



UC Systemwide SVSH Policy Training

September 2020

UNIVERSITY
OF
CALIFORNIA

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STATE OF TITLE IX

Workgroup: Guiding Principles

- We must provide a process that is both fair and kind, and that results in just and reliable outcomes
- We must minimize:
 - burdens on members of our community
 - burdens on our system and employees
 - vulnerability of outcomes being overturned by courts and unfavorable decisions by regulatory agencies
 - confusion among our campus community, particularly students
 - 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



"I ask no favor for my sex....All I ask of our brethren is that they take their feet off our necks."

– RBG, quoting the abolitionist Sarah Grimké

Agenda: Day One

- 9:00 – 10:00 Welcome and Introductions
State of Title IX
SVSH Policy: Overview and Changes
- 10:00 – 10:30 Break
- 10:30 – 10:50 Impartiality, Bias and Conflict of Interest
- 10:50 – 12:00 Investigation and Adjudication: Overview,
Initial Assessment and Investigation

Agenda: Day Two

- 9:00 – 10:00 Investigation and Adjudication: Hearings
- 10:00 – 10:30 Break
- 10:30 – 11:15 Investigation and Adjudication: Hearings (cont'd.)
- 11:15 – 12:00 Investigation and Adjudication: Appeals and Sanctions

Sexual Violence and Sexual Harassment Policy

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 (cont'd.)

- Overview of Resolution Processes
 - Alternative Resolution
 - Formal Investigation
 - DOE Grievance Process
 - Other Inquiry
- Specifies Supportive and Remedial Measures available
- States preponderance of evidence standard
- Establishes Responsible Employee reporting obligations

SVSH Policy – Overview (cont'd.)

- 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

SVSH Policy—Key Revisions

Sex-Based Conduct: Prohibited Conduct (sp. harassment and stalking) now defined to include conduct based on--

- gender
- gender identity
- gender expression
- sex- or gender-stereotyping, and
- sexual orientation

Retaliation:

- prohibits adverse actions for *refusal* to participate in SVSH process
- allows for good faith actions such as gathering evidence

SVSH Policy—Key Revisions (cont'd.)

Confidentiality: identities of parties and witnesses confidential except as required by law or permitted by FERPA

Supportive Measures:

- include “interim” and “mitigating” measures
- for DOE-Covered Conduct, must be non-disciplinary and non-punitive, and can’t unreasonably burden

Alternative Resolution: not available when Complainant is a student and Respondent is an employee

SVSH Policy—Key Revisions (cont'd.)

DOE Grievance Process: new investigation and adjudication process required to resolve allegations covered by the Title IX regulations (“DOE-Covered Conduct”)

Appendix IV: describes the process Title IX will use to determine whether the DOE Grievance Process applies (or, instead, a different Resolution Process)

Resources

UC Sexual Violence and Sexual Harassment Policy

Title IX Regulations FAQ

Title IX Regulations informational slide deck

Available on resources section of Systemwide Title IX Office website :

<https://www.ucop.edu/title-ix/>

UC Systemwide Sexual Violence and Sexual Harassment Policy Training September 2020

Impartiality & Avoiding Conflicts of Interest and
Bias

Topics

- Title IX Regulations and Preamble
- Impartiality
- Conflicts of Interest
- Bias

Title IX Regulations and Preamble

Title IX Coordinator, investigator, decision-maker, or those facilitating informal resolution processes must:

- Promote **impartial** investigations and adjudications of formal complaints of sexual harassment
 - Avoiding **prejudgment** of the facts
 - Not rely on **sex stereotypes**
- Avoid **conflict of interest** or **bias** for or against complainants or respondents **generally** or **individually**

Section 106.45(b)(1)(iii)

§ 106.45 serves the purposes of Title IX by **focusing on accurate factual determinations regardless of whether the rate of campus sexual assault, and the rate of false or unfounded accusations,** is as high as some commenters stated or as low as other commenters stated. (Preamble at 30104)

Both parties deserve an impartial, truth-seeking process to **resolve the allegations in each particular situation, regardless of the frequency or infrequency of victimization and false accusations.** (Preamble at 30104)

The nature of the training required under § 106.45(b)(1)(iii) is left to the recipient's discretion so long as it achieves the provision's directive that such training provide instruction on how to **serve impartially and avoid prejudgment of the facts at issue.** (Preamble at 30084)

Impartiality

Impartiality Generally

- “Impartial” applies to the state of mind or attitude of the decision-maker and ensures that there is no bias, either real or perceived. Impartial decisions are based on objective criteria.
- To be “independent” the decision-maker must be free of outside influence.
- You should declare any real or perceived conflict of interest and recuse yourself from the decision-making process without delay.

Prejudgment of Facts

Prejudgment refers to passing judgment prematurely or without sufficient investigation.

Example: The Complainant was drinking at the time of the incident so the decision maker presumes their recollection of the alleged conduct is not accurate.

Example: The Parties were in a consensual relationship previously so the decision maker assumes consent was given.

Sex Stereotypes

Decisions must be made on the basis of individualized facts and not on stereotypical notions. Generalizations cannot be relied on or applied to particular allegations.

Example: Men are sexually aggressive

Example: Women have regret about sexual experiences and are likely lying about sexual assault

Conflict of Interest

Conflict of Interest

Everyone involved in a Title IX investigation must support an objective evaluation of the evidence.

Objectivity includes the absence of any personal or professional interest that affects your ability to be fair and impartial to all parties in the investigation and that actually affects the outcome of the proceeding.

Note: There are no *per se* conflicts of interest outlined in the Title IX regulations.

Conflicts of Interest: Key Questions

- Do you or does anyone in your immediate family or household have a personal (e.g., social or familial) relationship with the Complainant, the Respondent?
- Is Complainant or Respondent a colleague of yours or any member of your immediate family member or household in department, or division?
- Do you or does any member of your immediate family (to the best of your knowledge) have any financial relationship with Complainant or Respondent?
- Are you aware of any other facts or circumstances that might be viewed as undermining your ability to render an opinion that is fair, impartial, and unbiased?

Bias

Bias

Preconceived judgment or opinion without just grounds or based on insufficient knowledge.

Can be **conscious or unconscious**.

- I don't like sushi (even though I've never had it).
- I believe I like peaches and plums the same (yet I always pick peaches).

Overt or hidden preferences of investigators and others involved in the adjudicative process. Bias can have an undesirable impact on credibility assessments and, ultimately, final determinations.

Examples

Example: When conducting interviews, the investigator asks more challenging questions and expresses more skepticism of male complainants alleging sexual assault than they do of female complainants making the same allegations.

Example: The Hearing Officer finds a Respondent in a case more credible than a Complainant because the Respondent speaks "perfect English" while the Complainant, who only knows English as a second language, does not.

Note That . . .

- Employment by the University, or prior work for the University as a contractor, on its own, does not warrant disqualification.
- The hearing officer's 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.

Sample Techniques for Addressing Bias

- ✓ Identify the objective investigation criteria.
- ✓ Avoid early hypotheses and recognize all possible outcomes.
- ✓ Open-ended questions.
- ✓ Obtain and consider all relevant evidence.
- ✓ Cite to evidence in report and acknowledge and explain credibility determinations.
- ✓ Obtain outside input and feedback mechanisms.

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Investigation and Adjudication:

Overview, Initial Assessment and Investigation

OVERVIEW

Overview

Stages of the SVSH Resolution Process

- Resources and reporting
- Investigation and preliminary determination/determination
- Hearing
- Sanction
- Appeal

****Important differences based on whether conducting a formal investigation or DOE Grievance Process investigation!***

INITIAL ASSESSMENT

Initial Assessment

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

Health & Safety Considerations

Title IX assesses all reports received to determine how to proceed.

