



# Sexual Violence and Sexual Harassment

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The existence of a dating relationship or past sexual relations between the Complainant and Respondent will never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of consent to prior conduct).

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable. In making this determination, the factfinder will consider all of the facts and circumstances the Respondent knew, or reasonably should have known, at the time. In particular, the Respondent's belief is not a valid defense where:

1. The Respondent's belief arose from the Respondent's own intoxication or recklessness;
2. The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented; or
3. The Respondent knew or a reasonable person should have known that the Complainant was unable to consent because the Complainant was incapacitated, in that the Complainant was:
  - a. asleep or unconscious;
  - b. unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or
  - c. unable to communicate due to a mental or physical condition.

allegation should be charged as sexual violence or sexual harassment. (See FAQ

- ii. Physical violence is physical conduct that intentionally or recklessly threatens the health and safety of the recipient of the behavior, including assault.
  - iii. Patterns of abusive behavior may consist of or include non-physical tactics (such as threats, isolation, property destruction, abuse of pets, economic control, displaying weapons, degradation, or exploitation of a power imbalance).
  - iv. The nature of the relationship between the Complainant and Respondent is determined by the length and type of relationship, and the frequency of interaction between them. Relationship violence includes both “dating violence” and “domestic violence.”
  - v. Conduct by a party in defense of self or another is not Relationship Violence under this Policy. If either party asserts that they acted in defense of self or another, the Title IX Officer will use all available, relevant evidence to evaluate the assertion, including reasonableness of the defensive actions and which party is the predominant aggressor.
- d. Stalking: Repeated conduct directed at a Complainant (for example, following, monitoring, observing, surveilling, threatening, communicating or interfering with property), of a sexual, romantic or other sex-based nature or motivation, that would cause a reasonable person to fear for their safety, or the safety of others, or to suffer substantial emotional distress. Stalking that is not sex-based is addressed by other University policies including but not limited to the [Policy on](#) Snii an0.00 (t)2 D6 (es)4 (s)]TJ 0ncg, in and (i)16 1 (i)102.7 -1.1094.68 48 17 >>SpanC BT eased (nal 0 Tw ( J ( )1) (e )]TJ EMCnot)2 ( s)1P(k)4 ies icnota tg not 0nced id (l)6 : n303 Tc 0.003 E17 >>LBodyC -0.00127 rg /TT2Tw 0.33 0 Td [(bas)-- (n) b

*f* a plan intended to make the Complainant believe that failure to perform an act would result in serious physical or non-physical harm to the Complainant or another person; or

*f* the abuse or credible threat of abuse of a legal or University policy process.

b) A commercial sex act is any sex act for which anything of value is given to or received by any person.

c) Force is physical conduct that would reasonably overcome the will of another.

d) Fraud is intentional deception that would reasonably overcome the will of another.

## 2. Sexual Harassment:

a. Sexual Harassment is when:

i. Quid Pro Quo: a person's submission to unwelcome sexual 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 activity; or

ii.



- d. Any persons with a professional license requiring confidentiality (including health center employees but excluding campus legal counsel), or someone who is supervised by such a person; and.
- e. Pastoral counselors (persons associated with a religious order or denomination, who are recognized by that religious order or denomination as someone who provides confidential counseling).

Designation as a “Confidential Resource” under this Policy only exempts a person from reporting to the Title IX Officer. It does not affect other mandatory reporting obligations under UC CANRA (Child Abuse and Neglect Reporting Act) Policy, the Clery Act as a Campus Security Authority (CSA), and other policies or laws that require reporting to campus or local law enforcement, or Child Protective Services.

3. Supportive and Remedial Measures.

- a. Supportive Measures include both Interim Measures and Mitigating Measures. The University provides Supportive Measures as appropriate and reasonably available, without fee or charge.
  - i. Interim Measures: Services, accommodations, or other measures put in place temporarily after the Title IX Officer receives a report of Prohibited Conduct to assist or protect the Complainant, the Respondent, or the University

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4. Location: “Location” is any University campus, the Lawrence Berkeley National

hostile work or academic environment based on sex. So, when determining whether a Complainant experienced a hostile environment as defined in this Policy, the Title IX Officer will consider other sex-based discrimination in combination with incidents of sexual harassment.

