

Introduction to UC Values and Student-Related Sexual Violence and Sexual Harassment Policies

Hearing Officer Training

October 2021

Guiding Tenets and Values

- We must encourage complainants to come forward.
- We must strive for resolution processes that are not only fair, but also kind.
- Outcomes must be both just and reliable.
- We must minimize language and practices that communicate real or perceived value judgments of parties
- We must invest in our community through education and training
- To our community, our process reflects our values.

SVSH Policy – Overview

- **Defines Prohibited Conduct**
 - Sexual Assault
 - Relationship Violence
 - Stalking
 - Sexual Harassment
 - Other Prohibited Behavior
- **Describes what the policy covers**
 - Conduct on University property
 - Conduct in scope of University employment, program or activity
 - Conduct that creates a hostile environment on campus or in a program or activity, even if occurs off-campus and outside a program and activity

Scope is broader than the Title IX regulations!

SVSH Policy – Overview

- Overview of Resolution Processes
 - Alternative Resolution
 - Formal Investigation
 - DOE Grievance Process
 - Other Inquiry
- Specifies Supportive and Remedial Measures available

SVSH Policy – Overview

- Establishes Responsible Employee reporting obligations
- Provides Amnesty from some student conduct charges for complainants and witnesses
- Reinforces the importance of Academic Freedom and Free Speech protections
- Describes responsibilities of the Title IX Officers and UC locations in implementing the Policy

Student Investigation and Adjudication Frameworks

Department of Education's Title IX Regulations

- The Title IX regulations require that the University follow a specific grievance process (“DOE Grievance Process”) in response to complaints of conduct covered by the regulations (“DOE-Covered Conduct”).
- We already had many required components, such as detailed written notices at the beginning and end of the process, the right to an advisor, the opportunity to identify witnesses and present evidence.
- However, we had not previously provided other components because we believe they are unnecessary or do not reflect best practices.

Student Investigation and Adjudication Frameworks

Student Frameworks

- In 2019, we revised the student framework, PACAOS Appendix E, to provide for live hearings in SVSH cases. This was largely in response to a California appellate court ruling.
- Appendix F, modeled on Appendix E, was issued in 2020 as a new policy that sets forth the University's procedures for resolving DOE Formal Complaints of DOE Covered Conduct, as defined in the SVSH Policy, where the respondents are students.
- Appendix E remains in effect as the University's procedures for resolving complaints of Non-DOE-Covered Conduct still prohibited by the SVSH Policy.

Student Investigation and Adjudication Frameworks

Student Frameworks

- Student Investigation and Adjudication Frameworks:
 - Appendix E (Non-DOE Covered Conduct)
 - Appendix F (DOE Covered Conduct)
- Appendix E and F Stages:
 - Stage 1 – Resources and Reporting
 - Stage 2 – Investigation and Proposed Sanctions
 - Stage 3 – Opportunity to Accept the Preliminary Determination
 - Stage 4 – Hearing
 - Stage 5 – Appeal

STAGE 1

Resources and Reporting

Initial Assessment of Reports by Title IX:

- Health and Safety Considerations
- Appropriateness of Resolution Process
- Closure After Initial Assessment
- Assessment for DOE Formal Complaint and DOE-Covered Conduct
- “Dismissal” of DOE Formal Complaint

STAGE 2

Investigation and Proposed Sanctions

Investigation by Title IX:

- Title IX Officer oversees the process
- Investigator charged with conducting a fair, thorough and impartial investigation
- Parties have equal rights throughout
- University bears the burden of gathering sufficient evidence
- Process is informed by case law, Title IX regulations, and best practices
- Investigations are conducted in a trauma-informed manner
- Timeline is generally 60-90 business days

STAGE 2

Investigation and Proposed Sanctions

Preliminary Determination & Proposed Sanctions:

- In all cases where the respondent is a student, the investigator reaches a “preliminary determination” as to whether the respondent violated the SVSH Policy.
- If the preliminary determination is of a violation, then the Student Conduct proposes a sanction.

STAGE 3

Opportunity to Accept the Preliminary Determination

Opportunity to Accept the Preliminary Determination:

- Both parties have the right to a hearing. Whether one is held depends on whether they choose to accept (or not contest) the preliminary determination and any proposed sanction.
- Unless both parties accept the investigator's preliminary determinations as to whether or not the policy was violated, there will be a fact-finding hearing to determine whether the SVSH Policy or other student conduct policies have been violated, after which Student Conduct will determine any sanctions.

STAGE 4

Hearing

Pre-hearing meeting, hearing, and hearing officer determination

- Both Appendix E and Appendix F include the following important components during the hearing process:
 - assignment of a hearing coordinator, separate from a hearing officer, to coordinate hearings; and
 - measures to ensure the well-being of parties during the hearing, such as: visual separation, if desired; presence of an advisor and support person; and the opportunity to take breaks

STAGE 4

Hearing

- Some significant differences in the Appendix F hearing process required by the regulations include:
 - parties are specifically allowed to present evidence from expert witnesses, if relevant;
 - at the hearing, the parties can ask questions of each other and witnesses through their advisor;
 - if a party does not have an advisor at the hearing, the University will assign someone (a “Reader”) to read the party’s questions;
 - the hearing officer may exclude questions posed by parties if they are not relevant, but only after the advisor or Reader has asked them in the hearing.

STAGE 4

Hearing

- We also built into Appendix F additional safeguards to ensure that live hearings proceed respectfully. These include:
 - the stated expectation that parties and their advisors adhere to the University's rules of conduct for the process with potential disqualification of advisors who do not comply;
 - the hearing officer asking their own questions of parties and witnesses first during the hearing, to elicit as much relevant information as possible before the questioning by parties' advisors or Readers;

STAGE 4

Hearing

- (Continued) We also built into Appendix F additional safeguards to ensure that live hearings proceed respectfully. These include:
 - the parties preparing their own questions, including follow-up questions, to be asked by the advisor or Reader. An advisor cannot ask questions they themselves develop without their party;
 - the hearing officer requiring rephrasing of any questions from parties that violate the rules of conduct;

STAGE 4

Hearing

- (Continued) We also built into Appendix F additional safeguards to ensure that live hearings proceed respectfully. These include:
 - virtual rather than in-person hearings, to make the hearings less intimidating for parties and witnesses, and provide the hearing officer and coordinator more control over the proceeding.
 - careful consideration of other measures to protect the well-being of parties, such as ensuring use of lived names and pronouns.

STAGE 5

Appeal Process

- Equal Opportunity to Appeal. The Complainant and Respondent have an equal opportunity to appeal the policy violation determination(s) and any sanction(s).
- The University administers the appeal process, but is not a party and does not advocate for or against any appeal.
- There are differences in the grounds for appeal between Appendix E and Appendix F.

STAGE 5

Appeal Process

Appendix E - In cases where there was a hearing, the following grounds for appeal apply:

- There was procedural error in the hearing process that materially affected the outcome;
- The determination regarding policy violation was unreasonable based on the evidence before the hearing officer; this ground is available only to a party who participated in the hearing; and
- The sanctions were disproportionate to the hearing officer's findings.

STAGE 5

Appeal Process

Appendix F - In cases where there was a hearing, the following grounds for appeal apply:

- There was procedural error in the hearing process that materially affected the outcome; procedural error refers to alleged deviations from University policy, and not challenges to policies or procedures themselves;
- There is new evidence that was not reasonably available at the time of the hearing and that could have materially affected the outcome;
- The hearing officer had a conflict of interest or bias that affected the outcome;

STAGE 5

Appeal Process

(Continued) Appendix F - In cases where there was a hearing, the following grounds for appeal apply:

- The determination regarding policy violation was unreasonable based on the evidence before the hearing officer; this ground is available only to a party who participated in the hearing; and
- The sanctions were disproportionate to the hearing officer's findings.

STAGE 5

Appeal Process

Decision by Appeal Officer

For both Appendix E and F, the appeal officer may:

- Uphold the findings and sanctions;
- Overturn the findings or sanctions;
- Modify the findings or sanctions; or

STAGE 5

Appeal Process

Decision by Appeal Officer

For Appendix E the appeal officer may:

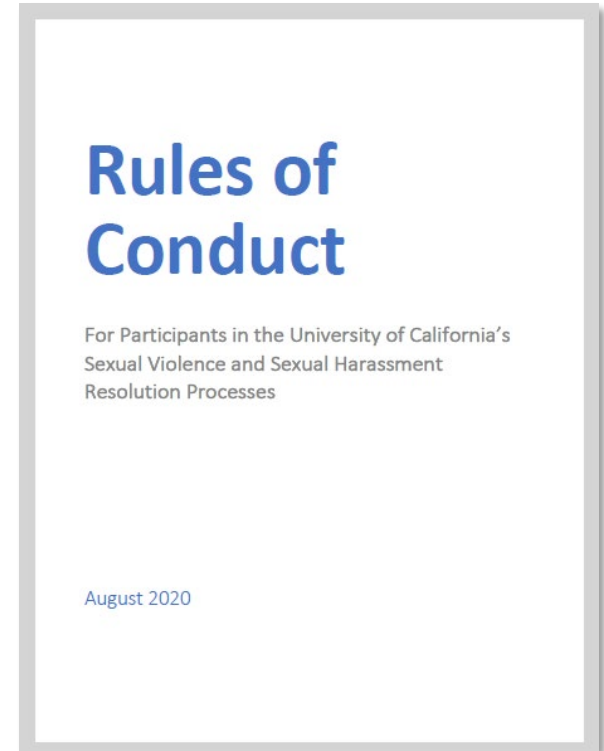
- In appeals alleging material procedural error, send the case back to the hearing officer for further fact-finding if needed.