Title IX Officer will:

- immediately assess health and safety – of complainant and campus community
- identify and oversee Supportive Measures
- provide complainant a written explanation of options, rights, and available resources

Appropriateness of Resolution Process

Title IX Officer will also determine whether to open a Resolution Process, considering whether:

- the alleged conduct is Prohibited Conduct
- the alleged conduct is covered by SVSH Policy
- there is enough information to go forward
- there is a sufficient nexus between the conduct and the University
- complainant wants a Resolution Process

Closure After Initial Assessment

If the Title IX Officer does not open a Resolution Process, they will:

- make a record of the report
- close the report
- take steps as appropriate to stop reported conduct, prevent escalation or recurrence, and address its effects
- send complainant written notice of the reason for the closure, any responsive steps, the availability of Supportive Measures and resources, and their right to return to Title IX

Assessment for DOE Formal Complaint and DOE-Covered Conduct

After the health and safety assessment, but before deciding whether another Resolution Process is appropriate, Title IX Officer must determine whether the report is a DOE Formal Complaint or otherwise alleges DOE-Covered Conduct.

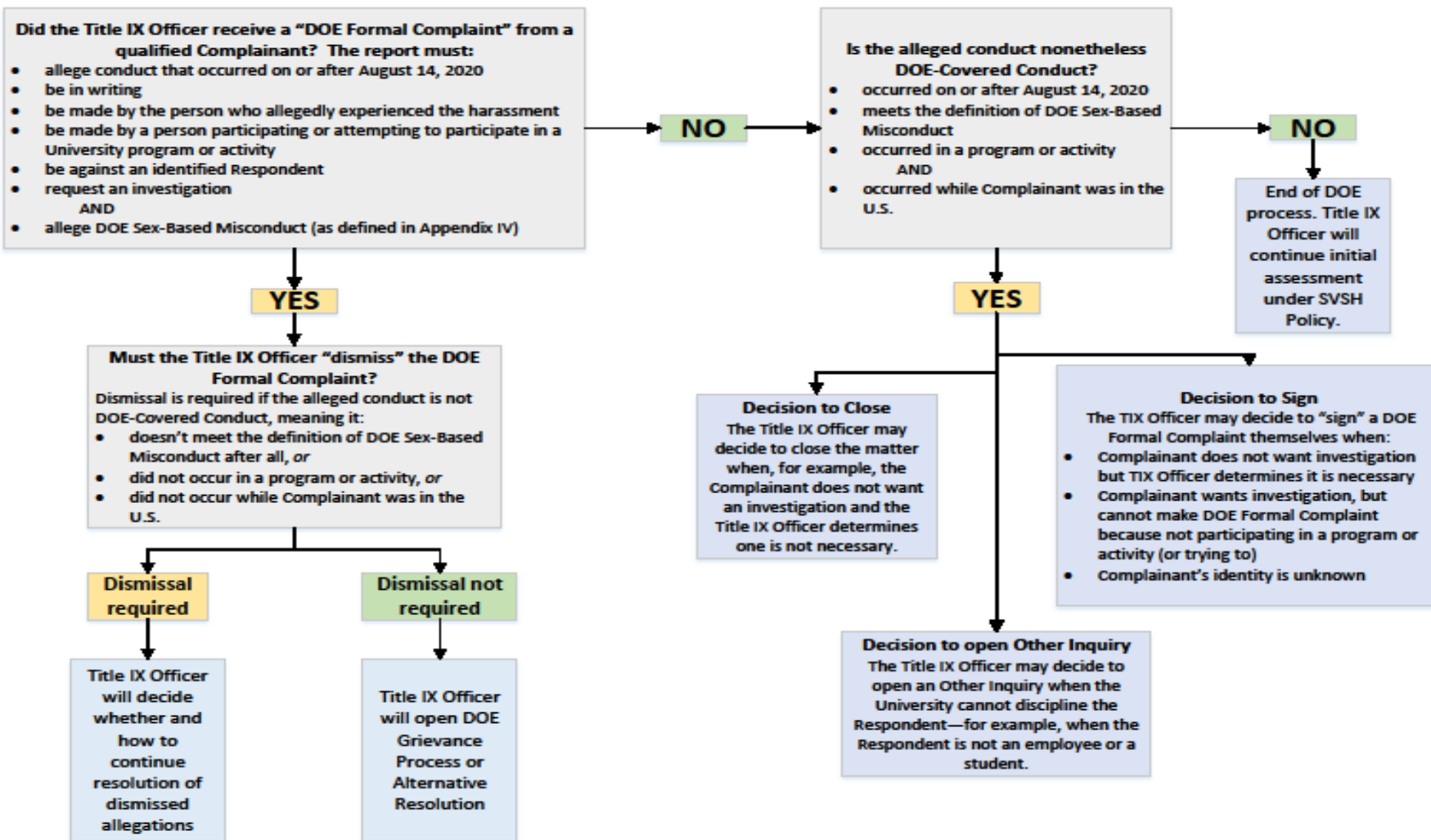
This is a new and complex part of the initial assessment required by the Title IX regulations. It is described in Appendix IV of the SVSH Policy.

The outcome of this assessment determines whether a case must proceed under the DOE Grievance Process.

Questions in DOE Assessment

- Did the Title IX Officer receive a DOE Formal Complaint from a qualified complainant?
- Must the Title IX Officer “dismiss” the DOE Formal Complaint?
- Is the conduct DOE-Covered Conduct?
- If conduct is DOE-Covered Conduct, will the Title IX Officer close the matter, or open a Resolution Process (a DOE Grievance Process, Alternative Resolution or Other Inquiry)?

**UC SEXUAL VIOLENCE AND SEXUAL HARASSMENT POLICY
INITIAL ASSESSMENT UNDER APPENDIX IV: DOE-COVERED CONDUCT**



What is DOE Sex-Based Misconduct?

First, some definitions.

“DOE Sex-Based Misconduct” is a subset of Prohibited Conduct. All conduct covered by the Title IX regulations is also prohibited by the SVSH Policy. However, not all conduct prohibited by the SVSH Policy is covered by the regulations. Rather, our policy is broader than the regulations.

DOE Sex-Based Misconduct is defined in Appendix IV.

What is DOE Sex-Based Misconduct?

“DOE Sex-Based Misconduct” includes:

- Quid Pro Quo sexual harassment *by an employee*
- Hostile Environment sexual harassment *if* it is so severe, pervasive *and* objectively offensive that it effectively denies equal access to UC programs or activities
- Sexual Assault-Penetration
- Sexual Assault-Contact that is intentionally touching Complainant’s intimate body part without consent (this is one of three categories of Sexual Assault-Contact)

What is DOE Sex-Based Misconduct?

“DOE Sex-Based Misconduct” includes (cont’d.):

- Relationship Violence
- Stalking
- sexual intercourse with a person under 18
- Invasion of Sexual Privacy, *if it is so severe, pervasive and objectively offensive that it effectively denies equal access to UC programs or activities*

What is DOE-Covered Conduct?

Alleged conduct is “DOE-Covered Conduct” if:

- it is DOE Sex-Based Misconduct (as just defined);
- it occurred on or after August 14, 2020;
- complainant was in the U.S. when it occurred; ***and***
- it occurred in a University program or activity

Question One:

Did Title IX receive a DOE Formal Complaint?

Did Title IX receive a DOE Formal Complaint from a Qualified Complainant? The complaint must:

- be in writing;
- be made by person who allegedly experienced the conduct;
- be made by person participating or attempting to participate in a UC program or activity;
- be against an identified respondent;
- request an investigation; *and*
- allege DOE Sex-Based Misconduct

If YES, then:

Must Title IX
dismiss the
DOE Formal
Complaint?