## B. Policy Coverage

This Policy covers acts of Prohibited Conduct committed by University students (as defined in Section 14.00 of the Policies Applying to Campus Activities, Organizations, and Students, and including applicants who become students and former students, as described in Section 101.00 of the Policy on Student Conduct and Discipline), employees, and third parties (such as Regents, contractors, vendors, visitors, guests, patients and volunteers), and acts of Prohibited Conduct committed against students, employees and third parties, when the conduct occurs:

1. on University property;
2. in connection with University employment or in the context of a University program or activity (including, for example, University-sponsored study abroad, research, on-line courses, health services, or internship programs); or
3. off University property and outside the context of a University program or activity, but has continuing adverse effects on—or creates a hostile environment for students, employees or third parties while on—University property or in any University program or activity.

Consistent with Section 101.00 of the Policy on Student Conduct and Discipline, if and as specified in implementing campus regulations, this Policy may cover additional Prohibited Conduct by students that occurs off campus.

Not every report of Prohibited Conduct will result in a Resolution Process described in Section V.A.5, even if it is covered by this Policy. Rather, the Title XI Officer will close some reports after making an initial assessment (see Section V.A.4).

## C. Conduct that Violates this Policy

This Policy prohibits sexual violence, sexual harassment, retaliation and other prohibited behavior as defined in Section II and Appendix V. Incidents that violate this Policy may occur between:

- x any members of the University community, including faculty and other academic appointees, staff, student employees, students, coaches, doctors, residents, interns, and third parties;
- x people in hierarchical relationships and peers;
- x people of any gender, gender identity, or sexual orientation; and
- x strangers and non-strangers.

People may engage in Prohibited Conduct in person or through other means. This includes electronic media, such as the internet, social networks, cell phones, texts, and other devices or forms of contact.





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- x Where the Respondent is a faculty member, the procedures are in the [Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty](#), and local implementing procedures.
  - x Where the Respondent is a staff member or non-faculty academic employee, including a post-MD resident, the procedures are in the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty
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## 2. Timelines for Making Reports

There is no time limit for reporting, and people should report incidents even if significant time has passed. However, the sooner the University receives a report, the better able it is to respond, investigate, remedy, and impose discipline if appropriate.

## 3. Initial Assessment of a Report / Immediate Health and Safety

As soon as practicable after receiving a report, the Title IX Officer will make an initial assessment, including a limited factual inquiry when appropriate, to determine how to proceed.

The Title IX Officer will first assess the report to determine whether the alleged conduct is DOE-Covered Conduct and, if so, whether to begin a DOE Grievance Process or Alternative Resolution. This stage of the assessment is described in [Appendix IV](#).

If the alleged conduct is not DOE-Covered Conduct, then the Title IX Officer will next determine:

- x whether the report on its face alleges an act of Prohibited Conduct as defined in Section II; and Appendix V; and
- x if so, whether the Prohibited Conduct is covered by this Policy, as described in Section III.B.

The Title IX Officer may consult with other offices as necessary. This may include Academic Personnel Offices for complaints involving faculty and other academic appointees, Student Affairs Offices for complaints involving students, Human Resources or Employee and Labor Relations Offices for complaints involving staff and health professionals for complaints stemming from a clinical encounter.

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which the Title IX Officer determines that:  
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information required by this Policy unless the Complainant states in writing that they do not want it.

If the Title IX Officer does not begin an investigation, they will inform the Complainant that this limits possible remedies. The Title IX Officer will nonetheless provide Mitigating Measures as appropriate and consistent with Complainant's privacy and the absence of an investigation.

