

UC Davis Policy and Procedure Manual

Chapter 380, Personnel—General

Section 12, Sexual Harassment

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Responsible Department: Offices of the Chancellor and Provost

Source Document: University of California Policy on Sexual Harassment and Procedures for Responding to Reports of Sexual Harassment

Exhibit A, Complaint Form

Exhibit B, Sexual Harassment Procedures Flow Chart

Exhibit C, UC Davis Complaint and Grievance Procedures Information

Exhibit D, UC Davis Disciplinary Procedures Information

I. Purpose

This section provides the primary procedures for students, faculty, staff, or others to report allegations of sexual harassment, and procedures for responding to such reports. While there are other complaint resolution and grievance procedures through which sexual harassment complaints may be made, this section takes precedence over any other available procedures.

II. Policy

- A. The University of California is committed to creating and maintaining a community where all persons who participate in University programs and activities can work and learn together in an atmosphere free of all forms of harassment, exploitation, intimidation, or discrimination.
- B. The University will respond promptly and effectively to reports of sexual harassment and take appropriate action to prevent, correct, and if necessary, impose discipline for behavior that violates this policy.
- C. Retaliation against a person who reports sexual harassment, helps someone with a report of sexual harassment, or takes any part in an investigation or resolution of a sexual harassment report is prohibited. Retaliation includes threats, intimidation, reprisals and/or adverse actions related to employment or education.
- D. The University recognizes that, as participants in a public university, the faculty and other academic appointees, staff and students 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. No provision of this policy shall be interpreted to prohibit conduct that is legitimately related to the following:
 1. course content, teaching methods, scholarship, or public commentary of individual faculty; or
 2. the educational, political, artistic, or literary expression of students in classrooms and public forums.

III. Conduct Constituting Sexual Harassment

- A. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct affects a person's employment or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile, or offensive working or learning environment.
- B. Sexual harassment may include incidents between any members of the UC community, including academic personnel, staff, coaches, housestaff, students, or non-student or non-

employee participants in UC programs such as vendors, contractors, visitors, or patients.

- C. Sexual harassment may occur in hierarchical relationships or between peers.
- D. Sexual harassment may occur between persons of the same sex or opposite sex.
- E. Relationships that begin as consensual, but evolve into situations that lead to charges of harassment are subject to this policy.
- F. Behavior that creates a hostile or intimidating environment for individuals who are not the direct target of the behavior may also be sexual harassment.
- G. Sexual assault is considered an extreme form of sexual harassment.
- H. Harassment that is not sexual in nature but is based on gender, sex-stereotyping, or sexual orientation is subject to the University's nondiscrimination policies and procedures (e.g., Section 380-15, APM 035, PPSM 12). However, in determining whether a hostile environment due to sexual harassment exists, the University may consider acts of discrimination based on gender, sex-stereotyping or sexual orientation.
- I. In determining whether conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and the totality of circumstances, including the context in which the conduct occurred.

IV. Procedures for Reporting

- A. Reporting sexual harassment
 - 1. Individuals who experience or observe behavior that may be sexual harassment may report the harassment, to any of the following designated officials:
 - a. The Sexual Harassment Officer (SHO)
 - 1) On the Davis campus, (530)752-9255, <http://shep.ucdavis.edu/>
 - 2) At UCDHS, (916)734-8104, http://www.ucdmc.ucdavis.edu/hr/hrdepts/harassment_mediation/sexual_harass_prgrm/.
 - b. The Title IX Officer
 - 1) On the Davis campus: (530) 752-9466
 - 2) At UCDHS, (916) 734-8104
 - c. Any department chair, manager, supervisor, human resources coordinator, faculty member, or academic supervisor.
 - d. Any Sexual Harassment Advisor (see <http://shep.ucdavis.edu/advisors.htm>).
 - e. Any non-student employee holding one of the following positions:
 - 1) Coach for sports teams (non-volunteer).
 - 2) Leadership Coordinator, Academic Coordinator or Conduct Coordinator in the residence halls.
 - 2. Use of the Sexual Harassment Complaint Form (Exhibit A) is encouraged, but not mandatory.
 - 3. Reports should provide as much information as possible. If insufficient information is provided to the University (e.g., certain anonymous reports or reports that do not identify the respondent), the University may not be able to respond other than by general outreach and education.
 - 4. Reports shall be made as soon as possible after the alleged conduct occurs, optimally

within one year.

