and non-faculty academic personnel matters);
  - the Chancellor's designee (in staff matters);<sup>7</sup>
- a statement indicating whether it appears that further investigation by an appropriate body may be necessary to determine whether other violations of University policy occurred, separate from any allegations of discrimination, harassment, or retaliation covered by these procedures;
- in matters where the investigation determined that the Respondent violated University policy, an identification of the decisionmaker responsible for institutional disciplinary action and/or basic information about the procedures used by these decisionmakers in the disciplinary process.

## 6. NOTICE AND USE OF THE INVESTIGATION REPORT AND NOTICE OF OUTCOME

The Notice of Outcome will be sent to the parties and in Title IX matters, the Report Recipients as appropriate.

The Complainant and Respondent may each submit a written request for a copy of the Investigation Report. An email request will suffice. The Investigation Report may be redacted by the Responding Office to protect the privacy of the parties and witnesses and to minimize the risk of retaliation.

The Responding Office will also forward the Investigation Report and Notice of Outcome to the administrator(s) responsible for supervision or discipline, and, in Title IX matters, additional Report Recipients as appropriate. The Responding Office shall request written notification of what action, if any, has been taken.

If the Respondent is an entity, the Responding Office will send the Investigation Report and Notice of Outcome to the entity's highest administrator (e.g., Chair) on behalf of the entity. Typically, the Responding Office will also send those documents to the Dean.

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<sup>7</sup> In Title IX matters, the Complainant and Respondent may respond to the Notice of Outcome and Investigation Report within five University business days of the date of the Notice of Outcome. This response should go to the Chancellor's designee and is designed to provide the Complainant and the Respondent with an opportunity to express their perspectives and address what outcome they wish to see. The response should not challenge the factual findings in the Investigation Report or present new evidence.

## APPENDIX A – DESIGNEE’S REVIEW IN TITLE IX MATTERS

The following describes the review by the Chancellor’s designee in Title IX matters.

### REVIEW AND APPROVAL BY CHANCELLOR’S DESIGNEE IN TITLE IX MATTERS (STAFF RESPONDENTS)

When the Title IX Office finds a staff Respondent responsible for violating policy, typically the department and/or Employee & Labor Relations (“administrative authority”) will submit a proposed decision to the Chancellor’s designee. The administrative authority may propose to resolve the matter with:

- no further action;
- action not requiring a notice of intent; or
- a notice of intent.

The administrative authority will not reinvestigate facts investigated by the Title IX Office.

The Chancellor’s designee will review the proposal and will decide whether to approve it. If the Chancellor’s designee does not approve the proposal, it will send the proposal back to the administrative authority for reconsideration and submission of a revision. If approved, the Chancellor’s designee will ensure the decision and its rationale are promptly communicated to the Complainant and Respondent.

The Respondent’s department will implement the approved decision in accordance with applicable policies within 40 Days of receiving the Notice of Investigation. Extensions to this timeline may be granted by the Chancellor’s designee for good cause. When an extension is granted, the Chancellor’s designee will provide written notice to the Complainant and Respondent with the reason for the extension and the projected new timeline.

### REVIEW BY CHANCELLOR’S DESIGNEE IN TITLE IX MATTERS (FACULTY RESPONDENTS)

In SVSH matters involving faculty Respondents, the opportunity to respond and the review are described in a separate Agreement between the Vice Chancellor–Equity, Diversity and Inclusion and the Vice Chancellor–Academic Personnel. That agreement is attached as Appendix B.

## APPENDIX B – PROCEDURES FOR TITLE IX INVESTIGATIONS: SEXUAL VIOLENCE, SEXUAL HARASSMENT

September 1, 2017

This Memorandum between the Vice Chancellor-Equity, Diversity and Inclusion (VC-EDI) and the Vice Chancellor, Academic Personnel (VCAP) outlines the procedures that will be used when the Title IX (T9) Office processes a report against a faculty respondent for violating the UC Policy on Sexual Violence Sexual Harassment (SVSH Policy). This memorandum is meant to be consistent with the SVSH Policy, the systemwide Investigation and Adjudication Framework for Senate and non-Senate faculty (dated July 1, 2017), and current UCLA Procedures for Handling Allegations of Discrimination, Harassment, or Retaliation (PHADHOR).

### PHASE 1: INVESTIGATION BY THE TITLE IX OFFICE

***Notice of Investigation.*** After the Initial Assessment, if a Formal Investigation is initiated, the T9 Office will notify the Chancellor and the VCAP by sharing the Notice of Investigation. The VCAP will share that Notice of Investigation with appropriate Senate committees, such as the Charges Committee. If the VCAP is made aware of any investigations conducted by the Academic Senate regarding an alleged violation of the SVSH Policy, the VCAP shall notify the T9 Office and the VC-EDI.

***Timeframe for investigation completion.*** The T9 Office will strive to issue its Notice of Outcome and Investigation Report within 60 business days of issuing the Notice of Investigation. That timeframe may be extended by the T9 Office for good cause, with written notice to the parties.