When the Title IX Officer begins an investigation, they will give the parties a written summary of the allegations, an explanation of their rights, the procedures that will be followed, available resources, and this Policy. While the parties have the right to identify evidence and witnesses, the University bears the burden of proof and of gathering evidence sufficient to reach a determination regarding responsibility.

- i. **Timeframe.** The Title IX Officer will complete the investigation promptly, typically within 60 to 90 business days of notifying the parties in writing of the charges. However, the Title IX Officer may extend the timeframe past 90 days for good cause. The Title IX Officer will periodically update parties on the status of the investigation and notify them in writing of the reason for any extension and the projected new timeline. The actual time required depends on the specific circumstances, including the complexity of the matter and the severity and extent of the alleged conduct. The Title IX Officer will consider, approve, and communicate extensions per written guidelines from the Systemwide Title IX Office.

If the police are also investigating the alleged conduct, the Title IX Officer will coordinate with the police but must nonetheless act promptly without delaying the investigation until the end of the criminal investigation.

- ii. **Disclosure of Information.** The investigation generally includes interviews with the parties and any witnesses, and a review of evidence. The Title IX Officer will share information with witnesses only as reasonably necessary to conduct a fair and thorough investigation. They will also counsel witnesses about keeping information learned through the investigation private to protect both the people involved and the integrity of the investigation. They will inform witnesses that directly related information they provide and their identities

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- x the University’s relationship to the Complainant, and
- x the University’s relationship to and level of control over the organization or person alleged to have engaged in the conduct. pe2 (hi)]4 (s (6 (s (6 (uec)4 (od-b)44 5.9

preliminary determination and have a hearing to determine whether this Policy was violated. If they do, the next stage of the DOE Grievance Process or Formal Investigation is a hearing. (See Appendix E: Sexual Violence and Sexual Harassment Student Investigation and Adjudication Framework for Non-DOE-Covered Conduct, [Interim Appendix F: Sexual Violence and Sexual Harassment Student Investigation and Adjudication Framework for DOE-Covered Conduct](#); [Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty](#), and [Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel](#).)

7. Remedy

- a. If the University finds Prohibited Conduct, the University will take prompt and - 1 o c

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- a. Coordinate compliance with this policy, including investigations, reports and remedies.
- b. Coordinate with other responsible units to ensure that Supportive and Remedial









3. How is “nudity” defined for the purposes of this Policy?

“Nudity” means the absence of an opaque covering which covers the genitals, pubic hair, buttocks, perineum, anus or anal region of any person or any portion of the breasts at or below the areola.

4. Why might some conduct prohibited by this Policy be sexual harassment in some cases but sexual violence or other prohibited behavior in others?

This Policy prohibits a broad spectrum of conduct which may, depending on the circumstances, be appropriately charged as Sexual Harassment, Sexual Violence, or Other Prohibited





July 31, 2019: Revised version reflecting comprehensive, systemwide review issued

August 14, 2018: Addition of FAQ #10 regarding the obligations of Responsible Employees when conducting Institutional Review Board—approved or certified exempt human subject research.

June 5, 2018: Technical revision: updated contact information.

September 1, 2017: Technical revisions:

- x updated the Policy responsible office and contact information
- x added links of the Staff and Faculty Adjudication Frameworks to Appendix II: University Disciplinary Procedures.

This Policy was remediated to meet Web Accessibility Content Guidelines (WCAG) 2.0.

November 7, 2016: Deleted the rescinded PPSMs #65, #67 and #71 from the Policy document and updated the FAQs and the links on Appendix I under Academic and Staff Personnel.

January 1, 2016: This Policy updated the processes for reporting and responding to complaints and added a new definition of “responsible employees.”

June 17, 2015: This Policy was updated on an Interim basis effective until December 31, 2015.

February 25, 2014: This Policy was reformatted into the standard University policy template.