- a. The University will respond to all reports to the greatest extent possible, taking into account the amount of time that has passed since the alleged conduct occurred.
 - b. An unreasonable delay in reporting an incident may impede the University's ability to conduct an investigation or effect appropriate remedial action.
5. The University cannot guarantee anonymity. Requests that the complainant's name remain anonymous or not be disclosed to the respondent will be considered in the context of the due process rights of the respondent, the need to ensure a complete and fair investigation, and factors such as the safety and protection of the complainant and campus community (see VIII, below).
- B. Allegations of sexual harassment made under other complaint resolution or grievance procedures
1. An individual who believes he or she has been subjected to sexual harassment may file a complaint or grievance pursuant to the applicable complaint resolution or grievance procedure listed in Exhibit C.
 2. Such complaint or grievance may be filed either instead of or in addition to making a report to one of the individuals identified in IV.A.1, above.
 3. A complaint or grievance alleging sexual harassment must meet all the requirements under the applicable complaint resolution or grievance procedure, including time limits for filing.
 4. If a complaint or grievance alleging sexual harassment is filed under a complaint resolution or grievance procedure other than this section, the complaint or grievance will be held in abeyance pending the outcome of the early resolution or formal investigation procedures described in V, below.
- C. Complaint that University response failed to follow policy
1. A complainant may file a complaint or grievance under the applicable complaint resolution or grievance procedure (see Exhibit C) alleging that actions taken by the University in response to the report did not follow appropriate procedures.
 2. A complaint or grievance alleging that the University has failed to follow this policy shall be filed in a timely manner.
 - a. The time period for filing begins on the date the individual was notified of the outcome of the investigation or other resolution process, or of the actions taken by the administration in response to the report, whichever is later.
 - b. The time period for filing a complaint differs based on the applicable complaint resolution or grievance procedure (see Exhibit C).
 3. A complaint or grievance may not be filed under this section to challenge or seek modification of a disciplinary sanction imposed on the respondent.
- D. Reporting retaliation
1. An individual who believes that s/he has been subjected to retaliation for reporting sexual harassment in good faith, assisting someone with a report of sexual harassment, or participating in any manner in an investigation or resolution of a report of sexual harassment, may make a report of retaliation under the procedures described in IV.A, above.
 2. A report of retaliation will be treated as a report of sexual harassment and will be subject

to these same procedures.

E. False reports

1. A person who makes a report of sexual harassment or retaliation that is later found to have been intentionally false or made maliciously without regard for the truth may be subject to disciplinary action.
2. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by an investigation.

V. University Response to Reports of Sexual Harassment

A. The University will inform individuals making reports of sexual harassment of resolution processes (e.g., early resolution, formal investigation, complaint resolution or grievance procedures), confidentiality policies, and the range of possible outcomes (including interim protections, remedies for the individual harmed by the harassment and disciplinary action that may be taken against the respondent).

B. Early Resolution

1. Early resolution may be used when parties want to resolve the situation cooperatively and/or when a formal investigation is unlikely to lead to a satisfactory outcome.
2. Early resolution may include but is not limited to the following:
 - a. No-fault conversation with written confirmation.
 - b. Mediating agreement between the parties.
 - c. Separating the parties.
 - d. Administrative review or preliminary inquiry, including fact-finding.
 - e. Negotiating agreement for disciplinary action.
 - f. Conducting targeted educational and training programs.
 - g. Referring parties to a counseling program.
 - h. Providing remedies and/or referral to support services for the individual harmed by the harassment.
3. The early resolution process shall be coordinated by the SHO and steps taken to encourage early resolution and agreements reached shall be documented.
4. While the University encourages early resolution of a complaint, the University does not require parties to participate in early resolution prior to the University's decision to initiate a formal investigation. Some reports of sexual harassment may not be appropriate for early resolution but may require a formal investigation at the discretion of the Title IX Officer.

C. Formal investigation

1. An individual reporting sexual harassment may request a formal investigation and determination of whether University policy has been violated.
2. Generally, where early resolution is inappropriate (such as where the facts are in dispute in reports of serious misconduct, or when reports involve a pattern of inappropriate behavior or criminal acts such as stalking, sexual assault or physical assault) or where early resolution was unsuccessful, the University will conduct a formal investigation.
3. The wishes of the individual reporting the harassment shall be considered, but are not determinative in the University's decision to initiate a formal investigation.