**Must the Title IX Officer “dismiss” the DOE
Formal Complaint?**

Dismissal is required if the conduct is not “DOE-
Covered Conduct.”

Yes Dismissal:

Notice and
Right to
Appeal

If the Title IX Officer dismisses the DOE Formal Complaint, they send parties written notice of the dismissal and reason, what happens next, and their rights.

Both parties can appeal based on:

- procedural error
- new evidence
- conflict of interest or bias

No Dismissal:

DOE Grievance
Process

If the DOE Formal Complaint is not dismissed, then the Title IX Officer will open a DOE Grievance Process.

What if the Title IX Officer did not receive a DOE Formal Complaint?

The first question we asked was whether the Title IX Officer received a DOE Formal Complaint. We just reviewed what happens if the answer to that question is “yes.”

What happens if the answer is no? The Title IX Officer must still ask whether the alleged conduct is DOE-Covered Conduct.

Is the conduct
DOE-Covered
Conduct?

As a reminder, conduct is “DOE-Covered Conduct” if:

- it is DOE Sex-Based Misconduct (as defined above)
- it occurred on or after August 14, 2020
- complainant was in the U.S. when it occurred
- it occurred in a University program or activity

YES DOE-Covered
Conduct:

Close or Open?

If the conduct is DOE-Covered Conduct, then the Title IX Officer must decide whether to:

- close the matter,
- “sign” a DOE Formal Complaint themselves and open either a DOE Grievance Process or Alternative Resolution, or
- open an Other Inquiry (if it applies).

NO DOE-Covered
Conduct:

End of DOE
Process

If the conduct is not DOE-Covered Conduct, this is the end of the DOE process.

The Title IX Officer will continue their regular assessment under the SVSH Policy to decide whether to open a different Resolution Process (Alternative Resolution, Formal Investigation, or Other Inquiry).

Final Note on Dismissal

Dismissal could also be required *after* the DOE Grievance Process is opened—this would happen if Title IX determined during investigation stage that the alleged conduct did not occur in a UC program or activity or that complainant was not in the U.S. at the time of the alleged conduct.

Note:

- parties can appeal any dismissal
- “dismissal” does not typically mean Title IX will close the investigation

References

Section V.A.3 and V.A.4 of the SVSH Policy
Appendix IV of the SVSH Policy

THE INVESTIGATION

Investigation Process

- 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 Process

The investigation process is the same, in most respects:

- under all frameworks (students, faculty and staff), and
- under both investigative Resolution Processes (Formal Investigation or DOE Grievance Process)

There are some important exceptions, noted in this presentation.

Rules of Conduct

Overview of Rules of Conduct

- Newly created document
- Provides rules for conduct of participants in SVSH resolution processes
- Applies throughout the resolution process, including investigations
- Establishes consequences for violations

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 outcome and investigation report

Special Evidentiary Rules

- Sexual history of complainant
 - Complainant's sexual history generally not considered
 - Limited circumstances in which may be directly relevant
- Clinical and privileged records
 - Do not accept or use without voluntary written consent
- Expert witnesses
 - Party may present for consideration
 - If request is granted, Title IX Officer will notify both parties and may retain own expert.

Evidence Review

- Parties have an equal opportunity to review and respond to the evidence
- Provided in a secure electronic format
- Newly added to faculty and staff/NFAP frameworks
- Title IX Officer designates reasonable time for review in accordance with SVSH Policy and frameworks

Notice of Outcome and Investigation Report

The investigation report will include:

- factual allegations and alleged policy violations
- statements of the parties;
- summary of the evidence and explanation of why any proffered evidence was not relied upon;
- credibility determinations when appropriate;
- findings of fact; and
- analysis of whether the SVSH Policy was violated.

The report includes Title IX Officer's determination of whether the Respondent violated this Policy. However, in a DOE Grievance Process, and any time the Respondent is a student, the determination is only preliminary.

Determination of Policy Violation

Faculty & Staff— Formal Investigation

For faculty and staff, at the end of a Formal Investigation—that is an investigation not under the DOE Grievance Process—the investigator determines whether the respondent violated the SVSH Policy.

The investigator's determination is final. If they determine a policy violation, then the case proceeds to the sanctioning process.

Preliminary Determination

Students and DOE Grievance Process

In all DOE Grievance Process cases, and 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. Whether one is held depends on whether they choose to accept (or not contest) the preliminary determination and any proposed sanction.

Preliminary Determination

Students— Formal Investigation

Under Appendix E, both parties can “contest” the preliminary determination. If either does, there will be a hearing to decide whether respondent violated policy. Both parties have this right, in all cases.

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

If neither party contests (or is presumed to contest), then the preliminary determination becomes final, and Student Conduct imposes the proposed sanction. There is no hearing.

Either or both parties can appeal the sanction as disproportionate to the finding.

Preliminary Determination

DOE Grievance Process

In a DOE Grievance Process, there is a hearing unless both parties accept the preliminary determination and any proposed sanction.

If both parties accept, then the preliminary determination becomes final, and University imposes the proposed sanction. There is no hearing.

The process is similar for all categories of respondent, though the office proposing sanctions differs, and only students can appeal the sanction.

Relevant Policies

PACAOS Appendix E: SVSH Student Investigation and Adjudication Framework for Non-DOE-Covered Conduct

Interim PACAOS Appendix F: SVSH Student Investigation and Adjudication Framework for DOE-Covered Conduct

Interim SVSH Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel

Interim SVSH Investigation and Adjudication Framework for Senate and Non-Senate Faculty

Available on Systemwide Title IX Office website:

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

UC Systemwide Sexual Violence and Sexual Harassment Policy Training September 2020

Pre-Hearing and Hearing Processes

Agenda

Overview

- Department of Education's Title IX regulations
- Key UC policy changes

Roles

- Hearing Officer, Hearing Coordinator, Reader; advisors, support people

Pre-Hearing

- Definition of scope
- Measures for well-being

Hearing and Post-Hearing

- Logistics/format
- Evidentiary principles
- Questioning
- Post-Hearing: determination of responsibility; sanction; notice

Overview

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.

Overview

Department of Education's Title IX Regulations

- Most notably, this includes live hearings and appeals for cases with faculty and staff respondents.
- Because faculty and many staff already have the right to a hearing at the disciplinary stage under other policies, these additional requirements mean it will be more difficult and take longer to hold employees accountable for DOE-Covered Conduct than other types of misconduct.
- Also notable are certain procedures, like allowing parties to question each other through their advisors at the live hearing.

Overview

Student Frameworks

- Last year, we revised the existing 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, 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 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.
- **NOTE:** The revised Faculty and Staff Frameworks include all of the elements and safeguards built into the student process under PACAOS Appendix F.

Overview

Student Frameworks

- 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.

Overview

Student Frameworks

- 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.

Overview

Student Frameworks

- (Continued) Some significant differences in the Appendix F hearing process 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.
 - 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.

Overview

Student 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;

Overview

Student 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;

Overview

Student 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.
 - careful consideration of other measures to protect the well-being of parties, such as ensuring use of lived names and pronouns.

Overview

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 process under PACAOS Appendix F.

Overview

Factfinding Hearing

- Unless both parties accept the investigator's preliminary determinations, there will be a factfinding hearing before a single hearing officer.
- The hearing is to determine whether a violation of the SVSH Policy (and any non-SVSH Policy violations charged in conjunction with them) occurred.
- The University's role in the hearing is neutral. The University will consider the relevant evidence available, including relevant evidence presented by the parties, in order to make factual findings and determine whether a policy violation occurred.