As a result of the issuance of this Policy, the following documents are rescinded as of the effective date of this Policy and are no longer applicable:

- x University of California Policy on Sexual Harassment, dated February 10, 2006
- x University of California Procedures for Responding to Reports of Sexual Harassment, dated December 14, 2004
- x University of California Policy on Sexual Harassment and Complaint Resolution Procedures, dated April 23, 1992
- x University of California Policy on Sexual Harassment and complaint Resolution Procedures, dated March 10, 1986

Future revisions to this Policy will be circulated under standard procedures for Presidential Policies. The review will include circulation under the standar

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## IX. APPENDICES

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### Appendix I: Applicable Complaint Resolution and Grievance Policies

Academic Personnel:

Members of the Academic Senate

[Senate Bylaw 335](#)

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In matters involving DOE-Covered Conduct, the Title IX Officer will ensure Supportive Measures are non-disciplinary and non-punitive, and that they do not unreasonably burden a party.

When determining limitations on parties' contact, the Title IX Officer will follow the parameters in paragraph vi (No-Contact Options) below.

In addition to Supportive and Remedial measures, the Title IX Officer may take other actions to stop reported conduct, prevent its escalation or recurrence, and address its effects.

Examples of services, accommodations, and other available measures include:

i. Campus Services Generally:

Academic, employment, and other support including tutoring, counseling, disability services, health and mental health services, family planning services, survivor advocacy, housing assistance, legal assistance, referral to employee assistance program, information about the right to report a crime to campus or local law enforcement, and written materials prepared by the Title IX Officer pursuant to V.B of the Policy.

ii. Measures Available to Employees, Including Academic, Staff and Student Employees:

Change to a different workstation, schedule, work location, unit, department, or position for which the employee is qualified provided that, in the case of a Complainant the change is voluntary and equitable.

iii. Training and Education of the Respondent:

The Respondent may be required to undergo training, including sexual harassment prevention training, anger management training, and periodic refresher classes.

iv. Campus Services Modified:

- x If a campus service is not generally available or a fee is imposed, access may be arranged or fees waived when appropriate.
- x Comprehensive, holistic survivor services including additional medical, counseling and academic support services.
- x Any other accommodations or Interim Measures that are reasonably available once a Complainant has requested them.

v. Additional Educational Measures for Students:

- x Change advisors, composition of dissertation committee, class sections and similar schedule adjustments.
- x Arrange extra time to complete academic requirements of a class or program, or to re-take a class or withdraw from a class, without an academic or financial penalty if the University delayed such accommodations after it reasonably should have known of the violation.
- x Review any disciplinary actions taken against the Complainant subsequent to the alleged violation to determine whether there is a causal connection between the violation and the Complainant's misconduct.





**Yes DOE Formal Complaint** : If the report is a DOE Formal Complaint from a qualified Complainant, the Title IX Officer must next determine whether they are required to “dismiss” it (Required Dismissal of Formal Complaint, below).

**No DOE Formal Complaint** : If the report is not a DOE Formal Complaint from a qualified Complainant, the Title IX Officer must still determine whether the alleged conduct is DOE-Covered Conduct (DOE-Covered Conduct, below); if it is, the Title IX Officer may need to themselves “sign” a DOE Formal Complaint (Decision to Open or Close, below). Note: Before signing themselves, the Title IX Officer will

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Harassment in Section II of the Policy;

- b. unwelcome sexual or other sex-based conduct (as defined in Section II of the Policy) that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denied the Complainant equal access to the University's programs or activities;
  - c. conduct that meets the definition of Sexual Assault-Penetration;
  - d. intentionally touching Complainant's intimate body part (genitals, anus, groin, breast, or buttocks) without the Complainant's consent (as defined in Section II of the Policy);
  - e. conduct that meets the definition of Relationship Violence in Section II of the Policy;
  - f. conduct that meets the definition of Stalking in Section II of the Policy;
  - g. sexual intercourse with a person under the age of 18; or
  - h. conduct that meets the definition of Invasion of Sexual Privacy in Section II of the Policy, and that a reasonable person would determine was so severe, pervasive, and objectively offensive that it effectively denied the Complainant equal access to the University's programs or activities.
- C. Required Dismissal of Allegations. The Title IX Officer must "dismiss" allegations in a DOE Formal Complaint if:
- x they determine during the Initial Assessment that the alleged conduct, even if true, is not DOE-Covered Conduct, as defined in Section B (DOE-Covered Conduct, below), or
  - x they determine during the investigation that the alleged conduct, even if true, did not occur in a University program or activity or that the Complainant was not in the United States at the time of the alleged conduct.
1. Significance of Dismissal. As noted above, "dismissal" means the Title IX Officer will no longer consider the allegations DOE-Covered Conduct. It does not necessarily mean the Title IX Officer will close the matter. Rather, the Title IX Officer will decide whether and how to continue resolution of the dismissed allegations.

