



SVSH Student Investigation and Adjudication Framework

(PACAOS – Appendix E) | July 2019

University of California

Combatting sexual harassment, which includes sexual violence, and fostering a culture of respect and accountability are of paramount importance to the University of California. The University is committed to providing a resolution process that treats parties fairly and with compassion, and results in just outcomes. UC's process for investigating and adjudicating sexual harassment complaints against students is set forth in *PACAOS Appendix-E: Sexual Violence and Sexual Harassment Student Investigation and Adjudication Framework*.

Interim Appendix E – March 1, 2019

- In January 2019, a California appellate court held, for the first time under California law, that colleges and universities in the state must provide live hearings to resolve sexual misconduct cases in which sanctions are severe and credibility of parties or witnesses is a central issue.
- Since the student adjudication process UC was using at the time did not provide for live hearings in all such cases, the University made immediate changes to comply with this ruling. This was done through a March 1, 2019 issuance of an interim Appendix E - Sexual Violence and Sexual Harassment (SVSH) Student Adjudication Framework.
- The University issued a new version of Appendix E on July 31, 2019 that details a more fully-developed hearing process. This presentation helps explain the hearing process in the July 2019 version of Appendix E.

Appendix E – July 31, 2019

- While interim Appendix E was in place, the University developed a long-term approach to a live hearing that is fair, treats parties with respect and compassion, and results in just and reliable outcomes.
- A workgroup comprised of dedicated representatives of stakeholder groups across the system – including students, faculty, Title IX, CARE, respondent services, and Student Conduct – worked through difficult questions to create a process that is not only legally compliant but also ensures that the University is true to its values and mission.
- The July 31, 2019 version of Appendix E reflects the careful efforts of the workgroup, input of key stakeholders, and feedback from the broader UC community.
- The University is also working to ensure the informal (Alternative Resolution) process is a robust and meaningful option for students who prefer an alternative to a formal investigation process and live hearing.

Appendix E – July 31, 2019

The process in Appendix E issued July 31, 2019 includes five stages:

Stage 1 – Resources and Reporting

Stage 2 – Investigation and Proposed Sanction

Stage 3 – Opportunity to Contest

Stage 4 – Hearing

Stage 5 – Appeal

Appendix E – Stage 1

Resources and Reporting

At Stage 1, undergraduate and graduate students who have experienced sexual violence can speak confidentially to their campus CARE advocate, and other confidential campus offices, to understand their rights and reporting options, including the option not to report. In addition, CARE advocates will inform students about counseling and other support resources that are available.

When the Title IX officer receives a report of sexual harassment, including sexual violence, they will determine how to proceed based on their evaluation of the report and the complainant's wishes.

Appendix E – Stage 2

Investigation and Proposed Sanction

Stage 2 is initiated if the Title IX office decides to initiate a formal investigation under the University's *Sexual Violence and Sexual Harassment (SVSH) Policy*.

In Stage 2, the Title IX investigator will conduct a fair, thorough and impartial investigation. At the end of the investigation, the investigator will make factual findings and a preliminary determination of whether the respondent violated University policy. If the investigator preliminarily determines the respondent violated policy, then Student Conduct will propose a sanction.

Appendix E – Stage 3

Opportunity to Contest

At Stage 3, the parties can choose to contest the investigator's preliminary determination. If they do, the University will hold a hearing (Stage 4) to decide whether the respondent violated University policy. Both the complainant and the respondent have this right, and they have it whether the investigator preliminarily determines the respondent violated policy, or preliminarily determines the respondent did not violate policy.

When Student Conduct proposes a sanction of suspension or dismissal, the respondent is *presumed* to contest the preliminary determination, unless the respondent informs the University that they do not contest.

If neither party contests (or is presumed to contest), then the investigator's preliminary determination becomes final, and Student Conduct imposes the proposed sanction. The University does not have a hearing (Stage 4). Either or both parties can appeal the sanction (Stage 5) as disproportionate to the finding.

Appendix E – Stage 4

Hearing

If either party contests (or is presumed to contest) the University will hold a hearing (Stage 4). Before the hearing, the hearing officer will hold pre-hearing meetings and takes other steps to educate the parties about the process; define the hearing's scope; and promote an orderly, productive, and respectful hearing.

The hearing will cover issues that are disputed and relevant to whether a policy violation occurred. The parties are expected not to spend time on undisputed facts or evidence that would be duplicative.

Appendix E – Stage 4

Hearing

The parties can propose questions to be asked of each other and witnesses during the hearing. However, only the hearing officer asks the questions – not the parties or their representatives – and the hearing officer first screens the questions to ensure they are relevant, and not harassing or unduly repetitive.

The hearing officer will implement measures throughout the hearing as needed to promote the well-being of parties, such as their physical or visual separation. Students can have an advisor and support person throughout the process.

If the hearing officer decides that the respondent violated University policy, then Student Conduct will determine an appropriate sanction.

Appendix E – Stage 5

Appeal

At Stage 5, the parties have an equal right to appeal the outcome.

In cases decided at a hearing, parties may appeal on any of three grounds:

- procedural error during the hearing;
- decision was unreasonable; and/or
- sanctions were disproportionate to the findings.

In cases that did not have a hearing – meaning neither party contested the investigator’s preliminary determination of whether the respondent violated University policy – parties may appeal on the ground that the sanctions were disproportionate to the findings.

An appeal officer decides the appeal, and their decision is final. There is no hearing at this stage.

Appendix E – Important Notes

The University knows the prospect of participating in a hearing may be intimidating. Here are a few important things to know:

- The hearing will be conducted in a respectful manner that promotes fairness and accurate fact finding.
- The hearing officer will meet with parties beforehand to explain the process, answer questions, and address issues to promote an orderly and fair hearing.
- Parties and witnesses will address only the hearing officer -- not each other. Only the hearing officer may question witnesses and parties, and they will exclude questions that are harassing, irrelevant or unduly repetitive.
- The hearing officer will implement measures as needed to protect the well-being of participants. For example, parties will be visually or physically separated, if they wish. They can also take breaks, and draw support from their support person and advisor.

Proposed Title IX Rules

- The U.S. Department of Education published proposed Title IX rules in November 2018 that would dictate how schools respond to sexual harassment complaints.
- The July 31, 2019 Appendix E does not implement the proposed Title IX rules.
- UC has serious concerns about several aspects of the proposed Title IX rules, and has taken a strong and public stance against them. When the Department eventually issues the rules, UC will respond thoughtfully, keeping the security and well-being of students and the broader community paramount. Until then, the University will continue its efforts to persuade the Department of Education to revise the rules to address the concerns UC has identified.

Resources

Policy on Sexual Violence and Sexual Harassment:
<https://policy.ucop.edu/doc/4000385/SVSH>

PACAOS Appendix E: SVSH Student Investigation and Adjudication Framework:
<https://policy.ucop.edu/doc/2710641/PACAOS-Appendix-E>

Systemwide Title IX Office – Resources: <https://www.ucop.edu/title-ix/resources/index.html>

UC Sexual Violence Prevention & Response:
<http://sexualviolence.universityofcalifornia.edu/>

Student Advisory Board: <https://www.ucop.edu/title-ix/resources/student-advisory-board/index.html>