Agenda

Overview

- Department of Education's Title IX regulations
- Key UC policy changes

Roles

- Hearing Officer, Hearing Coordinator, Reader; advisors, support people

Pre-Hearing

- Definition of scope
- Measures for well-being

Hearing and Post-Hearing

- Logistics/format
- Evidentiary principles
- Questioning
- Post-Hearing: determination of responsibility; sanction; notice

Roles

Hearing Officer

- Ensures an orderly, productive, and fair hearing and conducts the prehearing and hearing processes
- Decides the scope of the hearing
- Determines what evidence can be presented
- Manages hearing participants
- Determines whether policy violations occurred or not

Hearing Coordinator

- Manages the administrative and procedural aspects of the prehearing and hearing processes
- Supports the hearing officer and helps ensure an orderly, productive, and fair hearing

Reader

- If a party does not have an advisor at the hearing, the University will provide a person to read that party's questions during the hearing

Roles

Hearing Officer assignment

- Hearing officer may be a University employee or outside contractor.
- Hearing coordinator will inform parties of hearing officer's identity and they will have an opportunity to request disqualification of that person on the basis of bias or conflict of interest.
 - Involvement in the case or knowledge of allegations at issue prior to selection, or close personal relationship with party or expected witness, could warrant disqualification
 - Employment by University or prior work for University, on its own, does not
 - Hearing officer's identifying characteristics, like gender or race, or that they differ from a party's, on their own, does not
- Student Conduct will decide any request for disqualification of the hearing officer, and inform both parties of decision and, if change warranted, the name of the new hearing officer.

Roles

Parties' Advisors (optional)

- Consistent with their role in the investigation, an advisor's role is to provide guidance to their party
- They also are required to ask questions on their party's behalf during the hearing
- They may not otherwise speak on behalf of their party during the hearing

Parties' Support Persons (optional)

- Consistent with their role in the investigation, a support person's role is to provide emotional support to their party
- They may not speak on behalf of their party during the hearing

Agenda

Overview

- Department of Education's Title IX regulations
- Key UC policy changes

Roles

- Hearing Officer, Hearing Coordinator, Reader; advisors, support people

Pre-Hearing

- Definition of scope
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Hearing and Post-Hearing

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Pre-Hearing

Pre-Hearing Meeting Goals

- Explain the process; address questions
- Begin to define the scope of the hearing
- Set the expectation for respect and compliance with Rules of Conduct
- Promote an orderly, productive, and fair hearing

Pre-Hearing

Before the Pre-Hearing Meeting

- The hearing coordinator will:
 - provide written notice to each party of their separate prehearing meeting, time, and location (or if remote, call instructions);
 - inform the parties that they (and their advisors, if they have one at this stage of the process) are expected to participate in the pre-hearing meeting; and
 - notify each party that they should come to the pre-hearing meeting prepared to schedule dates for the hearing.

Pre-Hearing

Before the Pre-Hearing Meeting

- Each party will be requested to submit to the hearing officer:
 - a preliminary statement of what issues, if any, each considers to be disputed and relevant to the determination of whether a policy violation occurred,
 - the evidence they intend to present on each issue, including all documents to be presented,
 - the names of all requested witnesses, and a brief summary of such witnesses' expected testimony.

Pre-Hearing

At the Pre-Hearing Meeting

- The hearing officer and/or coordinator will explain what to expect at the hearing.
- The hearing officer and/or coordinator will inform the parties that the hearing will be conducted remotely.
- If a party believes that they need a University-provided physical space or technological equipment or assistance to participate, they may request such resources of the hearing coordinator during the prehearing meeting.
- The hearing officer and/or coordinator will also discuss measures available to protect the well-being of parties and witnesses at the hearing, as appropriate.

Pre-Hearing

At the Pre-Hearing Meeting

- The hearing officer and party will discuss the evidence the party has provided, to help identify and refine the issues to be decided at the hearing, which will inform the hearing officer's determination of the scope of the hearing.
- If a party does not participate in the pre-hearing meeting, the hearing coordinator will notify the party that they have 2 business days to contact the hearing coordinator to reschedule.
- If the party does not contact the hearing coordinator within the 2 business days, the hearing will proceed but the non-participating party will be presumed to agree with the hearing officer's definition of the scope of the hearing.

Pre-Hearing

After the Pre-Hearing Meeting

- After the pre-hearing meeting, 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.
- The hearing officer has discretion to grant or deny, in whole or part, the parties' requests for witnesses on the basis of relevance. The hearing officer's determination of scope may include issues, evidence, and witnesses that the parties themselves have not provided.
- After receiving the hearing officer's definition of scope, the parties may then submit additional information about the evidence, including witness testimony, that they would like to present.

Pre-Hearing

After the Pre-Hearing Meeting

- Prior to the hearing, the parties will receive
 - the hearing officer's confirmation of scope and evidence;
 - copies of all the evidence that will be considered at the hearing that the hearing officer has received, including the investigation file and any other documents that will be considered;
 - the names of expected witnesses and a summary of their expected testimony.
- If the hearing officer has excluded evidence (including witness testimony) that a party has requested to present, they will explain why that evidence was not relevant.
- The hearing officer will also notify the parties of any procedural determinations they have made regarding the hearing.

Pre-Hearing

After the Pre-Hearing Meeting

- The parties are encouraged to submit any questions for the other party and any expected witnesses to the hearing coordinator and hearing officer before the hearing, but will not be limited to those questions at the hearing. These questions will not be shared with the other party or witnesses.
- At any point before the hearing, if a party anticipates that they will not have an advisor available at the hearing to ask their questions for them, they should let the hearing coordinator know, to allow the University to plan for assigning the party a person to ask the party's questions at the hearing ("Reader"). Even without notice or during a hearing in progress, however, the University will provide such a resource if a party does not have one.

Agenda

Overview

- Department of Education's Title IX regulations
- Key UC policy changes

Roles

- Hearing Officer, Hearing Coordinator, Reader; advisors, support people

Pre-Hearing

- Definition of scope
- Measures for well-being

Hearing and Post-Hearing

- Logistics/format
- Evidentiary principles
- Questioning
- Post-Hearing: determination of responsibility; sanction; notice

Hearing

Goals of the Hearing

- Fairness and accurate factfinding
- Respect and compliance with Rules of Conduct
- Hearing Officer is responsible for making any determinations necessary to promote these goals, including implementing measures for the well-being of parties and witnesses.

Hearing

Logistics/Format

- Hearings will be remote, with any modifications hearing coordinator has made at party's request.
- Parties will be able to see and hear all questioning and testimony at the hearing if they choose to.
- Witnesses will participate in the hearing only for their own testimony.
- Parties and witnesses may request not to see the other participants in the hearing, or to not be seen by others, except when they themselves are testifying.
- The hearing officer must be able to see and hear any party or witness when they are testifying.
- Parties may have their advisors and support persons present throughout the hearing.

Hearing

Evidentiary principles

- Hearing officer should consider, that is rely on, all evidence they determine to be relevant and reliable, and not unduly repetitive.
 - **Relevant:** to an issue that is in dispute, and not a type of evidence defined by policy as not relevant
 - **Reliable:** hearing officer decides weight of all evidence they allow as relevant and not unduly repetitive
- Courtroom/legal rules of evidence and procedure do not apply.

Hearing

Evidentiary principles

- Parties may present the evidence they submitted, subject to exclusions by hearing officer.
- Generally, parties may not introduce evidence they did not identify during the prehearing process, but the hearing office has discretion to make exceptions.
- Parties are expected not to spend time on undisputed facts or evidence that would be duplicative.