For Appendix F the appeal officer may:

- In appeals alleging material procedural error or new evidence, send the case back to the hearing officer for further fact-finding if needed, for example on the issue of whether the alleged error or new evidence would have materially affected the outcome.

Rules of Conduct

- Provides rules of conduct for participants in the SVSH resolution processes
- Applies throughout the resolution process, including investigations and hearings
- Establishes consequences for violations
- <https://www.ucop.edu/title-ix/resources/svsh-training-and-materials/rules-of-conduct.pdf>



SVSH Resources

Systemwide Title IX Office

- SVSH Resources: <https://www.ucop.edu/title-ix/resources/index.html>

UC Training: A Trauma-Informed Approach

August 2021

Presented by: UC Santa Barbara

Dr. Kali Lantrip, (she/her) Ph.D - Counseling & Psychological Services,
Briana Miller, (she/her) MBA - Campus Advocacy, Resources & Education

Land Acknowledgement



A Note About The Language We Use



Criminal Justice

- Violations of California penal code
 - Assault
 - Rape
 - Abduction
 - Carnal abuse of children
 - Abandonment
 - Incest
 - Sexual Battery
 - Domestic Battery
 - Stalking
 - Criminal Threats
- Victim
- Suspect

Title IX

- Violations of campus policy
 - Sexual Assault-penetration
 - Sexual Assault - contact
 - Relationship Violence
 - Stalking
 - Sexual Harassment
 - Invasion of Sexual Privacy
- Complainant
- Respondent

Trauma-Practitioners

- Address harm's impact
- Self-identified traumatic event / violation
 - Harm
 - Betrayal
 - Sexual Assault
 - Childhood abuse/neglect
 - Intimate Partner abuse
 - unhealthy/toxic relationship
 - Stalking
- Survivor, client, patient, student
- Person causing harm

Today's Overview

1. Overview of interpersonal trauma
2. The impacts of trauma
3. What is a trauma-informed approach
4. Building a campus response that is healing and helpful

What is a Traumatic Experience?

A deeply distressing or disturbing experience that creates fear, helplessness, or horror

Often involves experiencing or witnessing an event(s) that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others


It overwhelms a person's resources for coping

Interpersonal Trauma Definitions

Sexual Violence: is any unwanted physical sexual contact that is not consented to or cannot be consented to.

Relationship Violence: is behavior that happens within a relationship and is characterized by one partner using a pattern of behaviors to gain and maintain power and control over the other person.

Stalking: is when a person repeatedly engages in conduct directed at a specific person that places that person in reasonable fear of their safety or the safety of others.



Interpersonal violence is widespread, impacts many of our students, and can have wide ranging implications for social engagement, academic success, and mental health.

- Interpersonal Violence (IPV) disproportionately impacts communities of color and the LGBTQ populations
- Many people have experienced multiple forms of trauma, and may have inter-generational trauma throughout their family history
- --- students will experience some form of sexual assault, stalking or relational violence during their college career

The opportunity of trauma informed care...

- *With appropriate supports and intervention - professional and personal - survivors of interpersonal violence can overcome their experienced trauma, move forward, and thrive.*
- *One factor that has been shown to greatly influence whether a survivor develops significant symptoms of post-traumatic stress disorder after a trauma is **how people and systems (University) respond to them when they talk about, report, or share their trauma experience.***
- *Calm, compassionate, **survivor-driven responses can lead to vastly better outcomes** for students.*

TRAUMA AND THE **BRAIN**



Impacts of Interpersonal Violence & Abuse

- **Cognitive**: difficulty with concentration, decision-making, memory, focus, learning
- **Physical health**: injuries, migraines, GI and immune issues, pain, sleep disturbance, changes in appetite
- **Mental and emotional well-being**: anxiety, depression, PTSD, suicidal thoughts, self-harm, flashbacks, guilt and self-blame
- **Social**: withdrawal, increased conflict with others, distrust, feeling alone and misunderstood
- **Attempts to cope**: numbing (ex: substance use/abuse); controlling (ex: eating disorders); externalizing (ex: anger)
- **Mood dysregulation**: vacillation between hyper-arousal (agitated/angry) and hypo-arousal (emotional numbness/"shutdown")



Trauma May Manifest in Challenging or Confusing Ways

- Non-linear memories and/or confusion about traumatic events
- Involvement in unhealthy relationship dynamics, and/or continued involvement with perpetrator
- Self-blame
- Challenges with regulating emotions
- Flat Affect
- Avoidance & the tendency to miss a lot of meetings

How to Build a Trauma-Informed Approach



“Trauma-informed care is a strengths based framework that is grounded in an understanding of the impact of trauma, that emphasizes physical, psychological, and emotional safety for both providers and survivors, and that creates opportunities for survivors to rebuild a sense of control and empowerment.”

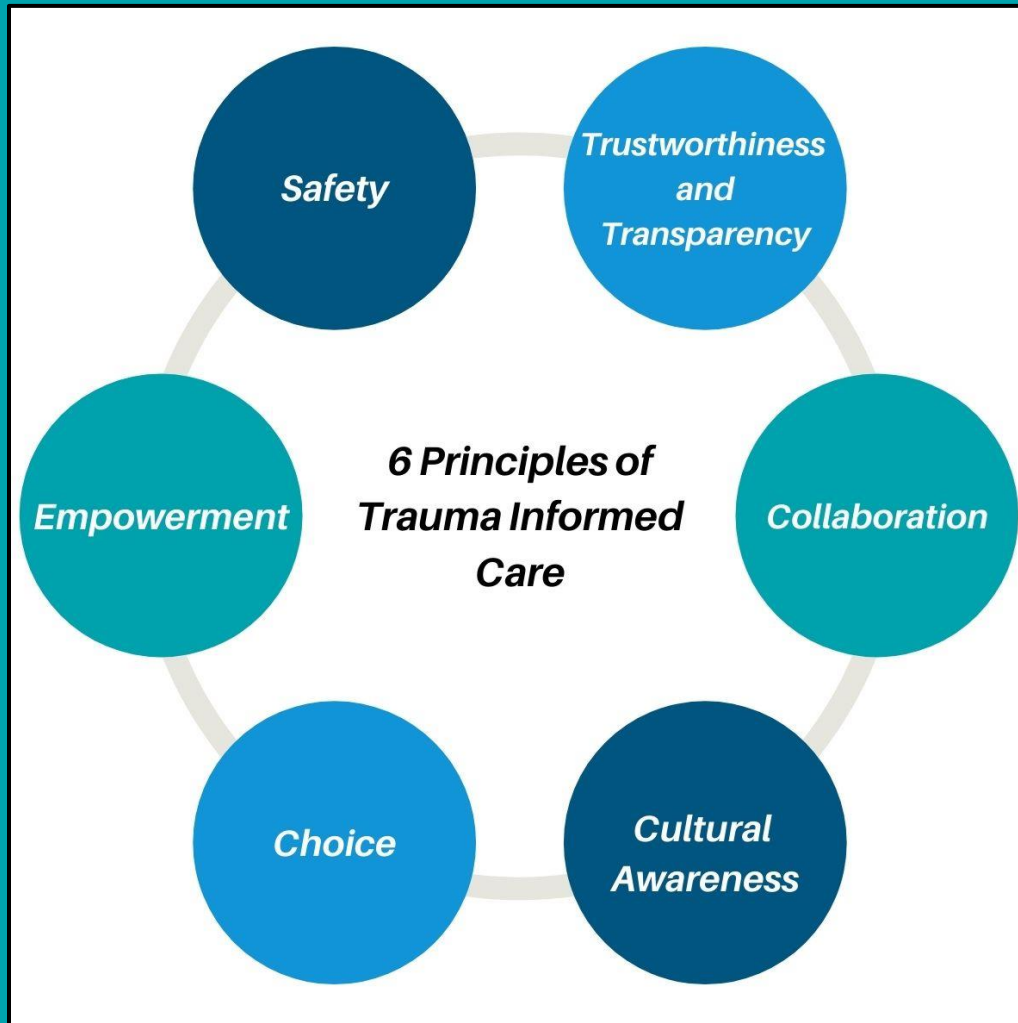
Hopper, E. K., Bassuk, E. L., & Olivet, J. (2010)

Engaging in Empathy

- Empathy is sometimes difficult and takes effort on our part... if we are tired, fatigued, consumed with our own struggles it can be difficult to connect with
- Engage in self-awareness - notice your reactions and do your own “work” to be aware of your own stress or trauma that may be part of your reaction
- Think about times that you were in pain and attempt to connect to the feeling. Your pain and/or experiences are not the same as the person you are connecting with - but can give you insight and sensitivity to what it is like to hurt

Connecting with Empathy





Safety



- Find a private place to talk to the survivor. This should be a quiet place, away from other people, that can ideally offer comfort
 - Example: comfy chairs, making tea, offering a fidget/stress toy or something for survivor to hold.
- Ask if there is anything else that would help them feel comfortable to engage in challenging or difficult conversations.
 - Support emotional regulation - breathing exercises and taking breaks
- Emotional safety can be established through being calm and kind. Let the survivor know that you are there to listen and support them. Focus on being flexible and **providing consistency**. Pay attention to non-verbal communication.

