

## Interim Sexual Misconduct Policy

Last update: March 10, 2014

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### **Making Sexual Misconduct Complaints to the Center for Student Conduct.**

Complaints against students that allege Sexual Misconduct may be made directly to the UC Berkeley Police Department, the Center for Student Conduct, the Office for the Prevention of Harassment and Discrimination (OPHD)\* or any other campus office authorized to receive such complaints. If the initial complaint is received by the Center for Student Conduct, then the Center for Student Conduct shall disclose to the Complainant the options for pursuing the complaint under applicable campus policies and/or to law enforcement agencies.

Sexual Misconduct Complaints, after receipt by the Center for Student Conduct, shall be referred to OPHD for investigation. All time periods and timelines that would otherwise apply pursuant to the provisions of the Code are suspended while OPHD responds to the Sexual Misconduct Complaint.

*\* The Office for the Prevention of Harassment and Discrimination is the office that houses the campus Title IX Officer, who is responsible for coordinating the institution's efforts to comply with Title IX and related University and campus policies focused on nondiscrimination on the basis of sex. These responsibilities include the oversight of the campus response to complaints of sexual harassment and assault. The Title IX Officer and other designated staff can conduct administrative investigations of complaints of sexual harassment and assault, according to University and campus policies and procedures*

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### **Investigation of Sexual Misconduct Complaints.**

In cases involving alleged sexual harassment (including without limitation sexual assault and/or gender discrimination), OPHD or other office designated by the Chancellor in accordance with the Berkeley Campus Policy on Sexual Harassment and Complaint Resolution Procedures will take responsibility for investigating complaints of sexual misconduct. OPHD may temporarily delay the fact-finding portion of its investigation while law enforcement officers collect evidence for a criminal investigation, but will promptly resume its investigation at such time as there will be no interference with law enforcement evidence collection. OPHD will complete its investigation whether or not any related criminal proceedings are concluded. When an investigation is temporarily delayed, immediate steps shall be considered and may be imposed by the Center for Student Conduct to ensure the safety and well-being of the Complainant and the campus community during the law enforcement investigation. Such steps shall be imposed consistent with the requirements of the Code of Student Conduct. OPHD will not suspend the investigation on the basis that a student faces potential or actual criminal charges associated with the matters being investigated. A Sexual Misconduct investigation shall be completed promptly. If the investigation is not completed within sixty (60) days, OPHD shall inform the Complainant and the Center for Student Conduct of the status of the investigation and provide the Complainant and the Center for Student Conduct with an estimated date for the completion of the investigation.

OPHD shall provide the Center for Student Conduct with the findings of the completed investigation.

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### **Interim Responses to Sexual Misconduct Complaints.**

An interim suspension or other interim protections and remedies may be imposed pursuant to the Code of Conduct during investigation of a Sexual Misconduct Complaint and/or prior to completion of the conduct process. The scope of, and process regarding, such interim suspension shall be in accordance with provisions of the Code of Student Conduct.

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### **Response to Sexual Misconduct Complaint.**

Within seven (7) days after the date that the Center for Student Conduct receives the investigative findings from the Office for the Prevention of Harassment and Discrimination\*\*, the Center for Student Conduct shall either (1) issue an Alleged Violation Letter consistent with the requirements of the Code of Student Conduct, (2) request an extension from the Independent Hearing Officer, or (3) choose not to pursue the case/issue a Notification letter.

*\*\*Unless the length of the investigation period is extended to a later specific date by the Independent Hearing Officer. Notice does not need to be provided to the student of the application for or issuance of such an extension.*

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### **Charges and resolution of charges.**

Following issuance of the Alleged Violation Letter, the Conduct process shall proceed in accordance with the requirements of the Code of Student Conduct, except to the extent that those requirements are specifically modified by this Interim Policy.

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### **Special procedures regarding informal Resolution.**

Prior to agreeing to an Informal Resolution of a Sexual Misconduct Complaint, the Center for Student conduct shall consult with the Complainant regarding any proposed Informal Resolution.