Hearing

Questioning

- Questions are allowed if they are relevant, including relevant to assessing credibility, and not unduly repetitive.
- Expert witnesses, if allowed, will be questioned according to same principles and procedures.
- Hearing officer may ask questions of all parties and witnesses.
- Each party's advisor (or reader) may ask questions of the other party and witnesses.
- Parties and witnesses will address their answers to all questions to the hearing officer.

Hearing

Questioning

- Hearing officer determines the order of testimony by parties and witnesses.
- For each party or witness, hearing officer asks their own questions first and then determines order of questioning by any others.
- Hearing officer may ask follow-up questions of parties and witnesses at any time.

Hearing

Questioning – by parties

- Each party will prepare their questions including follow-up questions, and provide them to their advisor/reader.
- The advisor/reader will ask questions only as the party has provided them.
- When an advisor/reader is asking questions for a party, they will state the question then pause for the hearing officer to determine if the question is not relevant or unduly repetitive, in which case the hearing officer will exclude it, or if the question otherwise violates the rules of conduct and requires rephrasing.
- If a party does not attend the hearing, the hearing will still proceed and they may still prepare questions for their advisor/reader to ask at the hearing.

Post-Hearing

Determination of policy violation

- Hearing officer will take into account the investigative file and evidence presented and accepted at the hearing.
- The hearing officer may not consider any “statement” about which a party or witness has refused, in whole or in part, to answer questions posed by a party and allowed as relevant by the hearing officer.
 - A “statement” is anything that constitutes a person’s intent to make factual assertions.
- On any issue that is disputed and material to whether a policy violation occurred, the hearing officer should make their own findings and credibility determinations.

Post-Hearing

Sanction

- Student hearings: If hearing officer decides that any policy violation has occurred, they will send their determination and findings to Student Conduct. Student Conduct will determine any sanctions.
- Faculty hearings: If hearing officer decides that the respondent violated the SVSH Policy, the Title IX Officer will send the determination and findings to the Chancellor or Chancellor's designee. The Chancellor or designee will decide what action to take to resolve the matter.
- Staff hearings. If hearing officer decides that the respondent violated the SVSH Policy, the Title IX Officer will send the determination and findings to the respondent's supervisor or appropriate administrative authority. The supervisor or appropriate administrative authority will propose a resolution of the matter. The proposed resolution must be approved by the Chancellor's designee.

Post-Hearing

Notice of determination and sanction - simultaneous notice to parties; include:

- Summary of allegations that would constitute DOE-Covered Conduct, as well as other Prohibited Conduct under SVSH Policy, and other related student conduct violations,
- Determination of whether SVSH Policy and other policies were violated,
- If so, description of sanctions,
- Notice that the Title IX Officer will determine whether Complainant will be provided additional remedies, and will inform Complainant of that determination,
- A description of the procedural history of the complaint,
- The findings on each disputed, material fact and an analysis of the evidence supporting the findings,

Post-Hearing

(Continued) Notice of determination and sanction - simultaneous notice to parties; include:

- A summary of the undisputed factual findings from the investigation report,
- The rationale for the determination of each charge,
- If hearing officer determines that DOE Covered Conduct did not occur, an analysis of whether other charged conduct, including other SVSH Policy violations, did occur,
- The rationale for any sanctions,
- Information about the right to appeal and procedures,
- An explanation that both parties will receive a copy of any appeal.

Resources

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

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Appeals and Sanctions

APPEALS

Appeals

- Who can appeal
- Grounds for appeal
- Filing an appeal
- Appeal decision

Who can appeal?

- If the framework provides an appeal process, Complainant and Respondent have an equal opportunity to appeal the determination and sanction.

Framework	Appeal?
Appendix E	YES
Appendix F	YES
Staff/NFAP Framework – formal investigations	NO
Staff/NFAP Framework DOE Addendum	YES
Faculty Framework – formal investigations	NO
Faculty Framework DOE Addendum	YES

- The University administers the appeal process, but is not a party and does not advocate for or against any appeal.

Grounds for Appeal: Student Frameworks

Appendix E

- If there was a hearing:
 - procedural error in the hearing process that materially affected the outcome
 - determination regarding policy violation was unreasonable based on the evidence before the hearing officer
 - sanctions were disproportionate to the hearing officer's findings
- If there was not a hearing:
 - sanctions were disproportionate to the investigator's preliminary determination regarding policy violations

Grounds for Appeal: Student Frameworks

Appendix F

- If there was a hearing:
 - procedural error in the hearing process that materially affected the outcome
 - new evidence that was not reasonably available at the time of the hearing and that could have materially affected the outcome
 - hearing officer had a conflict of interest or bias that affected the outcome
 - determination regarding policy violation was unreasonable based on the evidence before the hearing officer
 - The sanctions were disproportionate to the hearing officer's findings
- If there was not a hearing:
 - sanctions were disproportionate to the investigator's preliminary determination regarding policy violations

Grounds for Appeal: Staff/NFAP and Faculty Frameworks

DOE Addendum

- If there was a hearing:
 - 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 that could affect the outcome; and
 - The hearing officer had a conflict of interest or bias that affected the outcome.
- If there was not a hearing:
 - No appeal grounds

Filing an Appeal and Appeal Decision

- Each framework that has an appeal process and timeline
- Under the DOE Grievance Process, the appeal officer cannot be the same person as the Title IX Officer or investigator, or hearing officer or hearing coordinator
- Appeal officer may uphold, overturn, modify, or remand
- The appeal decision includes:
 - the appeal grounds;
 - a summary of the information considered;
 - and the decision and rationale including, where the findings or sanctions are overturned or modified, an explanation of why the ground(s) for appeal were proven.
- Appeal officer's decision is final – no hearing at this stage

SANCTIONS

Sanctions— Student Frameworks

- Student Conduct decides sanction
- if Preliminary Determination is that respondent violated policy, sanction proposed then; becomes final if not contested (or if accepted, in DOE case)
- if there is a hearing, sanction decided if hearing officer determines respondent violated policy
- sanction may be appealed by either party, whether or not there was a hearing
- frameworks state sanctioning options, and factors to consider

Minimum Sanctions—

Student Frameworks

Frameworks provide minimum sanctions for certain conduct:

- Aggravated Sexual Assault: two year suspension
- Sexual Assault-Penetration, Relationship Violence and Stalking: two year suspension, unless exceptional circumstances
- Sexual Assault-Contact: one-year suspension, unless exceptional circumstances

Sanctions — Faculty Framework

For Senate and Non-Senate Faculty:

- Chancellor or designee proposes resolution
- both parties can address outcome they wish to see
- when determination or preliminary determination is of a policy violation, Chancellor or designee will:
 - engage Peer Review Committee or Academic Personnel Office (non-Senate only); and
 - consult with the Title IX Officer

Sanctions — Faculty Framework

For Senate Faculty, if respondent is found in violation of SVSH policy after a hearing and any appeal (DOE) or after a Formal Investigation (non-DOE), then Chancellor or designee decides what action to take.

Options:

- no formal discipline
- early resolution
- charge with privilege and tenure committee

Both parties are informed of decisions and their rationale.

Sanctions — Faculty Framework

For Non-Senate Faculty, if respondent is found in violation of SVSH policy after a hearing and any appeal (DOE) or after a Formal Investigation (non-DOE), then Chancellor or designee decides what action to take.

Options:

- no disciplinary action
- informal resolution
- notice of intent

Both parties informed of decisions and rationale.