Trust & Transparency



- Identify your role and function ahead of time:
 - Any limits to confidentiality or reporting obligations,
 - Share any expectations that you have (or that they should have) for the discussion including timing, structure, and what will happen next.
- Make decisions with transparency by explaining the why behind decisions, policies, or practices.
- Establish next steps - regular communication that is clear, direct, and frequent
- Follow through with what you say you will do

Collaboration



- Recognize that healing happens in relationships
- Maximize collaboration and meaningful decision making
- Share power when possible
- Allow for joint decision-making
- Allow for group-norms around pauses, silence, or breaks
- Allow a place for feedback

Cultural Awareness



- Be self-aware and actively move past cultural stereotypes and biases
- Understand the person within their family, social, community contexts and build upon those cultural strengths.
- Make note of any variations to accessibility or limitations that may be experienced
- Recognize and address historical trauma, oppression, and discrimination that may be impacting the survivor as well as impacting their trust in you, the University or other systems
- Use strategies that encourage engagement and minimize mistrust
- Leverage the healing values of the individual including cultural connections, resources, supports

Choice

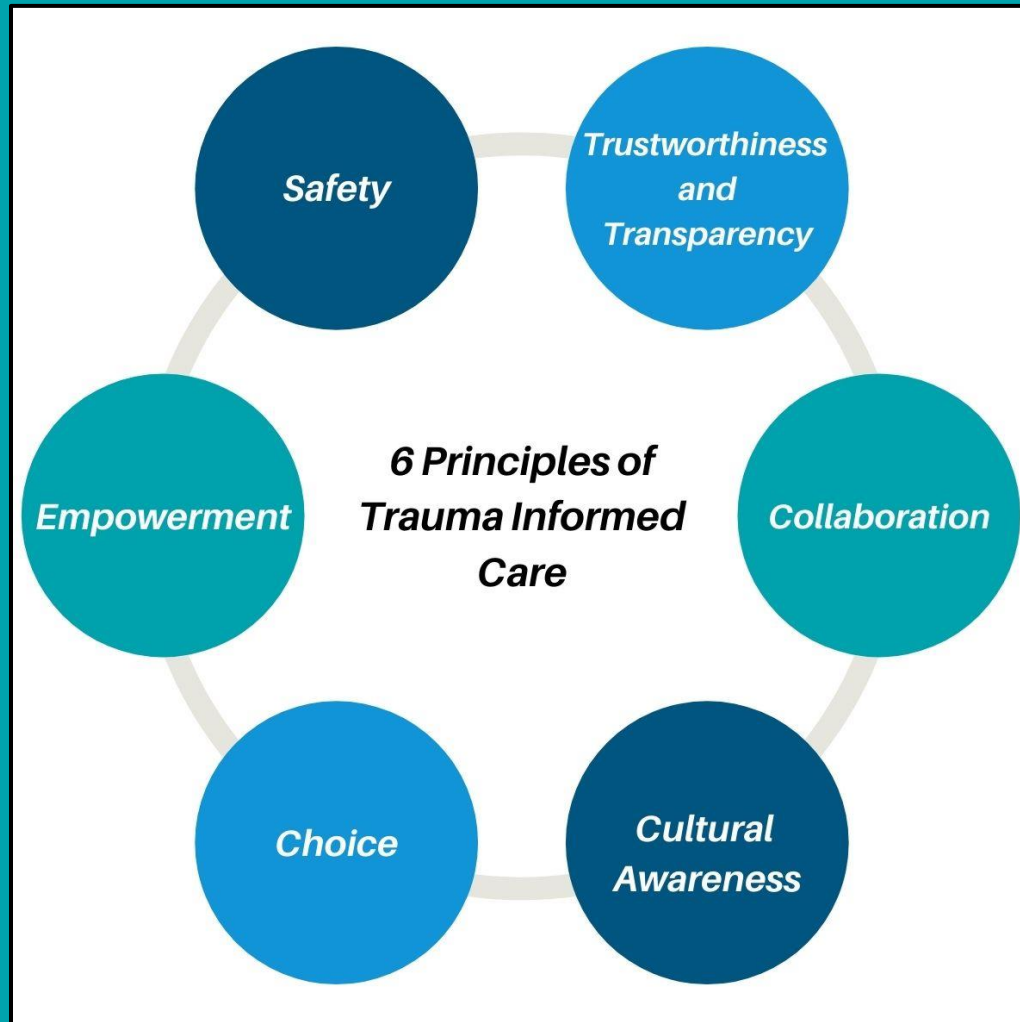


- Aiming to strengthen students, staff, faculty, and survivors experience of choice
- Recognizing that every person's experience is unique and requires an individualized approach.
- Recognize that silence is not disengagement - it is processing
- Offer opportunity to write down options and make list of benefits and drawbacks
- Supporting survivor control over their own healing journey

Empowerment



- Identify each individual's strengths and experiences
- Prioritize growth and hope
- Utilize brief check in opportunity for well-being and any needs during interaction
- Incorporate breathing techniques or mindfulness activities.
- Believe in resilience and the abilities of individuals, organizations, and communities to heal and promote recovery from trauma.



Building a Campus Approach that is Healing & Helpful

- Learn and be aware of the neurobiology of trauma and how it impacts students thinking, behavior, and emotional response.
- Ground yourself in practices of empathy.
- Provide safety, trust and transparency, collaboration, cultural awareness, choice, and empowerment in any ways possible.
- Seek consultation and support.

Thank You

For Questions, Comments, or Feedback
Please Contact:

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References

- Bath, H. (2008). The three pillars of trauma-informed care. *Reclaiming children and youth*, 17(3), 17-21.
<https://elevhalsan.uppsala.se/globalassets/elevhalsan/dokument/psykologhandlingar/trauma-informed-care.pdf>
- Brown, B., Davis, K., Stephenson, A., & Francis-Sears, A. (2013). Brené Brown on empathy.
<https://www.youtube.com/watch?v=KZBTYViDPIQ>
- Cooper, C. L. (2014). How language reflects our response to sexual violence. *Perspectives*, 23, 10.
https://www.americanbar.org/groups/diversity/women/publications/perspectives/2015/winter/how_language_reflects_our_response_sexual_violence/
- Cantor, D., Fisher, B., Chibnall, S., Harps, S., Townsend, R., Thomas, G., ... & Madden, K. (2019). Report on the AAU campus climate survey on sexual assault and misconduct. Association of American Universities.
- COVID-19 Considerations for a Trauma Informed Response for Work Settings (Organizations/Schools/Clinics) (2020). Portland State University <https://traumainformedoregon.org/wp-content/uploads/2020/03/Considerations-for-COVID-19-Trauma-Informed-Response.pdf>
- Harris, M., & Fallot, R. (2001). Creating cultures of trauma-informed care (CCTIC): A self-assessment and planning protocol.
- Hoch, A., Stewart, D., Webb, K., & Wyandt-Hiebert, M.A.(2015, May).Trauma-informed care on a college campus. Presentation at the annual meeting of the American College Health Association, Orlando, FL.

References

- Hopper, E. K., Bassuk, E. L., & Olivet, J. (2010). Shelter from the Storm: Trauma-Informed Care in Homelessness Services Settings. Mediaco-op. (August 20, 2021). Trauma and the Brain [Video]. Youtube. <https://www.youtube.com/watch?v=4-tcKYx24aA>
- Morgan, R.E., Oudekerk, B.A., (2019). BJS Statisticians U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics. Criminal Victimization, 2018 <https://bjs.ojp.gov/content/pub/pdf/cv18.pdf>
- National Sexual Violence Resource Center and National Sexual Assault Coalition Resource Sharing Project (2017) Building Cultures of Care: A Guide for Sexual Assault Services Programs https://www.nsvrc.org/sites/default/files/2017-10/publications_nsvrc_building-cultures-of-care.pdf
- SAMHSA. (2014). SAMHSA's Concept of trauma and guidance for a trauma-informed approach. Manual Publication IDSMA14-4884. Available on-line: <https://store.samhsa.gov/product/SAMHSA-s-Concept-of-Trauma-and-Guidance-for-a-Trauma-Informed-Approach/SMA14-4884>
- Schulman, M., & Menschner, C. (2018). Laying the groundwork for trauma-informed care. Center for Healthcare Strategies, Trenton, NJ. <http://www.traumainformedcare.chcs.org/wp-content/uploads/2018/11/Brief-Laying-the-Groundwork-for-TIC.pdf>
- Trauma-informed Oregon. (2020). COVID-19 Considerations for a Trauma-Informed Response for Work Settings (Organizations/Schools/Clinics) Portland State University <https://traumainformedoregon.org/wp-content/uploads/2020/03/Considerations-for-COVID-19-Trauma-Informed-Response.pdf>
- Virtual Meeting Facilitation Strategies (2020). OVW Technical Assistance and Resource Project. supported by Grant Nos. 2017-TA-AX-K036 and 2016-TA-AX-K051, awarded by the Office on Violence Against Women, U.S. Department of Justice.

Prohibited Conduct: Definitions and Elements
UC Sexual Violence & Sexual Harassment Policy
September 2021

Suzanne Taylor, UC Systemwide Title IX Director

AFFIRMATIVE CONSENT

The affirmative consent standard “provides greater clarity for both partners than the previous ‘no means no’ standard by requiring lucid, affirmative statements or actions at each step of a sexual encounter in order to ensure consent.