4. The Title IX Officer will initiate an investigation by:
 - a. identifying an investigator familiar with this policy and trained in sexual harassment issues and procedures to conduct the investigation;
 - b. providing the investigator with a charge letter describing the nature of the complaint, a definition of the standard of review and a date for the report to be completed; and
 - c. notifying the individual who reported the sexual harassment and the respondent that an investigation has been initiated. The notification will include a statement of the allegations, the name of the investigator, a date for completion of the investigation, contact information for the SHO and a weblink to this policy.
5. The following procedures shall be used to ensure a full, fair, and impartial investigation.
 - a. The investigator will interview the parties, if available, as well as other witnesses as needed.
 - 1) On request, parties may each have a representative present when interviewed by the investigator.
 - 2) Other witnesses may be accompanied by a representative if required by applicable University policy or at the investigator's discretion.
 - 3) A representative who impedes or interferes with the investigative process may be excluded from the proceedings.
 - b. The investigator will review relevant evidence, including documents.
 - c. Parties and witnesses will be instructed that maintaining confidentiality is necessary to protect the integrity of the investigation. Disclosure of facts or allegations to parties and witnesses will be limited to what is reasonably necessary to conduct a full and fair investigation.
 - d. The investigator may recommend interim protections or remedies for the complainant or witnesses at any time during the investigation. Failure to comply with the terms of any interim protections may be considered a separate violation of this policy.
 - e. The investigator will prepare and submit a written report to the Title IX Officer and SHO. The report shall include the following components:
 - 1) A statement of the allegations and issues.
 - 2) The positions of the parties.
 - 3) A summary of the evidence.
 - 4) Findings of fact.
 - 5) The investigator's determination as to whether University policy has been violated.
 - 6) If directed to do so, a recommendation of remedies to resolve the complaint.
 - f. The Title IX Officer will submit the report to the appropriate University official with authority to implement the actions necessary to resolve the complaint. The report may be used as evidence in other procedures, such as subsequent complaints, grievances and/or disciplinary actions.
6. The investigation shall be conducted and completed as promptly as possible, usually within 60 working days of the date of initiation of the formal investigation.
 - a. This deadline may be extended by the Title IX Officer.
 - b. Written notice of the extension shall be provided to the complainant and the

respondent.

7. Within 30 days of receiving the final report, the Title IX Officer shall notify the complainant and the respondent in writing that the investigation has been completed. This notification will indicate:
 - a. Whether or not there was a finding that University policy was violated.
 - b. Consistent with law and policies regarding confidentiality, whether action was taken to resolve the complaint.
 - c. How to obtain a copy of the final investigation report.
8. The complainant and respondent may request a copy of the final report from the Information Practices Coordinator, who can be reached at (530)752-3949. The release of the report is subject to University policy regarding privacy and confidentiality. See VIII, below.

E. Discipline

1. Disciplinary action shall be considered following a finding of violation of the policy, including engaging in sexual harassment, retaliation, violating interim actions, or filing intentionally false charges of sexual harassment.
 - a. Disciplinary actions will be pursued according to the procedures described in the appropriate policy (see Exhibit D).
 - b. Investigative reports prepared for a formal investigation under this policy may be used as evidence in disciplinary actions.

VI. Roles and Responsibilities

A. The Campus Title IX Officer

1. Develops and implements procedures for prompt and effective response to reports of sexual harassment.
2. Appoints and oversees a Sexual Harassment Case Management Team (SHCMT) to serve as a resource to the Title IX Officer and SHO.

B. The Title IX Officer and/or the SHO

1. Maintains accurate contact information for SHOs and Sexual Harassment Advisors on the Web.
2. Prepares and submits an annual report to the Office of the President, for submission to The Regents, on sexual harassment complaint activity during the preceding year.
3. Plans and manages the local sexual harassment education and training programs and ensures the program:
 - a. Widely disseminates this policy to the University community.
 - b. Provides educational and training materials to promote compliance with the policy and familiarity with local reporting procedures.
 - c. Coordinates training required by state law and University policy.
4. Receives reports of sexual harassment directly and from designated officials and ensures that the timelines, rights of the complainant, procedures, and remedies provided herein are met.
5. Maintains records of reports of sexual harassment and actions taken in response to reports, including records of investigations, voluntary resolutions, and disciplinary action

as appropriate.

- a. Records shall be kept for at least 5 years after closure.
- b. Records may be kept longer at the discretion of the Title IX Officer and/or the SHO.

C. Designated Officials

1. Maintain a work or educational environment free from all forms of harassment or discrimination.
2. Immediately consult with the SHO following notice of alleged sexual harassment. Failure to report sexual harassment allegations to the SHO may be grounds for disciplinary action.
3. In consultation with the SHO, implement appropriate interim actions.
4. Participate in training as required by state law.

D. Sexual Harassment Case Management Team (SHCMT)

1. The SHCMT includes the Campus Title IX Officer, the two SHOs, and representatives from Campus Counsel, Human Resources, Academic Personnel, Student Judicial Affairs, and other members as required.
2. The SHCMT meets regularly and on an as-needed basis to serve as a resource to the SHOs and the Title IX Officer.

E. Sexual Harassment Advisors

1. Serve under the auspices of the SHO as additional resources to the campus.
2. Respond to questions regarding this policy.
3. Provide copies of the policy and procedures upon request.
4. Provide information about complaint resolution options.
5. Notify the SHO of reports of alleged sexual harassment.
6. Assist the SHO in early resolution efforts.