If the Center for Student Conduct decides to agree with the Responding student to enter into an Informal Resolution, then the Center for Student Conduct shall provide the Complainant with the resulting signed Administrative Disposition. Upon receipt of the signed Administrative Disposition, The Complainant may appeal the Center for Student Conduct's decision to enter into the Informal Resolution. The Informal Resolution shall not be effective until the appeal period has run and, if an appeal has been made, the appeal has been resolved. The time limitations concerning the scheduling of the hearing are suspended from the date the Administrative Disposition is given to The Complainant and ends on the tenth day following resolution of any appeal.

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### **Special pre-hearing procedures.**

The Code of Student Conduct provides that pre-hearing information is exchanged by the Center for Student Conduct and the Responding Student no later than (5) days prior to the hearing date. The Center for Student Conduct shall provide this information to the Complainant prior to the hearing, to the extent permitted by law.

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### **Special procedures regarding the conduct of the hearing.**

The Complainant may be present at the hearing. With regard to the scheduling of the hearing, the Independent Hearing Officer shall make an equal effort to accommodate the schedules of the Responding student and the Complainant. Once the hearing is scheduled, the absence or unavailability of either the Responding student or the Complainant shall not be cause to cancel, postpone, or reschedule a scheduled hearing. The Complainant may be excluded from the hearing in order to protect the privacy of students other than the Responding student. Neither the Complainant nor the Responding student may record any portion of the hearing.

The Independent Hearing Officer may allow any witness to be visually or physically separated from the responding student. This may include, but not limited to, the use of a retractable wall or screen, television or computer monitor, or other appropriate technology. Requests for visual or physical separation should be made to the Independent Hearing Officer at least five (5) days prior to the hearing.

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### **Special notice of the outcome of the disciplinary process and rights of appeal.**

The Center for Student Conduct shall provide written notice to the Complainant of the outcome of the hearing process the same day such notice is given to the Responding student.

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### **Special appeal process and procedures.**

Any action that is subject to appeal pursuant to this Interim Policy is subject to the following requirements. Such action specifically includes the Administrative Disposition and the final outcome of a formal hearing.

Appeals must be filed by submitting the appeal to the Vice Chancellor for Student Affairs no later than the end of the tenth (10th) day after the appealing party received written notice of the outcome of the Administrative Disposition or formal hearing. When such an appeal is submitted within that time period, the Vice Chancellor for Student Affairs or his/her designee must promptly send a copy of the appeal to the Complainant (if the appeal is from the Responding student) or the Responding student (if the appeal is from the Complainant). Within five (5) days of receiving the copy, the non-appealing party may submit a written response to the Vice Chancellor for Student Affairs or his/her designee.

Appeals may be made based upon the following grounds:

1. Newly discovered evidence that was not available at the time of the hearing; or
2. Significant procedural error; or
3. Evidence or arguments, which for good cause, should be considered.

The Vice Chancellor for Student Affairs or his/her designee will make the final determination of all matters appealed under this provision of the Code of Conduct. The Vice Chancellor for Student Affairs or his/her designee may:

1. 1. Reject the appeal and affirm the original decision and/or sanctions; or
2. 2. Approve the appeal; and
  - a. Modify the decision and/or sanction(s) in question; or
  - b. Require that the matter be reopened and that elements of the Conduct process, including without limitations hearings, be repeated.

If the appeal is based upon newly discovered evidence, then the matter may be referred back to the Office for the Prevention of Harassment and Discrimination to determine whether any modifications should be made to the investigative report.

The decision or other action taken with regard to the appeal shall be communicated in writing by the Vice Chancellor for Student Affairs to Complainant, the Responding student, and the Center for Student Conduct within fifteen (15) days after receipt of the appeal and related documents. If no action is taken within that time period, then the appeal is deemed denied. All otherwise applicable deadlines and timelines provided for in the Code of Student Conduct are suspended during the time provided for appeals and while appeals are pending before the Vice Chancellor for Student Affairs. The filing of a timely appeal suspends the imposition of sanctions and/or formal resolution of charges until the appeal is decided, but interim action may be taken as determined by the Dean of Students or his/her designee consistent with the process and requirements of the Code of Student Conduct. The imposition of discipline or determination not to uphold charges following a formal hearing shall not be effective until the appeal period has run and, if an appeal has been made, the appeal has been resolved.