Put simply, only yes means yes.”

-- UC President Emeritus Napolitano in 2015

CONSENT

Consent is an element in three categories of conduct prohibited by the SVSH Policy:

- Sexual Assault-Penetration
- Sexual Assault-Contact
- Invasions of Sexual Privacy

CONSENT

Definition

SVSH Policy Definition:

Consent is affirmative, conscious, voluntary, and revocable. Consent to sexual activity requires of each person an affirmative, conscious, and voluntary agreement to engage in sexual activity.

CONSENT

Definition

SVSH Policy Definition (cont'd):

It is the responsibility of each person to ensure they have the affirmative consent of the other to engage in the sexual activity.

Lack of protest, lack of resistance, or silence do not, alone, constitute consent.

Affirmative consent must be ongoing and can be revoked at any time during sexual activity.

CONSENT

Definition

SVSH Policy Definition (cont'd):

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).

CONSENT

Definition

SVSH Policy Definition (cont'd):

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.

CONSENT Definition

SVSH Policy Definition (cont'd):

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; *or*
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*

CONSENT

Definition

SVSH Policy Definition (cont'd):

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.

CONSENT Definition

SVSH Policy Definition (cont'd):

Note: Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.

CONSENT

Analysis

Consent is a two-step analysis:

Step One: *Did Complainant affirmatively consent to the sexual activity?*

To find a violation for Prohibited Conduct when consent is an element, the answer must be “no.” However, even if the answer is “no,” the decision-maker must still typically go to Step Two.

CONSENT

Elements

Step Two: *If Complainant did not affirmatively consent, did Respondent nonetheless actually and reasonably believe that Complainant affirmatively consented?*

If (i) Respondent actually believed Complainant consented, and (ii) Respondent's belief was reasonable, then the decision-maker typically cannot find Respondent responsible.

CONSENT

Analysis

Was Respondent's belief that Complainant consented reasonable?

As already noted, the SVSH Policy identifies three circumstances where the decision-maker could find that Respondent believed Complainant consented, but the belief was not reasonable. If so, the decision-maker must find a policy violation (if other elements of a violation are met).

These three circumstances are not exhaustive. Rather, the decision-maker must, in each case, determine the reasonableness of Respondent's belief based on all of the facts and circumstances.

SEXUAL ASSAULT – PENETRATION

Definition

SVSH Policy Definition:

Without the consent of the Complainant, penetration, no matter how slight, of:

- the Complainant's mouth by a penis or other genitalia; or
- the Complainant's vagina or anus by any body part or object.

SEXUAL ASSAULT – PENETRATION

Elements

Elements of Policy Violation:

(1) Respondent engaged in penetration, no matter how slight,

(a)(i) of the Complainant's vagina, anus, or mouth (ii) by the Respondent's penis or other genitalia; *or*

(b)(i) of the Complainant's vagina or anus (ii) by any body part or object, *and*

(2) The Complainant did not consent to the Respondent's conduct.

SEXUAL ASSAULT – CONTACT

Definition

SVSH Policy Definition:

Without the consent of the Complainant, intentionally:

- touching Complainant's intimate body part (genitals, anus, groin, breast, or buttocks);
- making the Complainant touch another or themselves on any intimate body part; or
- touching the Complainant with one's intimate body part,

whether the intimate body part is clothed or unclothed.

SEXUAL ASSAULT – CONTACT

Elements

Elements of Policy Violation:

(1) The Respondent:

(a) touched the Complainant's genitals or anus or groin or breast or buttocks, *or*

(b) made the Complainant touch the Complainant's genitals or anus or groin or breast or buttocks, *or*

(c) made the Complainant touch the Respondent's genitals or anus or groin or breast or buttocks, *or*

(d) made the Complainant touch another person's genitals or anus or groin or breast or buttocks, *or*

(e) touched the Complainant with Respondent's genitals or anus or groin or breast or buttocks, *and*

SEXUAL ASSAULT – CONTACT

Elements

Elements of Policy Violation (cont'd):

(2) The Respondent's conduct was intentional;

and

(3) The Complainant did not consent to Respondent's conduct.

SEXUAL ASSAULT

Aggravating Factors

Sexual Assault—Penetration and Sexual Assault—Contact are aggravated when they include any of the following:

- (1) Overcoming the will of Complainant by:
 - force (the use of physical force or inducing reasonable fear of immediate or future bodily injury);
 - violence (the use of physical force to cause harm or injury);
 - menace (a threat, statement, or act showing intent to injure);
 - duress (a direct or implied threat of force, violence, danger, hardship, or retribution that is enough to cause a reasonable person of ordinary sensitivity, taking into account all circumstances including age and relationship (including a power imbalance), to do or submit to something that they would not otherwise do); or

SEXUAL ASSAULT

Aggravating Factors

Aggravating Factors (cont'd):

- (2) Deliberately causing the Complainant to be incapacitated (for example, through drugs or alcohol);
- (3) Deliberately taking advantage of the Complainant's incapacitation (including incapacitation that results from voluntary use of drugs or alcohol); or
- (4) Recording, photographing, transmitting, or distributing intimate or sexual images of Complainant without Complainant's prior knowledge and consent.

SEXUAL ASSAULT

Aggravating Factors

Aggravating Factors (cont'd):

As of January 1, 2022: engaging in the conduct during or in connection with a clinical encounter in which the Complainant was a patient and the Respondent was a health care provider or health care worker.

RELATIONSHIP VIOLENCE

Definition

SVSH Policy Definition:

Relationship Violence is:

- physical violence toward the Complainant or a person who has a close relationship with the Complainant (such as a current or former spouse or intimate partner, a child or other relative), or
- intentional or reckless physical or non-physical conduct toward the Complainant or someone who has a close relationship with the Complainant...that would make a reasonable person in the Complainant's position fear physical violence toward themselves or toward the person with whom they have the close relationship,

that is by a person who is or has been in a spousal, romantic, or intimate relationship with the Complainant, or who shares a child with the Complainant, and that is part of a pattern of abusive behavior by the person toward the Complainant.

RELATIONSHIP VIOLENCE

Elements

Elements of Policy Violation:

- (1) Respondent and Complainant are or were married or romantic/intimate partners, or they share a child; ***and***
- (2) Respondent engaged in either:
 - (a)(i) physical violence
 - (ii) toward Complainant or toward someone close to Complainant,***or***
 - (b)(i) physical or non-physical conduct
 - (ii) toward Complainant or toward someone close to Complainant,
 - (iii) that was intentional or reckless, and
 - (iv) that would make a reasonable person in Complainant's position fear physical violence toward themselves or the person close to them,***and***
- (3) Respondent's conduct was part of a pattern of abusive behavior toward Complainant.

RELATIONSHIP VIOLENCE

Definition

Policy Definition and Elements:

- Physical violence is physical conduct that intentionally or recklessly threatens the health and safety of the recipient of the behavior, including assault.
- 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).
- 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

Definition

Policy Definition and Elements:

Conduct by a party in defense of self or another is not Relationship Violence....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.

RELATIONSHIP VIOLENCE

Fact Pattern #1

The following facts are substantiated by the fact-finder: Complainant and Respondent met in class and decided to go on a first date. After dinner and a movie, they went to a bar and had a few drinks. Complainant suggested they take ride shares home, but Respondent insisted on driving. When Complainant refused to get in the car, Respondent twisted Complainant's arm and forced Complainant down on the car hood.

Is this Relationship Violence as defined in the SVSH Policy?

ELEMENT

FACT

(1) Respondent and Complainant are or were married or romantic/intimate partners, or they share a child; **and** Respondent and Complainant were on their first date

(2) Respondent engaged in either:

(a)(i) physical violence **(ii)** toward Complainant or toward someone close to Complainant, **or**

(b)(i) physical or non-physical conduct **(ii)** toward Complainant or toward someone close to Complainant, **(iii)** that was intentional or reckless, and **(iv)** that would make a reasonable person in Complainant's position fear physical violence toward themselves or the person close to them, **and**

Respondent twisted Complainant's arm and forced her onto the hood of the car

(3) Respondent's conduct was part of a pattern of abusive behavior toward Complainant.

This is the first instance of abuse by Respondent toward Complainant

RELATIONSHIP VIOLENCE

Fact Pattern #2

The following facts are substantiated by the fact-finder: Complainant and Respondent dated for several months, after meeting in class.

Respondent sometimes called Complainant ugly and stupid. When angry, Respondent would threaten to kill Complainant's dog. One night they went to a bar and had a few drinks.

Complainant suggested they take a ride share home, but Respondent insisted on driving. When Complainant refused to get in the car, Respondent twisted Complainant's arm and forced Complainant down on the hood of the car.

Is this Relationship Violence as defined in the SVSH Policy?

ELEMENT

FACT

(1) Respondent and Complainant are or were married or romantic/intimate partners, or they share a child; **and** Respondent and Complainant were dating for months

(2) Respondent engaged in either:

(a)(i) **(a)(i)** physical violence **(ii)** toward Complainant or toward someone close to Complainant, **or**

(b)(i) physical or non-physical conduct **(ii)** toward Complainant or toward someone close to Complainant, **(iii)** that was intentional or reckless, and **(iv)** that would make a reasonable person in Complainant's position fear physical violence toward themselves or the person close to them, **and**

Respondent twisted Complainant's arm and forced her onto the hood of the car

(3) Respondent's conduct was part of a pattern of abusive behavior toward Complainant.

