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## A Bill of No Confidence in UC Berkeley's Disciplinary Policies Regarding Sexual Assault

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**Authored by** Aryle Butler, Anais LaVoie, Senator Klein Lieu,  
Senator Megan Majd, and Senator Donna-Jo Pepito

**Sponsored by** Senator Klein Lieu, Senator Megan Majd, and Senator Donna-Jo Pepito

**WHEREAS**, sexual assault is a violent crime; and,

**WHEREAS**, the authors of this bill define those who are directly affected and/or harmed by sexual assault and harassment as “survivors,” affirming the agency and ability of individuals to take action in the face of opposition or trauma; and,

**WHEREAS**, the Administrative documents referenced in this bill refer to survivors of sexual assault and harassment as “victims,” “accusers,” or “complainants”; and,

**WHEREAS**, the Administrative documents referenced in this bill refer to those accused of sexual assault and harassment as the “accused” or often simply as “student” or “individual,” depersonalizing by contrast the reporting survivor’s identity as a fellow student with rights and as an individual with agency; and,

**WHEREAS**, the four publicly accessible Administrative documents referenced in this bill are: 1) University of California Policy on Sexual Harassment<sup>1</sup> (UCPSH); 2) The Berkeley Campus Student Policy and Procedures Regarding Sexual Assault and Rape<sup>2</sup> (BCSPPRSAR); and 3) Berkeley Campus Code of Student Conduct<sup>3</sup> (BCCSC); and Berkeley Campus Procedures for Responding to Reports of Sexual Harassment<sup>4</sup> (BCPRRSH); and,

**WHEREAS**, as viewable in its table of contents, there is no section in BCCSC specifically enumerating conduct regarding sexual assault, leaving these policies and procedures vague and under a blanket of conduct issues ranging from plagiarism to criminal behavior; and,

**WHEREAS**, BCSPPRSAR Article III. Definitions. feminizes sexual trauma in referring to actions against the sexual organ, anus, groin or buttocks “of any person,” and specifically “the breast of a female,” leaving out many students and completely ignoring sexual trauma experienced by trans\* students,

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<sup>1</sup> University of California Policy on Sexual Harassment

<http://ophd.berkeley.edu/policies-procedures/sexual-harassment>

<sup>2</sup> The Berkeley Campus Student Policy and Procedures Regarding Sexual Assault and Rape

<http://ophd.berkeley.edu/policies-procedures/sexual-assault>

<sup>3</sup> Berkeley Campus Code of Student Conduct

<http://sa.berkeley.edu/sites/default/files/UCB-Code-of-Conduct-new%20Jan2012.pdf>

<sup>4</sup> Berkeley Campus Procedures for Responding to Reports of Sexual Harassment

<http://ophd.berkeley.edu/policies-procedures/complaints>

**WHEREAS**, with the exception of direct reporting the UCPD, all reports of sexual assault to any unit providing related resources on campus are deferred to the Title IX Compliance Officer for review, according to BCSPRSAR Article V. Campus Procedures for Responding to a Sexual Assault; and,

**WHEREAS**, in processing sexual assault emotionally and practically, survivors often avoid direct reporting to police departments for fear of public ostracization and/or legal action that they will not be able to impact, seeking support from campus-operated resources instead; and,

**WHEREAS**, these reporting processes consolidates complete control over all actions taken on reported cases of sexual assault and harassment in one individual and office, creating a structural crisis of transparency for students; and,

**WHEREAS**, the Title IX Compliance Officer may or may not decide if cases of sexual assault and harassment even make it to the Center for Student Conduct, according to BCCSC Article II. Section B. Clause 2 “Sexual Harassment Complaints”; and,

**WHEREAS**, the Title IX Compliance Officer may decide to seek Early Resolution instead of a formal disciplinary hearing, effectively designating the Title IX Compliance Officer as a judge in a case before all evidence and testimony is collected or reviewed; and,