Sanctions —

Staff and Non-Faculty Academic Personnel Framework

For staff and non-faculty academic personnel:

- supervisor or other administrative authority decides, with approval from Chancellor's designee
- both parties can address outcome they wish to see
- when determination or preliminary determination is of a policy violation, Chancellor or designee will consult with:
 - Human Resources or Academic Personnel; and
 - the Title IX Officer

Sanctions —

Staff and Non-Faculty Academic Personnel Framework

For PPSM-Covered Staff, if respondent is found in violation of SVSH policy after a hearing and any appeal (DOE) or after a Formal Investigation (non-DOE), then supervisor decides action to take, with approval of Chancellor's designee. Options:

- no further action
- action not requiring notice of intent
- notice of intent

Both parties are informed of decisions and their rationale.

Sanctions —

Staff and Non-Faculty Academic Personnel Framework

For Non-Faculty Academic Personnel, if respondent is found in violation of SVSH policy after a hearing and any appeal (DOE) or after a Formal Investigation (non-DOE), then supervisor or other appropriate administrative authority decides action to take, with approval of Chancellor's designee. Options:

- no further action
- Informal resolution
- Notice of intent

Both parties are informed of decisions and their rationale.

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Respectful Processes and Rules of Conduct

Respectful Processes

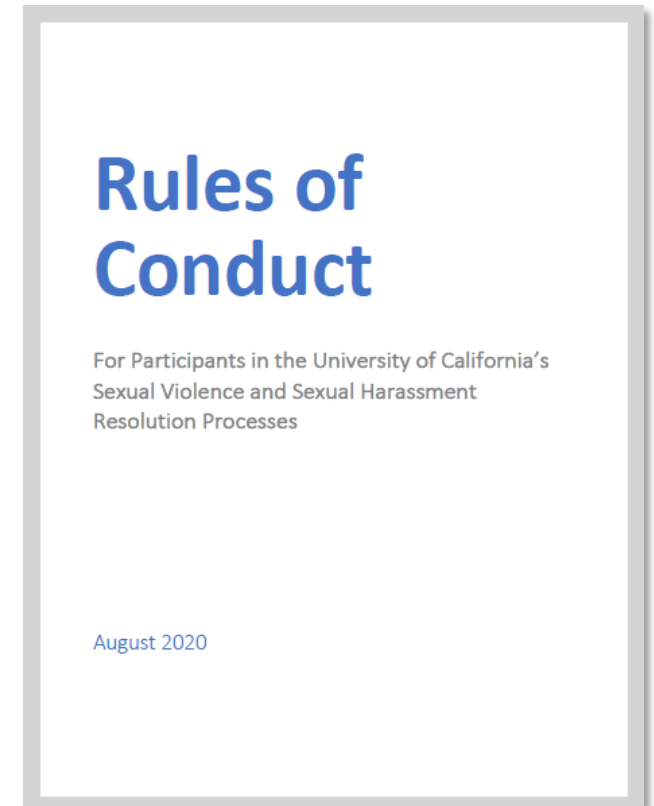
- SVSH Policy and frameworks reflect UC's imperative keep security and well-being of our students and the broader community as our highest priorities.
- University's Standards of Ethical Conduct affirm our commitment to the principle of treating each community member with respect and dignity.
- Members of the University community are expected to conduct themselves ethically, honestly, and with integrity in all dealings.

Respectful Processes

- Live hearing with questioning by party advisors is key concern for Title IX offices, hearing adjudicators, and broader UC community.
- DOE regulations permit institutions to adopt rules of conduct to govern hearings.
- Rules of Conduct created to promote respectful resolution processes and provide accountability for all participants.

Overview

- Rules of Conduct is a newly created document
- Provides rules for conduct of participants in 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>



Complainant and Respondent Rights

- Complainants and Respondents in the University's SVSH resolution processes have the right to:
 - Be treated fairly and respectfully by University employees/contractors
 - Be provided with information about the SVSH resolution processes and resources in accordance with the SVSH Policy
 - Be referred to by their lived name and pronouns
 - Request disability-related accommodations and language interpretation
 - Have all University policies and procedures applied in a nondiscriminatory manner

Rules of Conduct

- All participants in the University's SVSH resolution processes are expected to:
 - When participating in a resolution process, follow the University's investigation and adjudication procedures
 - Respect the instructions provided by University employees/contractors administering the SVSH resolution process, and raise questions or concerns in a respectful and non-harassing manner
 - Not engage in retaliatory behavior towards the other party, any witness, or others
 - Not deliberately delay or disrupt the proceedings without good cause

Advisor and Support Person

- A party's advisor's primary role is to provide guidance through the process and, as discussed in more detail in the hearing section below, to ask questions of the other party and witnesses in a hearing.
- A party's support person's primary role is to provide emotional support.
- Other witnesses may have a representative present at the discretion of the Title IX Officer or as required by University policy or a collective bargaining agreement.
- Advisors and support persons must follow the Rules of Conduct throughout the SVSH resolution process.

Rules of Conduct in Investigations

- Investigations involve several steps in which understanding and following the Rules of Conduct are particularly important, for example:
 - communications between a party and the Title IX office when the investigation is initiated
 - scheduling and participating in interviews
 - providing and reviewing evidence
 - meetings with Student Conduct, Human Resources, Academic Personnel, or Chancellor's designee
- Important for parties to be responsive to the University's inquiries and not unnecessarily delay the proceedings without good cause.

Rules of Conduct in Investigations

- Advisors and support persons who fail to follow the Rules of Conduct may be removed.
- The removal of a party's advisor or support person during the investigation will not be held against the party, nor play any factor in the investigator's or Title IX Officer's assessment.

Rules of Conduct in Hearings

- As described in the SVSH Policy, following an investigation a hearing may be held to determine whether there is an SVSH Policy violation.
- The specific hearing procedures for student, faculty, and staff respondents are further described in the applicable frameworks.

Rules of Conduct in Hearings

- Hearings involve several steps in which understanding and following the Rules of Conduct are particularly important, for example:
 - communications between a party and the Hearing Coordinator to schedule the pre-hearing meeting;
 - participation in the pre-hearing meeting and hearing; and
 - communicating with the University regarding any appeal.
- As with investigations, it is important for parties to be responsive to the University's inquiries during the hearing process and to not unnecessarily delay the proceedings without good cause.

Role of Advisors in Hearings

- If a party's advisor plans on attending the hearing, the advisor is expected to attend the pre-hearing meeting.
- In general, advisors may not speak on the party's behalf during the hearing.
- Advisors may not interrupt questioning by the Hearing Officer.
- Advisors may not provide their party with answers to questions through electronic or other third party means.
- Advisors can communicate with their party during breaks or when the hearing is adjourned.

Role of Advisors in Hearings

- In a DOE Grievance Process hearing, the party's advisor has the role of asking questions of the other party and witnesses. In this questioning process, the advisor:
 - Will read the questions prepared by the party, including questions the party prepares during the hearing, such as follow-up questions written in real time;
 - Must read the questions as the party has provided them;
 - May not ask questions or follow up questions that they developed without their party; and
 - May request a brief break to discuss additional or follow-up questions with their party.

Role of Reader in DOE Grievance Process Hearing

- In a DOE Grievance Process, if a party does not have an advisor available at the hearing to ask their questions for them, the University will assign a person to ask the party's questions ("Reader"), without cost to the party.
- Parties should inform the University as early as possible if a Reader is needed.
- Whenever possible, the Hearing Coordinator will notify the party of the identity of the Reader in advance of the hearing.
- The party may inform the Hearing Officer if they believe the Reader has a conflict of interest or bias against the party.

Role of Reader in DOE Grievance Process Hearing

- The Reader will not attend the prehearing meeting with the party, and will not assist the party in developing questions prior to the hearing.
- In the questioning process, the Reader:
 - May only read questions and follow up questions prepared by the party. This includes reading written questions the party provides to the Reader during the hearing, such as follow-up questions written in real time.
 - May not ask questions or follow up questions that have not been prepared by the party.
 - May request a brief break in order to receive additional or follow up questions prepared by the party.