Respondent had a history of threatening and degrading Complainant

STALKING

Definition

SVSH Policy Definition:

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

Elements

Elements of Policy Violation:

Respondent engages in conduct that:

(1) is repeated (that is, occurring more than once);
and

(2) is directed at Complainant; ***and***

(3) is of a sexual, romantic or other sex-based nature or motivation; ***and***

(4) would cause a reasonable person to either:

(a) fear for their safety or safety of others; ***or***

(b) suffer substantial emotional distress.

STALKING

Fact Pattern

The following facts are substantiated by the fact-finder: Respondent and Complainant met once, at a campus function. In subsequent weeks, Respondent was often waiting outside Complainant's classes when they ended. Respondent posted on various online forums that Complainant is a liar and a thief, and should be "held accountable one way or another." Respondent is convinced that Complainant stole Respondent's research and money. There is no factual basis for the belief.

Is this Stalking as defined in the SVSH Policy?

ELEMENT

FACT

Respondent engaged in conduct that:

(1) is repeated (that is, occurring more than once); **and**

On multiple occasions, Respondent showed up at Complainant's class and posted online

(2) is directed at Complainant; **and**

Respondent targeted Complainant's classes and spread misinformation about her specifically

(3) is of a sexual, romantic or other sex-based nature or motivation; **and**

Respondent targeted Complainant because of a belief Complainant stole from Respondent

(4) would cause a reasonable person to either:
(a) fear for their safety or safety of others, **or**
(b) suffer substantial emotional distress

Most people would feel threatened and distressed by a stranger following them, spreading lies about them, and suggesting they should be held "accountable"

SEXUAL HARASSMENT –*QUID PRO QUO*

Definition

SVSH Policy Definition:

Sexual Harassment [*quid pro quo*] is when 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.

SEXUAL HARASSMENT – *QUID PRO QUO*

Elements

Elements of Policy Violation:

Respondent engaged in conduct that was:

(1) unwelcome; ***and***

(2) of a sexual nature (such as sexual advances, requests for sexual favors, verbal, nonverbal or physical conduct of sexual nature); ***and***

(3) Respondent explicitly or implicitly made Complainant's submission to the conduct the basis for:

(a) employment decisions, ***or***

(b) academic evaluation, grades or advancement, ***or***

(c) other decisions affecting participation in a University program, activities or services.

SEXUAL HARASSMENT –HOSTILE ENVIRONMENT

Definition

SVSH Policy Definition:

Sexual Harassment [hostile environment] is when unwelcome sexual or other sex-based conduct is sufficiently severe, persistent 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 or activities of the University, and creates an environment that a reasonable person would find to be intimidating or offensive.

SEXUAL HARASSMENT –HOSTILE ENVIRONMENT

Elements

Elements of Policy Violation:

Respondent engaged in conduct that was:

- (1) Unwelcome; *and*
- (2) of a sexual nature or otherwise sex-based; *and*
- (3) sufficiently severe, persistent or pervasive that it:
 - (a) unreasonably denied, adversely limited or interfered with Complainant's participation in or benefit from the University's education, employment or other programs, activities or services; *and*
 - (b) created an environment that a reasonable person would find intimidating or offensive.

SEXUAL HARASSMENT

Definition (cont'd.)

Sexual conduct includes sexual or romantic advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.

Other sex-based conduct includes acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on gender, gender identity, gender expression, sex- or gender-stereotyping, or sexual orientation.

Consideration is given to the totality of the circumstances in which the conduct occurred.

The SVSH Policy will be implemented in a manner that recognizes the importance of the rights to freedom of speech and expression.

INVASION OF SEXUAL PRIVACY – *WATCHING*

Definition

SVSH Policy Definition:

Without a person's consent, watching or enabling others to watch that person's nudity or sexual acts in a place where that person has a reasonable expectation of privacy.

INVASION OF SEXUAL PRIVACY – *WATCHING*

Elements

Elements of Policy Violation:

(1) Respondent watched or enabled others to watch Complainant; *and*

(2) When watched, Complainant was nude, engaged in a sexual act, or both; *and*

(2) The watched nudity or sexual act occurred in a place where Complainant had a reasonable expectation of privacy; *and*

(3) Complainant did not consent to Respondent's conduct.

INVASION OF SEXUAL PRIVACY – *RECORDING*

Definition

SVSH Policy Definition:

Without a person's consent, making or attempting to make photographs (including videos) or audio recordings, or posting, transmitting or distributing such recorded material, depicting that person's nudity or sexual acts in a place where that person has a reasonable expectation of privacy.

INVASION OF SEXUAL PRIVACY – *RECORDING*

Elements

Elements of Policy Violation:

- (1) Respondent did one of the following:
 - (a) made photographs (including videos) or audio recordings; ***or***
 - (b) attempted to make photographs (including video) or audio recordings; ***or***
 - (c) posted, transmitted or distributed make photographs (including video) or audio recordings; ***and***
- (2) The attempted or actual recorded material depicted (or attempted to depict) Complainant's nudity or sexual acts; ***and***
- (3) The attempted or actual recording was of a place where Complainant had a reasonable expectation of privacy; ***and***
- (4) Complainant did not consent to Respondent's conduct.

INVASION OF SEXUAL PRIVACY – *Recording*

Fact Pattern

The following facts are substantiated in the fact-finding process. Complainant entered the communal bathroom in Complainant's residence hall just as Respondent exited. A few moments later, Complainant was shocked to discover a video camera hidden in Complainant's shower. Respondent owned the camera, could activate it remotely, and planned to activate it upon returning to Respondent's room. The camera had not recorded anything at the time Complainant discovered it.

Is this Invasion of Sexual Privacy (Recording) as defined in the SVSH Policy?

ELEMENT	FACT
<p>(1) Respondent did one of the following: (a) made photographs (including videos) or audio recordings; or (b) attempted to make photographs (including video) or audio recordings; or (c) posted, transmitted or distributed recorded material; and</p>	<p>Respondent intended to make video of the Complainant (and possibly others)</p>
<p>(2) The attempted or actual recording attempted to or did depict Complainant's nudity or sexual acts; or</p>	<p>The Respondent tried to record Complainant while Complainant was showering</p>
<p>(3) The attempted or actual recording was of a place where Complainant had a reasonable expectation of privacy; and</p>	<p>People have a reasonable expectation of privacy while in the shower</p>
<p>(4) Complainant did not consent to Respondent's conduct</p>	<p>Complainant did not know of the attempted recording and so could not consent</p>

INVASION OF SEXUAL PRIVACY – EXTORTION

Definition

SVSH Policy Definition:

Using depictions of nudity or sexual activity to extort something of value from a person.

INVASION OF SEXUAL PRIVACY – EXTORTION

Elements

Elements of Policy Violation:

- (1) Respondent used depictions of nudity or sexual activity of Complainant
- (2) to extort from Complainant
- (3) something of value to Complainant

INVASION OF SEXUAL PRIVACY – EXTORTION

Elements

Elements of Policy Violation:

- (1) Respondent used depictions of nudity or sexual activity of Complainant
- (2) to extort from Complainant
- (3) something of value to Complainant

INVASION OF SEXUAL PRIVACY – EXTORTION

Elements

Elements of Policy Violation:

- (1) Respondent used depictions of nudity or sexual activity of Complainant
- (2) to extort from Complainant
- (3) something of value to Complainant

OTHER
PROHIBITED
BEHAVIOR

Sex with a
Minor

SVSH Policy Definition:

Sexual intercourse with a person under the age of 18.

EXPOSURE

Definition

SVSH Policy Definition:

Exposing one's genitals in a public place for the purpose of sexual gratification.

EXPOSURE

Elements

Elements of Policy Violation:

- (1) Respondent exposed their genitals
- (2) in a public place
- (3) for the purpose of sexual gratification

FAILURE TO COMPLY

SVSH Policy Definition:

Failing to comply with the terms of a no-contact order, a suspension of any length, or any order of exclusion issued under this [SVSH] Policy.

RETALIATION

Definition

SVSH Policy Definition:

Retaliation is an adverse action against a person based on their report or other disclosure of alleged Prohibited Conduct to a University employee, or their participation in, refusal to participate in, or assistance with the investigation, reporting, remedial, or disciplinary processes provided for in this Policy.

RETALIATION

Definition

SVSH Policy Definition:

An adverse action is conduct that would discourage a reasonable person from reporting Prohibited Conduct or participating in a process provided for in this Policy, such as threats, intimidation, harassment, discrimination and coercion.

Good faith actions lawfully pursued in response to a report of Prohibited Conduct (such as gathering evidence) are not, without more, retaliation.

RETALIATION

Elements

Elements of Policy Violation:

(1) Respondent engaged in “adverse action” toward the Complainant, ***and***

(2) Respondent engaged in this behavior because Complainant:

(a) reported or disclosed Prohibited Conduct to a University employee, **or**

(b) participated in, refused to participate in, or assisted with the investigation, reporting, remedial, or disciplinary processes provided for in the SVSH Policy.

SVSH Policy Appendix IV and Appendix V

Appendix IV: DOE-Covered Conduct: includes modified definitions of Prohibited Conduct that apply when allegations are covered by the federal Title IX regulations

Appendix V: Prohibited Conduct in the Context of Patient Care: includes modified definitions of Prohibited Conduct that apply when conduct arises in the context of patient care

THANKYOU

Frequent Reporting Methods & Sources

How does OPHD receive initial reports?