**WHEREAS**, according to BCPRRS Article A, Section 2. “Procedures for Early Resolution”:

“The goal of Early Resolution is to resolve concerns at the earliest stage possible, with the cooperation of all parties involved. The Berkeley campus encourages Early Resolution options when the parties desire to resolve the situation cooperatively and/or when a Formal Investigation is not likely to lead to a satisfactory outcome. Early Resolution may include an inquiry into the facts, but typically does not include a formal investigation.”; and,

**WHEREAS**, this procedure does not define “satisfactory outcome,” nor for whose satisfaction the Title IX Compliance Officer is working when suggesting Early Resolution; and,

**WHEREAS**, according to BCSPRSAR Article III. Definitions. “Unlawful Sexual Intercourse”:

“In instances where a person is charged with violating the Policy, the student disciplinary process will determine whether the person reasonably should have known that the accuser was not consenting (or was not capable of consenting) to the act. In addition, if both parties are too impaired to freely consent to a sexual act, either party (or both parties) may be charged with violating this Policy.”; and,

**WHEREAS**, this definition of consent reinforces societal silencing of sexual assault by requiring the burden to be on survivors to prove they were not consenting, rather than requiring affirmative proof of consent, and “victim-blaming” - potentially punishing survivors for violating campus policies due to events that were beyond their consent and control; and,

**WHEREAS**, if the Title IX Compliance Officer chooses to pursue disciplinary action through the Center for Student Conduct, and the Center determines there is not sufficient evidence to warrant further investigation, there is no recourse or appeals process for the survivor to challenge this decision, according to BCCSC Article II. Section C. Clause 2. Line A. “Notice of Charges”; and,

**WHEREAS**, the rights of the accused to due process and to be assumed innocent until proved guilty should be upheld, but the rights of survivors to see justice and to have their experiences respected should be expanded to be on par with those of the accused; and,

**WHEREAS**, both BCCSC Article I. “Student Rights” and Article II. Section D. “Resolution of Charged Cases” completely omit any mention of rights awarded to survivors during the reporting and review process; and,

**WHEREAS**, the Center for Student Conduct’s website provides a flowchart<sup>5</sup> for the accused to understand disciplinary processes, but does not provide information allowing survivors to understand what happens when a report is made or follow-up on their reports once submitted; and,

**WHEREAS**, BCCSC Article II. Section C. Clause 2. Line B. Subarticle 1. “Response to Charges” allows the accused to challenge decisions made by disciplinary bodies by requesting a panel or administrative hearing; and,

**WHEREAS**, disciplinary bodies are not similarly mandated to respect the requests of survivors as to how a case they report will be considered, according to BCPRRSH Article 4. “Procedures for Formal Investigation,” which reads:

“The wishes of the individual making the request shall be considered, but are not determinative, in the decision to initiate a Formal Investigation of a report of sexual harassment.”; and,

**WHEREAS**, any protections for survivors are provided at the discretion of the investigator, only if and when a formal investigation is launched, according to (but not enumerated by) BCPRRSH Article 4. “Procedures for Formal Investigation”; and,

**WHEREAS**, the failure of UC Berkeley to protect the rights of survivors is magnified by the work of other universities in the Bay Area to support survivors, such as at San Francisco State University, where:

“Victims of sexual assault must have the following rights: equal rights with the accused in determining if a disciplinary hearing shall be open or closed; the right to have a person of the victim's choice accompany the victim throughout the disciplinary hearing; the right to be present during the entire hearing; the right not to have past sexual history

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<sup>5</sup>Division of Student Affairs: The Center for Student Conduct, “Overview of Process”  
<http://sa.berkeley.edu/conduct/overview>

introduced as part of the testimony except for specific purposes described in law; and the right to prompt relocation of one of the parties”<sup>6</sup>; and,

**WHEREAS**, as written in BCCSC Article VI. “Conduct Sanctions,” disciplinary actions decrease after an accused student graduates, because revocation of a degree is only considered a viable course of action in cases of misconduct related to degrees obtained by fraud or academic dishonesty and not other conduct violations; and,