Questioning of Parties & Witnesses in DOE Grievance Process

- In all hearings, the Hearing Officer has oversight over the questioning of parties and witnesses.
- In a DOE Grievance Process hearing, the Hearing Officer will ask questions of each party and witness first.
- Following the Hearing Officer's questions of the party or witness, the other party's advisor or Reader will read the questions the party has prepared.
- A party will never question the other party or witness directly. The parties and witnesses will address only the Hearing Officer, and not each other.

Questioning of Parties & Witnesses in DOE Grievance Process

- Parties and witnesses may be asked relevant questions, including those that are relevant to assessing credibility.
- Before the party or witness answers, the question will be screened for relevance by the Hearing Officer.
- The Hearing Officer will exclude a question that is, for example, irrelevant in light of the policy violation(s) charged, or relevant only to issues not in dispute, or unduly repetitive.
- If a question is relevant but violates the Rules of Conduct, the Hearing Officer will require rephrasing of the question.

Questioning of Parties & Witnesses in DOE Grievance Process

- Several types of questions and evidence are categorically excluded as irrelevant and will be screened out by the Hearing Officer if asked.
- These types of questions include:
 - duplicative questions;
 - questions and evidence about the complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence fall under the exceptions discussed in SVSH Policy procedures; and
 - questions about a party's clinical or privileged records, unless the party has provided voluntary written consent.

Removal from the SVSH Resolution Process

- The University may remove any person who is not a party from an SVSH Resolution Process for violating the Rules of Conduct.
- In general:
 - A University staff person or official, such as the Title IX Officer or Hearing Officer, will bring the concerning conduct to the individual's attention through a reminder of the applicable Rules of Conduct.
 - If the conduct continues, for example during an investigation meeting or hearing proceeding, the meeting or proceeding may be paused in order to address the conduct with the individual.
 - If the conduct continues, the University may remove the individual.
- The University staff person or official may, but is not required, proceed through each of the steps outlined above before arriving at the next.

Removal from the SVSH Resolution Process

- If an Advisor is removed during a hearing, the Hearing Officer may appoint a Reader to ask the remainder of the party's questions, if any.
- Advisors may be prohibited from representing a party in the University's SVSH resolution process at the campus or location in which the conduct violation occurred and from representing parties across the UC system.
- If a party continues to violate the Rules of Conduct, the University staff person or official may recess the meeting or proceeding for an appropriate period, including requiring the party to receive additional instruction or training.

Training and Instruction

- All parties, advisors, and Readers will be provided training and instruction prior to the hearing. The training may include:
 - SVSH Hearing Procedures
 - Rights and these Rules of Conduct
 - Role of Advisors, Support Persons, and Readers
 - Trauma-Informed Questioning
 - University Resources and Availability of Supportive Measures
 - University Prohibition Against Retaliation
- The Hearing Coordinator will communicate with the parties, their advisors, and Readers (if applicable) regarding the training expectations and timeframe for completing the training.
- An advisor or Reader who participates in multiple hearings is only required to take the training once each academic year.

Closing

- The security and well-being of our students and the broader community are UC's highest priorities.
- UC is committed to our Standards for Ethical Conduct, including the principal of treating each community member with respect and dignity.
- Provides rules for conduct of participants in 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>

UC Systemwide Sexual Violence and Sexual Harassment Policy Training September 2020

Supportive Measures

Supportive Measures

- Title IX Regulations
- SVSH Policy

Title IX Regulations— Response to Reports

The Title IX Officer “must promptly contact the complainant to discuss the availability of supportive measures[,] consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.”

Title IX Regulations— Definition

“Supportive Measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.”

Title IX Regulations—

Definition (cont'd.)

“Such measures are designed to restore or preserve equal access to the [University’s] education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment or deter sexual harassment.”

SVSH Policy— Definitions

Supportive Measures include:

- *Interim Measures*, put in place temporarily after the Title IX Officer receives a report of Prohibited Conduct, for the complainant, respondent, or both; and
- *Mitigating Measures*, for a complainant who is not in a Resolution Process.

Services, accommodations or other measures to assist or protect a party, restore or preserve access to programs and activities, or deter Prohibited Conduct.

SVSH Policy

Consistent with the Title IX regulations, the SVSH Policy states that 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.

Responsibility

The Title IX Officer is responsible for identifying and overseeing effective Supportive Measures, under Title IX Regulations and SVSH Policy.

Privacy

The University protects parties' privacy within parameters of ensuring Supportive Measures are effective, under Title IX Regulations and SVSH Policy.

Recordkeeping

The Title IX Officer will keep, for at least seven years, records of Supportive Measures put in place or, if none, the reason why.

Title IX
Regulations
Definition—
Examples

See Appendix III to the SVSH Policy.

Remedial Measures

SVSH Policy: services, accommodations, or other measures put in place as a result of a completed Resolution Process.

Title IX Regulations: Need not be non-disciplinary or non-punitive, and need not avoid burdening the respondent.

Authorities

SVSH Policy:

Section II: Definitions

Appendix III: Supportive and Remedial Measures

Title IX Regulations:

§ 106.30: Definitions

§ 106.44: Response to Sexual Harassment

UC Systemwide Sexual Violence and Sexual Harassment Policy Training September 2020

Initial Assessment – Deep Dive

Agenda

Determining whether conduct is DOE-Covered Conduct

Steps in DOE portion of Initial Assessment

Hypotheticals

Is the conduct DOE-Covered Conduct?

Determining whether conduct is covered by Regulations (*under SVSH Policy, whether conduct is "DOE-Covered Conduct"*):

- Occurred in the U.S. (*SVSH Policy: Complainant was in U.S. at time of alleged conduct*)
- Occurred in University "program or activity" (*SVSH Policy: same*)
- Was "sexual harassment" as defined in the Regulation (*SVSH Policy: was "DOE Sex-Based Misconduct"*)

The Department recognizes that “recipients are obligated to think through the scope of each recipient’s own education program or activity in light of the statutory and regulatory definitions of ‘program or activity’

(20 U.S.C. 1687 and 34 CFR 106.2(h)) and [§ 106.44(a)]” See 85 Fed. Reg. 30198 (May 19, 2020)

#1 – Did the conduct occur in the United States?

- Title IX rules do not have extraterritorial application with respect to study abroad programs. (Preamble 30205-06)
- Nothing in the Title IX rules prevents an institution from initiating student conduct proceedings or offering supportive measures to address sexual misconduct against a person outside of the United States. (Preamble 30206)

Allegation	Covered by Title IX Regulations?	Covered by SVSH Policy?
Respondent sexually assaulted Complainant in France, while both were students in UC Education Abroad Program	No—the complainant was not in the U.S. when the conduct occurred.	Yes—the conduct occurred in context of or will create a hostile environment in a University program/activity
While Complainant was in China doing doctoral research, Respondent stalked Complainant online. Respondent, a UC lecturer, remained in California.	No—the complainant was not in the U.S. when the conduct occurred.	Yes—facts suggest conduct occurred in connection with University employment or in context of University program/activity
In the time of COVID, Respondent sexually harassed Complainant during their online class. Respondent attended class virtually from England; Complainant attended from Oregon.	Yes—the complainant was in the U.S. when the conduct occurred (provided the conduct is both severe and pervasive).	Yes—the conduct occurred in context of University program/activity

#2 Did the conduct occur in a University program or activity?

➤ This means the location was on campus (preamble page 624)

OR ...