- Responsible Employees
- Whistleblower Referrals
- Campus Leadership
 - Vice Chancellors & Vice Provosts
- UCPD
- Housing & Residential
- Athletics Staff
- Department email:
- Department voicemail
- Direct outreach from campus partners
- iSight webform: <https://uctitleix.i-sight.com/portal/Berkeley>
Preferred method of receiving reports

Report Harassment and Discrimination

([Link to Webform](#))



Intake Meetings

- Scheduled for approximately 45 minutes
- Preferably coordinated with CARE Office Staff
- Dual purposes:
 - Information Sharing – OPHD  Complainant
 - Introduce OPHD
 - Scope of Practice
 - Record-Keeping
 - Retaliation Prohibition
 - Overview of Resolution Options
 - Alternative Resolution, Formal Investigation/DOE Grievance
- Active Listening - OPHD  Complainant
- Key Details
 - Date, Location
 - Is the alleged conduct is Prohibited Conduct?
 - Is the alleged conduct is covered by SVSH Policy?
 - Is there is enough information to go forward?
 - Is there is a sufficient nexus between the conduct and the University?
 - Does the complainant want a Resolution Process?
- Provide Initial Feedback
 - Timeline for Next Contact

Initial Assessment

The Title IX Officer will assess the report to determine whether to open a DOE Grievance Process, Alternative Resolution, or other Resolution Process.

- Closure After Initial Assessment
 - Even if true, the alleged conduct is not Prohibited Conduct;
 - Conduct is not covered by this Policy;
 - There is not enough information to carry out a Resolution Process; or
 - Not enough nexus between the conduct and the University to carry out a Resolution Process.
 - “Warm handoff” to appropriate unit

Immediate Health & Safety

The Title IX Officer, in coordination with the Case Management Team, and in consultation with the Complainant when possible will:

make an immediate assessment of the health and safety of the Complainant and the campus community;

determine and oversee Supportive Measures that are immediately necessary (including no contact orders); and

provide to the Complainant a written explanation of rights and reporting options (including the right to report to the police), and available campus and community resources.

Supportive Measures

When determining Supportive Measures, the Title IX Officer will:

- Assess how much the University can protect the parties' privacy while also ensuring the measures are effective. The Title IX Officer will explain to the parties any limits on protecting their privacy.
- Tailor the measures to the circumstances of each case, minimize burdens on the parties, and avoid depriving the parties of educational and employment opportunities as much as practicable.

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.

Supportive Measures

Interim Measures:

- Services, Accommodations , or other measures put into place temporarily after the Title IX Officer receives a report of Prohibited Conduct to assist or protect the Complainant, the Respondent, or the University community; restore or preserve a party's access to a University Program or activity; or deter Prohibited Conduct.
- Interim measures may:
 - Remain in place until the final outcome of a Resolution Process or a subsequent disciplinary or appeal process
 - Change or terminate depending on the parties' evolving needs, as assessed by the Title IX Officer; or
 - Become permanent as part of the resolution of a report.

Supportive Measures

Mitigating Measures:

Services, Accommodations , or other measures put into place for a Complainant who is not in a Resolution Process, including a Complainant who was previously in a Resolution Process that did not result in a finding of a policy violation.

Mitigating measures may be implemented to provide support restore or preserve access to a University program, activity, or deter Prohibited Conduct.

Alternative Resolution

After an initial assessment of the alleged facts, the Title IX Officer may – if the Complainant and Respondent agree in writing – begin an **Alternative Resolution** process (Not an option when Complainant is a student and Respondent is an employee).

May be especially useful when:

- an investigation is not likely to lead to a resolution;;
 - both parties prefer an informal process; or
 - a case involves less serious allegation
-
- If Alternative Resolution is selected, the Title IX Officer will provide timely written notice to both parties.
 - Participation in Alternative Resolution is voluntary. The Title IX Officer will oversee the Alternative Resolution process and maintain an appropriate level of involvement.

Alternative Resolution

Resolution may include, among other responses:

- separating the parties;
 - providing for safety;
 - mediation (except in cases of sexual violence);
 - referral for disciplinary action;
 - an agreement between the parties
 - referring the parties to counseling;
 - conducting targeted preventative educational and training programs; and conducting a follow-up review to ensure that resolution has been carried out effectively.
-
- The Title IX Officer will complete the Alternative Resolution process promptly, typically within 30 to 60 days.
 - Once the parties have agreed to the terms of an Alternative Resolution, the University will not conduct a Formal Investigator or (if it applies) DOE Grievance Process unless the Title IX Officer determines that the Respondent failed to satisfy the terms or that it was unsuccessful in stopping the Prohibited Conduct or preventing its recurrence.

Investigation – General Principles

- Title IX Officer oversees the process
- Investigator charged with conducting a fair, thorough and impartial investigation
- Parties have equal rights throughout
- University bears the burden of gathering sufficient evidence
- Process is informed by case law, Title IX regulations, and best practices
- Investigations are conducted in a trauma-informed manner
- Timeline is generally 60-90 business days

Investigation - Overview

Overview of Investigation Process:

- parties receive written notice
- parties have the right to an advisor
- investigator interviews parties and witnesses
- parties can meet with investigator, identify witnesses, submit evidence, and propose questions for parties and witnesses
- parties can review evidence prior to conclusion of investigation
- investigator will consider (rely on) all relevant and reliable evidence
- Parties receive written notice of preliminary determination and investigation report

Investigation – Notice of Allegations

- Parties to an investigation will receive a Notice of Allegations letter from the Title IX Officer (with input from Student Conduct on possible Student Conduct violations)
- The Notice provides details about the specific behavior in question and lists the potential SVSH policy and Student Conduct Code violations including:
 - The identities of the parties involved
 - The date, time, and location of the reported incident(s) (to the extent known)
 - The specific provisions of the SVSH Policy and/or any other Student Conduct policy potentially violated
- The Notice also includes (1) a statement that the investigation report will make factual findings and a preliminary determination about whether there has been a violation of the SVSH Policy and/or other student conduct policies, (2) a statement that the parties each have the opportunity during the investigation to pose questions for the investigator to ask of the other party and witnesses, (3) a statement of the standard of evidence, (4) a summary of the resolution process, (5) an admonition against retaliation, and (6) a summary of rights and resources available to the party.
- The Notice can be amended, at any point in the investigation, to add additional charges identified during the investigation. Any such amendment should be issued in the same way as the initial Notice was issued.

Investigation – Advisors and Support Persons

- At all stages of this process, parties have the right to an advisor and/ or a support person of their choosing in the process. At a maximum, a party may have one advisor and one support person.
- The advisor and/or support person may be any person who is not otherwise a party or a witness in the investigation.
- Neither the advisor nor the support person may speak on behalf of a student or otherwise disrupt any meetings or proceedings in any manner. The University reserves the right to exclude an advisor and/or support person who does not abide by these procedures.

Investigation - Support & Safety

- Throughout the resolution process (including investigation), the University will offer support services for Complainants (CARE Advocate) and Respondents (Respondent Services Coordinator).
- The University will continue to consider and implement interim measures throughout the process (including investigation) as appropriate to ensure the safety, well-being, and equal access to University programs and activities of its student.

Investigation - Participation

- Neither the Complainant nor the Respondent is required to participate in the investigation.
- The University will not draw any adverse inferences from a party's decision not to participate or to remain silent during the process.
- However, when a party selectively participates in the process, an investigator may consider the selective participation in evaluating the party's credibility.
 - In doing so, the investigator should try to discern reasonable non-adverse explanations for the selective participation, including from the parties' own explanations, and determine whether the information available supports those explanations.

Investigation – Standard of Proof

- The standard of proof used for factfinding and determining whether a policy violation(s) has occurred is Preponderance of the Evidence (more likely than not). To this end, a Respondent will not be found responsible for a violation of the SVSH Policy unless the evidence establishes it is more likely than not that they violated the SVSH Policy.

Investigation – Equal Opportunity

- During the investigation, each party will have equal opportunity to:
 - Meet with the investigator (separately) and may conduct follow-up meetings to clarify inconsistencies or discuss evidence gathered during the investigation.
 - Submit evidence (and collect any applicable waiver or additional information before accepting evidence)
 - Identify witnesses who may have relevant information
 - The investigator has discretion to determine which witnesses to interview.
 - The investigator will note in the report any witnesses they were asked to interview, but did not and list a reason for not doing so.
 - Propose questions for the other party and witnesses
 - Parties have the opportunity to pose questions at at least two points in the investigation: (1) when they speak with the investigator and (2) in response to the evidence review.
 - The investigator has discretion to determine which questions to ask and the investigator may decline to ask questions.

Investigation - Evidence

- The investigator will generally consider all evidence they determine to be relevant and reliable.
- The investigator may determine and weigh the relevance of any witnesses or other evidence to the findings.
- The investigator may exclude evidence that is irrelevant or immaterial.

Generally will consider	Generally will not consider
Direct observations and reasonable inferences from the facts	Statements of personal opinion as to anyone's general reputation or any character trait
May Consider	Will not consider (with limited exception)
Prior or subsequent conduct of the Respondent in determining pattern, knowledge, intent, motive, or absence of mistake.	The sexual history of a party. However, in limited circumstances, sexual history may be directly relevant to the investigation.

