



UNIVERSITY
OF
CALIFORNIA

U.S. Department of Education Title IX Regulations

August 14, 2020



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.

U.S. Department of Education (DOE) Title IX regulations

On August 14, 2020, the U.S. Department of Education's (DOE) new Title IX regulations went into effect. The regulations mandate how schools across the country must respond to complaints of sexual harassment, which includes sexual violence.

U.S. Department of Education (DOE) Title IX regulations

The University identified serious concerns with the regulations when the DOE first proposed them. Despite our advocacy for changes, the DOE retained many of the most problematic parts in the final rules.

As the University's federal funding is conditioned on compliance with the regulations, the University has issued interim policies to fully implement the regulations, despite our disagreement with some aspects of the regulations.

U.S. Department of Education (DOE) Title IX regulations

This presentation highlights important things to understand about how the regulations do and do not affect the University and some of the significant changes included in the interim policies.

Key Highlights

Required Grievance Process

- Most significantly, 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”). The regulations are prescriptive about what must be included.
- Even so, we already have 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, and measures to ensure access to our programs and activities; these are important to a fair process.

Key Highlights

Required Grievance Process

- However, we have not previously provided other components because we believe they are unnecessary or do not reflect best practices.
- Most notably, this includes live hearings and appeals for cases with faculty and staff respondents.
- It also includes certain procedures, such as the ability of parties to question each other through their advisors at the live hearing.

Key Highlights

Unchanged Scope of SVSH Policy

- The University's Sexual Violence and Sexual Harassment ("SVSH") Policy is more expansive than the regulations in both conduct prohibited and its coverage.
- The University will apply the DOE Grievance Process only when required, in response to DOE-Covered Conduct. It will follow its existing processes for all other reports under the SVSH Policy.

Key Highlights

Unchanged Scope of SVSH Policy

- Although administering two separate processes for similar conduct is more difficult, we believe this approach is the most protective of our community
- It is important to understand that the University will continue to prohibit all forms of misconduct previously prohibited by the SVSH Policy, and to treat allegations of misconduct with the same seriousness and care.

Key Highlights

Unchanged Responsible Employee Obligations

- The obligation of UC employees to report sexual harassment to the Title IX Officer is established by the SVSH Policy, and unchanged by the Title IX regulations.
- The SVSH Policy requires all employees who are not Confidential Resources to inform the Title IX officer of possible Prohibited Conduct (as defined in the policy) toward any student, and designated employees to inform the Title IX officer of possible Prohibited Conduct toward any other University affiliate.

Significant Policy Changes

Sexual Violence and Sexual Harassment Policy

- The same conduct that was prohibited by the policy prior to August 14 is still prohibited.
- A subset of this conduct is now covered by the DOE regulations. This includes sexual assault, relationship violence, stalking, and some conduct that constitutes sexual harassment if the person who experienced the conduct was in the United States at the time the conduct occurred and when the conduct occurred on University property or in the context of a University program or activity.
- The SVSH Policy contains definitions that further explain these terms.

Significant Policy Changes

Sexual Violence and Sexual Harassment Policy

- The regulations define sexual misconduct to include conduct on the basis of sex even if it is not sexual in nature.
- The Prohibited Conduct definitions in the policy are revised where appropriate to prohibit conduct based on gender, gender identity, gender expression, sex, sex- or gender-stereotyping, and sexual orientation.

Significant Policy Changes

Sexual Violence and Sexual Harassment Policy

- The University will continue to provide supportive including interim measures to people in a resolution process or affected by Prohibited Conduct.
- The terms and definitions for these supportive measures are revised to align with the regulatory language, including stating that measures provided in connection with DOE-Covered Conduct cannot be punitive or disciplinary, or unreasonably burden a party.

Significant Policy Changes

Student Investigation and Adjudication Frameworks

- Last year, we revised the existing student framework for SVSH cases, PACAOS Appendix E, to provide for live hearings. This was in response to a California appellate court ruling.
- Appendix F, modeled on Appendix E, is 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 responding parties are students.
- Appendix E remains in effect as the University's procedures for resolving complaints of Non-DOE-Covered Conduct.

Significant Policy Changes

Student Investigation and Adjudication Frameworks

- Both Appendix E and Appendix F include the following important components:
 - the Title IX office conducting a thorough and impartial investigation, making factual findings, and reaching a preliminary determination of whether the respondent violated the SVSH Policy;
 - the equal right of both parties to present, review, and respond to evidence during the investigation;
 - the opportunity for the parties to accept the investigator's preliminary determination and any proposed sanction, thereby foregoing a hearing;

Significant Policy Changes

Student Investigation and Adjudication Frameworks

- (Continued) Both Appendix E and Appendix F, include the following important components:
 - the equal opportunity for the parties to not accept the investigator's preliminary determination and have a hearing to determine whether the respondent violated the SVSH Policy; 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.