If the matter is in Alternative Resolution, the Title IX Officer may continue with that process, but will notify the parties which allegations were dismissed and which (if any) continue to be considered DOE-Covered Conduct.

2. Notice of Dismissal. If the Title IX Officer is required to “dismiss” allegations from a DOE Formal Complaint, they will notify the parties in writing:
  - a. of the allegations dismissed and the reasons;
  - b. whether they will continue resolution of the dismissed allegations and, if so, under what Resolution Process;
  - c. that the parties can appeal the dismissal on the grounds listed below;
  - d.

- c. in appeals alleging new evidence, send the case back to the Title IX Officer with a request to determine whether the new evidence affects the dismissal and report back to the appeal officer.
  7. Notice of Decision. Within 10 business days of receiving the appeal, the appeal officer will provide their written decision to the parties and the Title IX Officer, to include:
    - a. a statement of the grounds identified on appeal;
    - b. a summary of the information considered by the appeal officer; and
    - c. the decision of the appeal officer and the rationale for the decision.
- D. Case Consolidation . The following provisions apply when the University opens a DOE Grievance Process.
  1. Consolidation of DOE Formal Complaints. The Title IX Officer may consolidate allegations of DOE-Covered Conduct against multiple respondents, by multiple complainants, or by one party against the other party, when the allegations arise out of the same facts or circumstances.
  2. Consolidation of DOE-Covered Conduct Allegations with other Prohibited Conduct Allegations. When allegations of DOE-Covered Conduct and allegations of other Prohibited Conduct or of violations of other University policies arise from the same facts or circumstances, the Title IX Officer will process all allegations under the DOE Grievance Process procedures for clarity and consistency. The Title IX Officer will clearly document and inform the parties of which allegations are and are not DOE-Covered Conduct

#### Appendix V: Prohibited Conduct in the Context of Patient Care.

There are many circumstances in which a health care provider or health care worker may touch or penetrate a patient's body as a legitimate part of the patient's health care. On the other hand, conduct that a health care provider or health care worker engages in with a sexual purpose is never a legitimate part of a patient's health care. So when Prohibited Conduct allegedly occurs in the context of patient care, the Title IX Officer will refer to this



- engaged in Sexual Harassment (Quid Pro Quo or Hostile Environment);
- watched or enabled others to watch Complainant's nudity or sexual acts (Invasion of Sexual Privacy); or
- made or attempted to make photographs (including videos) or audio recordings, or posted, transmitted or distributed such recorded material, depicting the Complainant's nudity or sexual acts (Invasion of Sexual Privacy).

For all other allegations (such as that Respondent penetrated Complainant's mouth with Respondent's genitalia, used depictions of Complainant's sexual activity to extort Complainant, or exposed their genitals), the Title IX Officer will apply the definitions in Section II (not this Appendix V).

**B. Definitions.**

**1. Prohibited Conduct.**

- a. **Sexual Assault – Penetration.** Penetration, no matter how slight, of the Complainant's vagina or anus by any part of the Respondent's hand or by a medical device, if the Respondent engaged in the conduct for a sexual purpose.
- b. **Sexual Assault – Contact.** Intentionally, and for a sexual purpose --
  - x touching Complainant's intimate body part (genitals, anus, groin, breast, or

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