Investigation – Evidence Review

- Before the investigator writes and issues the Investigation Report, the parties have an equal opportunity to conduct a review of the evidence and provide a response to the investigator.
- The Evidence Review consists of the parties having electronic access for a set period of time (under Appendix E, not to exceed 5 business days absent good cause) to a summary of the relevant statements made by the parties and any witnesses as well as the documentary evidence that the investigator has deemed relevant.
- Even parties who have not participated in the investigation prior to the Evidence Review have an opportunity to participate in the Evidence Review itself and provide a response.
- A party's advisor and/or support person will also be provided electronic access to the Evidence Review materials for the duration of the review period.

Investigation – Investigation Report

- The investigator prepares the written investigation report which includes:
 - The factual allegations and alleged policy violations
 - Statements of the parties and witnesses
 - A summary of the evidence the investigator considered. The report usually includes a table of relevant evidence which briefly describes the item of evidence and where it can be found either later transcribed into the report or as an attachment to the report. It should also explain why any proffered evidence was not relied upon.
 - Findings of Fact (undisputed findings of fact and often a section reasoning through each disputed fact before reaching a finding on that specific disputed fact).
 - Credibility determinations of the parties and witnesses (when appropriate) – if none are needed, the report should note why that is the case
 - An analysis of whether each alleged policy violation has occurred – using the elements of the alleged policy violation to analyze the facts found in accordance with the preponderance of the evidence standard.
 - A preliminary determination on each alleged policy violation. In all cases where respondent is a student, the investigator reaches a “preliminary determination” as to whether respondent violated the SVSH Policy.

Investigation – Notice of Findings of Fact and Preliminary Determination

- Once the investigation has been completed, the Title IX Officer provides the parties (separately) with (1) a written Notice of Factual Findings and Preliminary Determinations and (2) a copy of the Investigation Report. The Notice and Report are forwarded on to Student Conduct at that point too.
- The Notice of Factual Findings and Preliminary Determinations includes:
 - A statement summarizing the factual findings and preliminary determinations as to whether the applicable SVSH Policy version(s) and/or other student conduct policies have been violated.
 - If the investigator preliminarily determines a policy violation(s) occurred, an explanation of how the proposed sanction will be determined (noting that each party will be able to provide input on sanctions)
 - A statement that there will be a factfinding hearing, if either party contests the investigator's preliminary determinations or is presumed to contest
 - An explanation of the procedures and timeline for contesting
 - A statement that even if no party contests the preliminary determination, they still have the right to appeal the sanction, if any
 - A reminder that Retaliation is prohibited
 - A reminder about any interim measures that are in place and will remain in place during the adjudication process

Preliminary Determination

In all cases where respondent is a student, the investigator reaches a “preliminary determination” as to whether respondent violated the SVSH Policy.

If the preliminary determination is of a violation, then the relevant decision-maker proposes a sanction.

In all such cases, both parties have the right to a hearing.

UC SVSH Student Adjudication Process – Hearing Officer Training

Hearing Officer Training – Session 2

November 3, 2021

The Planning Team

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- Elisabeth Yap, Senior Counsel, UCOP
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- Charlotte Russell, Interim Deputy Title IX Coordinator & Associate Director, UC Berkeley
- Elizabeth Rome, Interim Associate Director of Investigations and Deputy Title IX Officer, UC Berkeley
- Becca Wallace, Senior Conduct Coordinator, UC Berkeley
- Erin Slater-Wu, Independent Hearing Officer, UC Berkeley
- Mikaela Falwell, Adjudication Coordinator & Judicial Officer, UC Davis
- Linda Imonode Skemer, Title IX Hearing Officer, UC Santa Cruz
- Caitlin Frank, Senior Student Conduct Coordinator, UC San Diego

Pre-Hearing

Hearing Officer Assignment

The hearing coordinator will notify the parties of the hearing officer's identity. Within 5 business days of the notification, the parties may request the hearing officer be disqualified on the basis of bias or conflict of interest.

Student conduct will: review the request and determine whether to grant it; inform both parties of the decision; and, provide parties the identity of the new hearing officer, if applicable.

Reasons for Disqualification

May warrant disqualification. Involvement in the case or knowledge of the allegations at issue prior to being selected as the hearing officer, or a close personal relationship with a party or expected witness in the proceeding could, depending on the circumstances, warrant disqualification of the hearing officer

Do not warrant disqualification. Employment by the University, prior work for the University as a contractor, gender, gender identity, race, ethnicity, religion, sexual orientation or similar identifying characteristic, or the fact that they differ from those of any party, do not, on their own, warrant disqualification.

Pre-Hearing Meeting - Purpose

The purpose of the pre-hearing meeting is to discuss:

- What to expect at the hearing, including the hearing process,
- Measures available to protect the well-being of parties and witnesses at the hearing, as appropriate,
- The evidence the party has provided, to help identify and refine the issues to be decided at the hearing and inform the hearing officer's determination of the scope of the hearing, and
- Any questions.

Determination of Scope

Within 5 business days of concluding the pre-hearing meeting(s), the hearing officer will determine what issues are disputed and relevant to the determination of whether a policy violation(s) occurred, and will notify the parties of the scope of the issues to be addressed at the hearing and the expected witnesses.

When determining the scope of the hearing, the hearing officer will determine what facts are disputed and whether they are relevant to the determination of whether a policy violation occurred.

Within 5 business days of the hearing officer's notification of the scope of the hearing, the parties may then submit additional information about the evidence, including witness testimony, that they would like to present.

Reasons for Disqualification

May warrant disqualification. Involvement in the case or knowledge of the allegations at issue prior to being selected as the hearing officer, or a close personal relationship with a party or expected witness in the proceeding could, depending on the circumstances, warrant disqualification of the hearing officer

Do not warrant disqualification. Employment by the University, prior work for the University as a contractor, gender, gender identity, race, ethnicity, religion, sexual orientation or similar identifying characteristic, or the fact that they differ from those of any party, do not, on their own, warrant disqualification.

The Hearing

Procedures

- The parties will have the opportunity to present the evidence they submitted, subject to any exclusions determined by the Hearing Officer. Generally the parties may not introduce evidence or witness testimony at the Hearing not identified during the pre-Hearing process. However, it is the Hearing Officer's discretion to accept or exclude additional evidence or witness testimony at the Hearing.
- Courtroom rules of evidence and procedure will not apply. The Hearing Officer will generally consider all evidence they deem relevant and reliable, and may determine and weigh the relevance of any witness testimony or other evidence to the findings. The Hearing Officer will also follow the evidentiary principles in Section IV.C.3 of the Framework. The Investigation Report will be made available and the Hearing Officer generally will rely on any finding in the report that is not disputed. If a witness does not appear at the Hearing and their credibility is not central to the determination of a particular disputed issue, the Hearing Officer may determine what weight to give to their statements from the Investigation Report.

Procedures Cont'd

- The parties are expected not to spend time on undisputed facts or evidence that would be duplicative, and the Hearing Officer may exclude evidence, including witness testimony, that is irrelevant in light of the policy violation(s) charged, not disputed, unduly repetitive, or otherwise improper. The Hearing Officer may also decide any procedural issues for the Hearing and make any other determinations necessary to promote an orderly, productive, and fair Hearing.
- The Hearing will be conducted in a respectful manner that promotes fairness and accurate factfinding. The parties and witnesses will address only the Hearing Officer, and not each other. Only the Hearing Officer may directly question witnesses and parties. The parties have the right to propose questions to be asked of any individuals who make statements at the Hearing and may do so by submitting them to the Hearing Officer.

Procedures Cont'd

- The parties may be attended by an advisor and/or support person to help guide and support them through every stage of this process. Advisors and Support Persons are limited to conferring with their party privately, however, and may not actively participate, interrupt or otherwise disrupt the proceedings.
- The Hearing is closed to the public, and witness participation will be limited to the extent necessary for them to provide their testimony and answer questions.
- If any participant is found to be disruptive, the Hearing Officer may exclude them from the remainder of the proceedings.

Procedures Cont'd

- The Hearing Officer will not draw adverse inferences from a party's decision to not participate in the Hearing, or to remain silent during the Hearing. However, they may consider a party's selective participation -- such as choosing to answer some but not all questions posed, or choosing to provide a statement only after reviewing the other evidence gathered in the investigation – when assessing credibility. See Section III.F.
- The Rules of Conduct apply to all participants in the University of California's Sexual Violence and Sexual Harassment Resolution Processes. The Hearing Officer will apply the Rules of Conduct throughout the hearing process.

Procedures Cont'd

- The Hearing Officer will implement measures they deem appropriate to protect the well-being of parties and witnesses, such as instituting breaks or allowing physical or visual separation of the parties from each other or witnesses. This may include, but is not limited to, the use of a physical partition, a separate physical location, video conference and/or any other appropriate technology. To assess credibility, the Hearing Officer must have sufficient access to the Complainant, Respondent, and any witnesses presenting information; if the Hearing officer is sighted, then the Hearing Officer must be able to see them. Additionally, the parties have the right to hear (or, if deaf or hard of hearing, to access through auxiliary aids or services) testimony of any individual who makes statements at the Hearing.
- The Hearing Coordinator will facilitate a recording of the Hearing. This recording will serve as the sole, official verbatim record and become part of the student conduct record. No other recording devices of any kind are permitted by anyone else.