**WHEREAS**, SB 41 “A Bill Condemning the Prevalence of Sexual Assault in the City of Berkeley” passed through the ASUC Senate this year acknowledging an increase in reports of sexual assault in the City of Berkeley and harrowing national statistics related to the number of students who will be sexually assaulted or raped while in college; and,

**WHEREAS**, the resolutions of SB 41 are still pending, specifically the resolutions which mandated the ASUC External Affairs Vice President to request data from the UC Berkeley Center for Student Conduct relating to the number of rapes and sexual assaults which have occurred and have been disciplined, formally or informally, on campus over the last five years, and for the ASUC External Affairs Vice President to direct this data to the ASUC Representative to the Gender Equity Resource Center; and,

**WHEREAS**, a coalition of student groups and campus leaders led by ASUC Senators Megan Majd and Donna-Jo Pepito recently launched the “6000 in Solidarity” campaign in order to fight sexual assault and have students pledge solidarity with the approximate 6000 students enrolled today who will be sexually assaulted or raped before they graduate from UC Berkeley; and,

**WHEREAS**, by signing the “6000 in Solidarity” pledge<sup>7</sup>, supporters agree to: 1) Only engage in consensual sexual activities; 2) Be an effective bystander in preventing others from acting without consent; 3) Report sexual assault when it happens, and encourage survivors to do the same; and 4) join the call for the Center for Student Conduct to start taking sexual assault seriously by publishing data relating to the occurrence of sexual assault at UC Berkeley in the last five years and actively disciplining sexual offenders; and,

**THEREFORE BE IT RESOLVED**, the ASUC holds no confidence in the University’s current sexual assault policies and disciplinary procedures, specifically in the Title IX Compliance Office and the Center for Student Conduct; and,

**THEREFORE BE IT RESOLVED**, the ASUC create an independent Center for Crisis Management within the Student Advocate’s Office in order to support survivors and address the potential academic impacts of being a student in a state of trauma; and,

**THEREFORE BE IT RESOLVED**, the ASUC suggests the following additions to existing policies around sexual assault and harassment in order to strengthen the rights and resources for survivors, with

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<sup>6</sup>San Francisco State University’s Sexual Assault Policy

<sup>6</sup>[http://www.sfsu.edu/~safe\\_plc/Assault\\_Policy.htm](http://www.sfsu.edu/~safe_plc/Assault_Policy.htm)

<sup>7</sup> 6000 in Solidarity Campaign

<http://www.calserve.org/6000-campaign/>

the goal of ensuring the accused and the survivor are awarded equal rights and respect without infringing on the right of the accused to due process and the presumption of innocence until proof of guilt:

- 1 A democratization of the initial review process to include representatives from, for every reported case of sexual assault or harassment, the Title IX Compliance Officer, the Student Advocate's Office, the Gender Equity Resource Center, and the Center for Student Conduct, ending the concentration of power solely in the Title IX Compliance Officer.
- 2 A new definition of consent that does not rely on survivors to provide the burden of proof and that does not blame survivors for sexual assaults done to them.
- 3 A procedure through which survivors can request a formal hearing of the evidence and testimony in their cases.
- 4 A process through which survivors can request representation from the Student Advocate's Office in all proceedings related to their case.
- 5 An appeals process for survivors dissatisfied with the handling of their report.
- 6 A disciplinary process for former accused students who graduate or leave the University before their cases are resolved.
- 7 An expansion of the duties of the Title IX Compliance Officer to include annual publication to the student body at-large of: 1) data related to the number of sexual assaults reported to the office and the disciplinary action sought in each case; and 2) a Heat Map showing the locations, within a number of blocks necessary to maintain confidentiality, in which reported cases of sexual assault occurred, in order to track and address high regional concentrations of sexual assault.

**THEREFORE BE IT RESOLVED**, that the ASUC Senate endorse the "6000 in Solidarity" campaign for the purpose of allowing UC Berkeley's diverse student body to access and sign the pledge and ultimately take action against the prevalence of sexual assault on campus.