***Notice of Outcome and Investigation Report.*** When the T9 Office finds that a faculty member is responsible for a policy violation, the Notice of Outcome will include:

- a statement that a finding that Respondent engaged in Prohibited Conduct (as defined in SVSH Policy II.B) constitutes a finding of probable cause that the Faculty Code of Conduct has been violated;
- a description of the additional process for deciding whether and what discipline to impose, including a statement that the VCAP will engage the Chancellor's Peer Review Committee (CPRC) to advise on appropriate resolution, which may include pursuing discipline;
- a statement of the anticipated timeline and a statement that the parties will be informed of the final resolution of the matter.

### ***Distribution***

***To Parties.*** When the T9 Office completes its Investigation Report, the T9 Office will send the Notice of Outcome to the Complainant and Respondent. That Notice will inform the parties that they may request a copy of the Investigation Report. If a party makes that request, the T9 Office will electronically deliver a copy of the report to that party within a reasonable period of time. The report may be redacted to protect the privacy of personal or confidential information regarding all individuals other than the individual requesting the report.

***To VCAP.*** When the T9 Office sends the Notice of Outcome to the parties, it will also send the notice to the VCAP with the *unredacted* Investigation Report. When a *redacted* version is available, the T9 Office will send that version to the VCAP as well.

***To Supervisors.*** The T9 Office may also send the Notice of Outcome and the Investigation Report to the administrators responsible for supervision or discipline (typically the Dean), and other persons with a *bona fide* need-to-know. Ordinarily, a *redacted* version of the Investigation Report will be sent unless an unredacted version is necessary. In the cover memo or transmission email, the T9 Office will provide guidance about the Investigation Report's appropriate use.

***Recommendations.*** If the T9 Office has issued an Investigation Report finding policy violations, it may suggest to the VCAP recommendations for appropriate corrective action, including action to prevent future violations of SVSH Policy. The T9 Office may also inform the VCAP of any interim measures and remedial actions already taken that may be relevant to the VCAP's decision-making process. Even if the T9 Office finds no policy violation, it may identify conduct it believes warrants preventive or corrective action. Furthermore, it may identify potential policy violations other than SVSH that the VCAP may consider for additional action as appropriate.

## **PHASE 2: VCAP CONSULTATION AND SETTLEMENT**

***Parties' opportunity to respond.*** The T9 Office will offer the parties an opportunity to respond to the VCAP within five (5) business days of when the VCAP receives a Notice of Outcome and Investigation Report. That response will be encouraged to be in writing although it can be made in person. The purpose of this opportunity to respond is to provide the parties with an opportunity to express their perspectives and address what outcome they wish to see. The parties will be informed that their responses may be shared with the designated advisory body, as explained below.

***Consultation.*** If the Investigation Report finds Prohibited Conduct, after the parties have had the opportunity to respond, the VCAP will distribute the Notice of Outcome, Investigation Report, and any written responses or summary of oral responses from the parties to the designated advisory body. For Senate and non-Senate faculty Respondents, the designated advisory body is the Chancellor's Peer

Review Committee (CPRC). The advisory body will advise the VCAP with respect to how to proceed, including advice on appropriate resolutions, remedies, and disciplinary sanctions.

***Probable cause.*** University of California systemwide policy requires that the T9 Office's finding, by a preponderance of the evidence, that the Respondent has engaged in SVSH Prohibited Conduct shall constitute probable cause that the Faculty Code of Conduct has been violated. The systemwide policy further provides that the VCAP will not reinvestigate the investigated allegations of Prohibited Conduct.

***Timeframe for filing charges.*** Within (40) business days of receiving an Investigation Report finding Prohibited Conduct, the VCAP will ensure that a formal complaint of the charges by the appropriate party, such as Departmental chair or Dean, has been filed with the Charges Committee, and with the Privilege & Tenure (P&T) Committee unless an Early Resolution is achieved sooner.

This timeframe may be extended for good cause by the Chancellor, and if that occurs the VCAP will provide written notice to the parties. The designated advisory body and all relevant Senate committees will be notified of these deadlines.

For non-Senate academic appointees, following consultation with the CPRC, and in accordance with APM-150, the Chancellor or Chancellor's designee will decide what action to take to resolve the matter.

***Simultaneous Early Resolution.*** A Formal Complaint will not be delayed, held in abeyance or suspended while VCAP pursues or finalizes an Early Resolution. Even after charges have been filed with the Charges Committee, or a Formal Complaint has been filed with P&T, the VCAP may simultaneously negotiate an Early Resolution, as appropriate.

***Notifying parties of outcomes.*** The VCAP will update the parties of the status of the matter every 30 business days, and will keep the parties apprised of the expected date of outcome. The VCAP will promptly inform the parties, with a copy to the T9 Office, of any final decision, including any decision on discipline and its rationale. The VCAP will copy the T9 Office on this communication.

***Facilitating T9 data collection.*** By copy of this notification to parties of outcomes or within 30 business days of an Early Resolution or discipline after a formal P&T hearing, the VCAP will notify the T9 Office in writing of:

1. the terms of the Early Resolution or discipline after a formal P&T hearing;
2. any remedies provided to the Complainant that had not previously been provided; and
3. any other corrective action taken.

If so requested, the VCAP will report such outcomes or actions using forms provided by the T9 Office that are mutually agreed upon.