Hearing Officer Questions

The Hearing Officer will determine the order of questioning. Unless they determine re-phrasing is necessary, the Hearing Officer will ask the questions as they are submitted by the parties and will not change them. The Hearing Officer may find it necessary to rephrase questions to, for example, prevent them from being harassing or for clarity. The Hearing Officer may also exclude questions that are unduly repetitive, clearly not relevant, harassing or unduly time consuming. (Appendix E Guidelines)

Generally the Hearing Officer will pose their own questions first. Aim to ask questions in a way that is thoughtful to the sensitivity of the topics presented at the hearing. Aim to use trauma informed practices when questioning all parties and witnesses.

Trauma Considerations

Your role is not to determine whether a participant is suffering from trauma. You should be mindful that the hearing process can impact parties and how they present in a hearing, however. This can also look different for every person and range from flat affect to challenges in regulating emotions.

Apply trauma informed practices to the hearing process. Facilitating a hearing process that promotes safety, information sharing, and compassion will lead to a more orderly hearing and better outcomes, consistent with the *Principles of Community* and goals of Appendix E.

Recommended Hearing Practices

Be Clear

- Explain the process using simple terms/phrases.
- Check-in with parties for understanding and questions.
- Speak slowly and deliberately.
- Avoid acronyms, and repeat key information in multiple ways and places.
- Provide consistent tone, words and actions.
- Consider providing handouts to make large amounts of information more digestible.

Create a Safe Environment

- Explain what to expect, keeping in mind the hearing modality.
 - Provide choice/preference to parties where reasonably possible – minimize the potential for surprises.
 - Offer/initiate breaks (e.g., after long lines of questioning)
 - Use supportive and non-biased phrases to ease participation:
 - “I can imagine this is a difficult situation, take your time.”
 - “Take as much time as you need.”
 - Offer parties the option to speak privately with their support person/advisor.
 - Phrase questions to be nonjudgmental (e.g., instead of, "why didn't you..." consider asking, "can you tell me more about your decision to...?").
-

Post-Hearing

Credibility Determination

- In determining credibility, the hearing officer will weigh the accuracy and veracity of the evidence.
- If a witness does not participate in the hearing, and their credibility is not central to the determination of a particular disputed issue, the hearing officer may determine what weight to give to their statements from the investigation report.
- Parties may behave in unexpected ways during the hearing for a variety of reasons. Its important to take in information in a neutral way without bias and evaluate the evidence. The hearing officer should consider non-adverse reasons when assessing credibility.

Report Writing

The hearing officer will complete a report outlining their decision as to whether Respondent violated the SVSH Policy and/or other student conduct policies, including:

- The determinations of whether the SVSH Policy and/or other student conduct policies have been violated,
- The findings on each disputed, material fact and an analysis of the evidence supporting the findings,
- A summary of the facts found by the investigator that the parties did not dispute,
- The rationale for the determination of each charge, and
- Any procedural decisions made during the hearing, as well as their rationale.

Tip: Consider citing to specific pages when you refer to the investigation report in your decision.

Report Writing

When writing your report, please consider your potential audience.

- **Parties/Students.** Use clear and plain language so that students understand your rationale and decision.
- **Student Conduct.** If the hearing officer decides that any policy violation has occurred, they will send their determination and findings to Student Conduct within 10 business days of the hearing. Based on the hearing officer's findings and determinations, and other information relevant to sanctioning (see Section IX.D.), student Conduct will determine an appropriate sanction.
- **Appeal Officers.** Appeal Officers will decide whether an appealing party has proven the asserted ground(s) for appeal based on the evidence presented at the hearing, the investigation file, and the appeal statements of the parties. Consider what information is relevant and important for them to have so that they can facilitate an effective and timely appeal.

Types of Appeals

1. Appeals concerning the outcome of a hearing
 - Procedural error in the hearing process that materially affected the outcome
 - The determination regarding the policy violation was unreasonable based on the evidence before the Hearing Officer
2. Appeals disputing the sanctions
 - Sanctions disproportionate to investigator's preliminary determination in cases where there is no hearing
 - Sanctions disproportionate to Hearing Officer's findings in cases with a hearing

Appeal Response Options

1. Uphold the findings and sanctions
2. Overturn the findings or sanctions
3. Modify the findings or sanctions
4. Send the case back to the hearing officer for further fact finding
 - Can only occur in cases involving procedural error
 - Remanded cases will include specification on what further fact finding needs to occur or what additional information needs to be considered
 - After fact finding, hearing officer reports to appeal officer regarding findings

Hearing Report Tips

Hearing Report Tips – What not to do

Do not...

critique or rehash the investigation or investigation report.

Example: “because the investigator relied on flawed evidence, I reject their analysis...”

Example: “the investigator found Respondent not credible because of Respondent’s inconsistent statements, but did not sufficiently weigh Respondent’s explanation...”

Hearing Report Tips – What to do

Instead...

make your own credibility assessments, factual findings and policy determinations.

Example: “I carefully considered the proffered evidence, but found it unreliable for the following reasons...”

Example: “I did not find these inconsistencies to materially affect Respondent’s credibility because, as explained by Respondent...”

Hearing Report Tips – Examples

WHAT <u>NOT</u> TO DO	WHAT <u>TO</u> DO
“because the investigator relied on flawed evidence, I reject their analysis”	“I carefully considered the proffered evidence, but found it unreliable for the following reasons...”
“the investigator found Respondent not credible because of Respondent’s inconsistent statements, but did not sufficiently weigh Respondent’s explanation”	“I did not find these inconsistencies to materially affect Respondent’s credibility because, as explained by Respondent...”

Hearing Report Tips – What not to do

Do not...

include extraneous private or sensitive information about parties or witnesses.

Example: “Witness One’s parents are undocumented immigrants”

Example: “Complainant was sexually abused by a parent as a child”

Hearing Report Tips – What to do

Instead...

consider whether private or sensitive details are actually relevant to your determination and, if so, whether they can be phrased more generally.

Example: “Witness One was reluctant to participate in the police investigation for personal reasons unrelated to this case”

Example: “a past personal experience contributed to Complainant’s depression”

Hearing Report Tips – Examples

WHAT <u>NOT</u> TO DO	WHAT <u>TO</u> DO
“Witness One’s parents are undocumented immigrants”	“Witness One was reluctant to participate in the police investigation for personal reasons unrelated to this case”
“Complainant was sexually abused by a parent as a child”	“a past personal experience contributed to Complainant’s depression”

Hearing Report Tips – What not to do

Do not...

state information in a way that conveys unnecessary judgment.

Example: “because the witnesses chose to drink excessively, they failed to come to Complainant’s aid when Complainant needed them”

Example: “Complainant could have left the room, but instead stayed and pretended to enjoy the sexual conduct. She cannot now expect Respondent to be responsible for knowing what was in her mind”

Hearing Report Tips – What to do

Instead...

state information in an accurate but neutral manner when practicable.

Example: “because the witnesses were themselves heavily intoxicated, they were not able to help the Complainant”

Example: “though Complainant gave the impression of enjoying the sexual conduct, she actually did not. The question to be answered under the SVSH Policy is whether Respondent actually and reasonably believed that Complainant consented...”

Hearing Report Tips – Examples

WHAT <u>NOT</u> TO DO	WHAT <u>TO</u> DO
“because the witnesses chose to drink excessively, they failed to come to Complainant’s aid when Complainant needed them”	“because the witnesses were themselves heavily intoxicated, they were not able to help the Complainant”
“Complainant could have left the room, but instead stayed and pretended to enjoy the sexual conduct. She cannot now expect Respondent to be responsible for knowing what was in her mind”	“though Complainant gave the impression of enjoying the sexual conduct, she actually did not. The question to be answered under the SVSH Policy is whether Respondent actually and reasonably believed that Complainant consented...”

Hearing Report Tips – What not to do

Do not...

conclude that complainant did consent to or welcome conduct, or that conduct did not occur.

Example: “I find it more likely than not that Respondent did not touch Complainant’s intimate body part”

Example: “the preponderance of the evidence substantiated that Complainant welcomed Respondent’s sexual conduct”

Hearing Report Tips – What to do

Instead...

determine whether it's more likely than not that the conduct did occur, or that complainant did not consent or did not welcome conduct, as that is the inquiry the SVSH Policy requires (even if the language is awkward).

Example: “I do not find it more likely than not that Respondent touched Complainant’s intimate body part as Complainant alleged”

Example: “the preponderance of the evidence did not substantiate that the conduct was unwelcome to Complainant”

Hearing Report Tips – Examples

WHAT <u>NOT</u> TO DO	WHAT <u>TO</u> DO
“I find it more likely than not that Respondent did <u>not</u> touch Complainant’s intimate body part”	“I do <u>not</u> find it more likely than not that Respondent touched Complainant’s intimate body part”
“the preponderance of the evidence substantiated that the sexual conduct <u>was welcome</u> to Complainant”	“the preponderance of the evidence did <u>not</u> substantiate that the conduct was <u>un</u> welcome to Complainant”

Hearing Reports: Some Best Practices

- summarize procedural history and preliminary determination succinctly
- state undisputed facts and issues
- define disputed facts and issues
- limit discussion of the Investigation Report
- make and explain credibility assessments
- analyze each and every element of the Prohibited Conduct at issue
- use UC policy terminology
- think of the reader: use plain language, proofread, be accurate

SVSH Resources

Systemwide Title IX Office

- SVSH Resources: <https://www.ucop.edu/title-ix/resources/index.html>