Grades or degrees may be withheld pending resolution of appeals.

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## **Special General Provisions.**

### **Notices.**

Notices or communications given to the Responding student by the Center for Student Conduct concerning the following shall be provided to Complainant on the same day:

Administrative Disposition;

Notice of the outcome of a hearing;

Final decision to impose sanctions issued by the Dean of Students; and

Any decision regarding an appeal.

### **Privacy.**

Portions of the communication to Complainant of actions and proposed actions may be redacted if such redaction is required or permitted by law in order to protect the privacy of the student who is the subject of the Sexual Misconduct Complaint, other students, or other persons. In accordance with federal and state law, the Center for Student Conduct may maintain certain information regarding a Sexual Misconduct Complaint in confidence in order to protect the privacy and confidentiality of the Complainant; however, this information will not be used in a hearing.

### **Advisor to Complainant.**

The Complainant may be accompanied by one advisor at any stage of the process, at the Complainant's own expense. An advisor's role in the student conduct process is to provide assistance in preparing for and conducting meetings and hearings. In meetings prior to the commencement of a formal hearing process, the Complainant may be assisted by an advisor who, with the written permission of the student, may interact directly with Center for Student Conduct staff and may meet on behalf of the student to seek an informal resolution.

During a formal hearing, the Complainant may consult with the advisor throughout the proceedings.

The Complainant may request that the advisor be allowed to speak on behalf of the Complainant during the hearing and the Independent Hearing Officer will decide whether or

not to grant that request after considering:

1. whether granting the request will promote the fair, efficient and timely completion of the hearing;
2. the ability of the Complainant to effectively present the Complainant's position and testimony; the complexity and seriousness of the case;
3. the advisor's familiarity with and willingness to abide by applicable procedures;
4. cultural or language barriers that prevent the Complainant from expressing themselves during the hearing;
5. and such other factors as may be relevant in the particular case.

The Independent Hearing Officer may limit the speaking role of the advisor during the hearing if necessary to prevent disruption.

**Special Grounds for Discipline; retaliation and intimidation.**

The campus does not permit retaliation against any person for bringing a Sexual Misconduct Complaint. Students may be disciplined for retaliating in any fashion against any person who makes a Sexual Misconduct Complaint. Retaliation includes, but is not limited to, harassment, threats, intimidation, reprisals, and/or adverse actions committed or instigated by the person who is the subject of the complaint or persons acting on behalf of that person against directed toward the Complainant or anyone providing emotional or material support to the Complainant. Any student who participates in retaliation may be subject to the disciplinary process as outlined in the Code of Student Conduct.

Students may be subject to the disciplinary process as outlined in the Code for Student Conduct for any attempt to intimidate any witness or otherwise attempt to prevent the testimony of any witness who has information relevant to a student conduct proceeding.

**Application of sanctions.**

Any sanctions described in the Code of Student Conduct may be imposed in response to a Sexual Misconduct Complaint except for the sanction set forth in section 105.10, which sanction may only be imposed for academic dishonesty. Sanctions include without limitation exclusion, probation, suspension and dismissal.

**Special Definitions.**

Complainant: The person who makes a Sexual Misconduct Complaint.

Sexual Misconduct: For the purposes of this Code of Student Conduct, Sexual Misconduct means sexual harassment and sexual assault as those terms are defined in the University of California Policy on Sexual Harassment and Sexual Violence. The grounds for discipline for such conduct are Physical Abuse (section 102.08), Sexual, Racial, or Other Forms of Harassment (section 102.09), and/or Stalking (section 102.10).

Sexual Misconduct Complaint: A formal written complaint made to the Center for Student Conduct or a complaint made to the Office for the Prevention of Harassment and Discrimination alleging that the Complainant was subjected to acts, committed by the student who is the subject of the complaint, which acts violated the provisions of the Code of Student Conduct concerning sexual harassment, sexual violence, and/or stalking (specifically grounds for discipline under sections 102.08, 102.09, and/or 102.10).

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