Significant Policy Changes

Student Investigation and Adjudication Frameworks

- Some significant differences in Appendix F required by the regulations include:
 - parties are specifically allowed to present evidence from expert witnesses, if relevant;
 - limitations on the University's ability to consider evidence that is privileged or contained in medical and behavioral health records;
 - in the evidence review, parties can review all evidence “directly related” to the allegations; this is a standard broader than relevance (the standard in Appendix E);

Significant Policy Changes

Student Investigation and Adjudication Frameworks

- (Continued) Some significant differences in Appendix F required by the regulations include:
 - at the live hearing, the parties can ask questions of each other and witnesses through their advisor. Under Appendix E, by comparison, the hearing officer asks the parties' proposed questions;
 - if a party does not have an advisor at the hearing, the University will assign someone (a "Reader") to read the party's questions;

Significant Policy Changes

Student Investigation and Adjudication Frameworks

- (Continued) Some significant differences in Appendix F required by the regulations include:
 - 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. Under Appendix E, the hearing officer reviews the questions to ensure they are relevant and not harassing before asking them;

Significant Policy Changes

Student Investigation and Adjudication Frameworks

- (Continued) Some significant differences in Appendix F required by the regulations include:
 - on any disputed and material issue, the hearing officer may not rely on any statement of a party or witness about which they refuse to answer questions at the hearing. Under Appendix E, this is only true when credibility of the party is central to determination of the issue; and
 - the parties are allowed to appeal on certain grounds specified in the regulations, additional to the grounds in Appendix E.

Significant Policy Changes

Student Investigation and Adjudication Frameworks

- 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;

Significant Policy Changes

Student Investigation and Adjudication Frameworks

- (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;

Significant Policy Changes

Student Investigation and Adjudication Frameworks

- (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. The University will consider individual needs for participation, such as for University-provided physical space for privacy or safety and for technological equipment or assistance; and
 - careful consideration of other measures to protect the well-being of parties, such as ensuring use of lived names and pronouns.

Significant Policy Changes

Student Investigation and Adjudication Frameworks

- Appendix F applies to allegations of alleged DOE-Covered Conduct that occurred on or after August 14, 2020.
- Appendix E applies to all other allegations (i.e., non-DOE-Covered Conduct and conduct that occurred before August 14) against student respondents.

Significant Policy Changes

Faculty and Staff Frameworks

- The regulations require live hearings and the right to appeal in investigated matters alleging DOE-Covered Conduct by employee respondents, including faculty, staff, and non-faculty academic personnel.
- The revised Faculty and Staff Frameworks provide that such cases will proceed under the DOE Grievance Process, which includes all of the elements and safeguards built into the student frameworks, PACAOS Appendices E and F, that are detailed in the prior slides.

Significant Policy Changes

Faculty and Staff Frameworks

- Under the Faculty and Staff frameworks, if both parties in a DOE Grievance Process accept the investigator's preliminary determination, then the determination will become final and the University will impose any proposed sanctions and corrective actions; the parties have no further right to challenge the determination or resolution.
- If either party does not accept the preliminary determination, then the matter will proceed to a hearing. After the hearing, both parties will have the right to appeal on specified grounds. The hearing and appeal procedures are codified in an addendum to the frameworks, called the DOE Addendum.

Significant Policy Changes

Faculty and Staff Frameworks

- At the sanctioning stage, respondents have the same rights as in matters alleging non-DOE-Covered Conduct.
- This means that Senate faculty respondents have the right to an additional hearing with the Committee on Privilege & Tenure per the Academic Senate Bylaws, non-Senate faculty respondents have the right to grieve per the Academic Personnel Manual, and represented employees have the right to grieve per applicable collective bargaining agreements. Note that the Staff Framework applies to all represented employees, including staff and academic.

Significant Policy Changes

Faculty and Staff Frameworks

- Investigations of non-DOE-Covered Conduct will proceed as they have in the past. However, for consistency and to facilitate compliance with the regulations, some additional rights related to notice, consideration of evidence, and evidence review are included in both processes.
- The DOE Grievance Process applies only to allegations of DOE-Covered Conduct that occurred on or after August 14, 2020.
- All other conduct will continue to be addressed through the University's existing processes.



The interim policies are the culmination of the University's effort to comply with the regulations without compromising its values or the sexual harassment prevention, detection and response efforts so critical to its mission. The work was aided by a diverse systemwide workgroup that included representatives of students, staff, the Academic Senate, and professionals from the offices most directly involved in resolution processes, including Title IX, Student Conduct, CARE, Respondent Services, Hearing Coordinators, Academic Personnel and Human Resources. The workgroup provided valuable advice on how best to implement the regulations in a way that treats parties with respect and kindness, while continuing to ensure just and reliable outcomes. The policies reflect their careful work.

Resources

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