VII. Privacy and Confidentiality

- A. The University shall protect the privacy of individuals involved in a report of sexual harassment to the extent permitted or required by law and University policy.
 1. The University will comply with requests for confidentiality whenever possible, but may need to make disclosures to complete a fair investigation and ensure a working and learning environment free from sexual harassment.
 2. If disclosure is required by law or University policy, the records shall be redacted to protect the privacy of all persons other than the person requesting the report (see PPM Section 320-20).
 3. An individual who has made a report of sexual harassment may be advised of the specific sanctions imposed against the respondent when the individual needs to be aware of the sanction in order for it to be fully effective (e.g., restrictions on communication or contact).
 4. Information on disciplinary actions taken against the respondent will not be disclosed without the respondent's consent, unless it is necessary to ensure compliance with the action, the safety of individuals, or is required by law.
- B. University employees designated in IV.A.1.a-e, above, have an obligation to respond to reports of sexual harassment, even if the individual making the report requests that no action be taken.

- C. Confidential resources
1. Staff in the following units are identified as confidential resources who can be consulted for advice and information, and are not designated officials.
 - a. Academic and Staff Assistance Program ((530)752-2727; (916)734-2727).
 - b. Campus Violence Prevention Program ((530)752-3299).
 - c. Counseling and Psychological Services ((530)752-0871).
 - d. Lesbian, Gay, Bisexual, and Transgender Resource Center ((530)752-2452).
 - e. Mediation Services ((530)297-4480; (916)734-5335).
 - f. Women's Resources and Research Center (752-3372).
 - g. Legal, medical, or other advisors whose communication is protected by a statutory privilege.
 2. Consultation with these resources will not lead to a report of sexual harassment unless additional action is taken by the individual seeking advice.

VIII. Further Information

- A. The following agencies may serve as neutral fact finders to facilitate the voluntary resolution of disputes between parties. Contact information for the nearest office is available in local telephone books or on the agencies' Web sites.
1. The federal Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing investigate complaints of discrimination, including unlawful sexual harassment in employment.
 2. The U.S. Department of Education Office for Civil Rights investigates complaints of discrimination, including unlawful sexual harassment of students, in educational programs or activities.
- B. UC Davis sexual harassment education programs provide information and assistance to all members of the campus community. Contact the Davis campus program at (530)752-9255 or the UCDHS program at (916)734-2259.

IX. References and Related Policies

- A. Office of the President:
1. University of California Policy on Sexual Harassment and Procedures for Responding to Reports of Sexual Harassment.
 2. Policies Applying to Campus Activities, Organizations, and Students (Section 110.00, Policy on Student Grievance Procedures).
- B. Title VII of the Civil Rights Act of 1964, 42 US Code 2000e et seq.
- C. EEOC Guidelines on Discrimination Because of Sex, 29 CFR 1604.11.
- D. Title IX, Educational Amendments of 1972, 20 US Code 1681 and 1687.
- E. Title IX Regulations, 34 CFR Part 106.
- F. California Fair Employment and Housing Act, Government Code 12900 et seq.
- G. UCD Policy and Procedure Manual:
1. Section 280-05, Procedures for Student Complaints of Prohibited Discrimination or Arbitrary Treatment.

2. Section 320-20, Privacy of and Access to Information.
 3. Section 380-15, Staff Complaints of Discrimination.
 4. Section 380-17, Improper Governmental Activities.
- H. Academic Personnel Manual:
1. Section 010, Academic Freedom.
 2. Section 015, Faculty Code of Conduct and UCD-015, Procedures for Faculty Misconduct Allegations.
 3. Section 016, University Policy on Faculty Conduct and the Administration of Discipline and UCD-016, Procedures for Faculty Discipline.
 4. Section 035, Affirmative Action and Nondiscrimination in Employment.
 5. Section 140 and UCD-140, Non-Senate Academic Appointees/Grievances.
 6. Section 150, Non-Senate Academic Appointees, Corrective Action and Dismissal.
- I. Academic Senate Bylaw 335 and Davis Division Bylaw 87.
- J. Personnel Policies for Staff Members:
1. Policy and UCD Procedure 12, Nondiscrimination.
 2. Policy and UCD Procedure 62, Corrective Action.
 3. Policy and UCD Procedure 70, Complaint Resolution.
- K. UC Collective Bargaining Agreements.
- L. Resident Medical Staff Personnel Policy and Procedure:
1. Policy 200, Nondiscrimination.
 2. Policy 440, Grievances.
- M. UCD Administration of Student Discipline.
- N. UCD Sexual Assault Protocol.
- O. UCD Principles of Community.