Off-campus, and the conduct occurred:

- ✓ in the context of **University operations** (34 CFR 106.2); or
- ✓ at a location, event or circumstance over which the University exercised **substantial control over the respondent** and **the context in which the conduct occurred** (34 CFR 106.44(a)); or
- ✓ at a **building owned or controlled by a student organization** that is **officially recognized by the University** (34 CFR 106.44(a)).

DOE-OCR Title Preamble

Preamble states that factors such as whether the University **“funded, promoted, or sponsored the event or circumstance where the alleged harassment occurred”** may be useful to consider.

However, “no single factor is determinative to conclude whether a [university] exercised substantial control over the R and the context in which the harassment occurred, or whether an incident occurred as part of ‘all of the operations of’ a...university

For example,

- a party at a private residence that the University does not own or control is very unlikely part of a program or activity even if hosted by students,
- *while an event at a private residence hosted by a Greek organization may require a more fact-specific inquiry.*

Off-campus, and the conduct occurred: in the **context of University operations** (34 CFR 106.2); or

All of the **operations of an educational institution or system** would include, but is not limited to:

- traditional educational operations;
- faculty and student housing;
- campus shuttle bus service;
- campus restaurants;
- the bookstore;
- and other commercial activities.

Fox v. Pittsburg State Univ., 257 F. Supp. 3d 1112, 1124–25 (D. Kan. 2017).

Operations ' may include computer and internet networks, digital platforms, and computer hardware or software.

- sexual harassment perpetrated through use of cell phones or the internet if the sexual harassment occurred in an education program or activity. 30202
- Rules specify that an education program or activity includes online conduct where the recipient exercised substantial control over both the respondent and the context in which harassment occurred. 30202

Off-campus, and the conduct occurred: at a location, event or circumstance over which the University exercised **substantial control** over the respondent **and** the context in which the conduct occurred

(34 CFR 106.44(a))

Substantial Control over R in Which the Conduct Occurred?

- Student using a personal device to perpetuate online sexual harassment during class time?
- Private party occurring in an off-campus apartment building where three students lived in the apartment, two of whom were fraternity members, and the party was attended by students but was not an official fraternity event?
- Only known harassment of a UC student occurred in a non-affiliated research program in Alaska. The undergraduate complaint was referred to the program by a UC graduate student.

Substantial Control over R in Which the Conduct Occurred: Examples

- Fraternity retreat at private residence in Lake Tahoe.
- Alleged assault occurred at fraternity?
- The University assigned a senior faculty member to monitor Greek Affairs, had an “Office of Greek Affairs” staffed by University employees that provided resources, support and services to Greek organizations, and took action to curtail the fraternity’s activities after plaintiff reported her assault.

Off-campus, and the conduct occurred: at a **building owned or controlled by a student organization that is officially recognized by the University** (34 CFR 106.44(a)).

Includes on-campus and off-campus buildings owned and controlled by a student organization officially recognized by a postsecondary institution, which includes fraternities, sororities, or sports team houses.

Although postsecondary institutions may not always control what occurs in a building owned or controlled by a recognized student organization, such student organizations and events are an integral part of campus and student life and fall within Title IX under a bright-line requirement imposed under § 106.44(a).

SVSH Policy Coverage

This Policy covers acts of Prohibited Conduct committed by University students, employees, and third parties (such as Regents, contractors, vendors, visitors, guests, patients and volunteers), and acts of Prohibited Conduct committed against students, employees and third parties, when the conduct occurs:

on University property;

SVSH Policy Coverage

#2 in connection with University employment or in the context of a University program or activity (including, for example, University-sponsored study abroad, research, on-line courses, health services, or internship programs); or

SVSH Policy Coverage

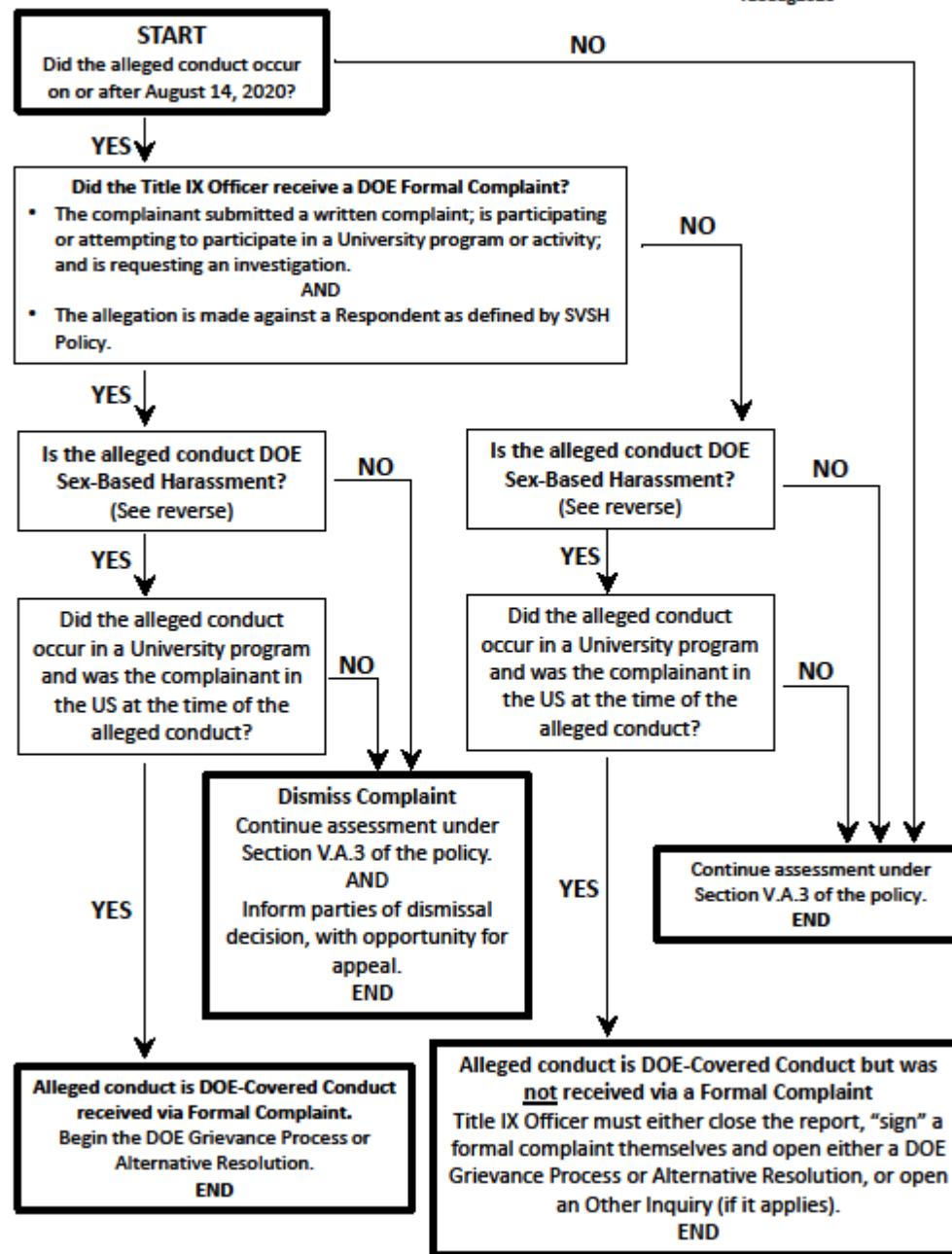
3 off University property and outside the context of a University program or activity, but has continuing adverse effects on—or creates a hostile environment for students, employees or third parties while on—University property or in any University program or activity.

Questions in DOE Initial Assessment— Review

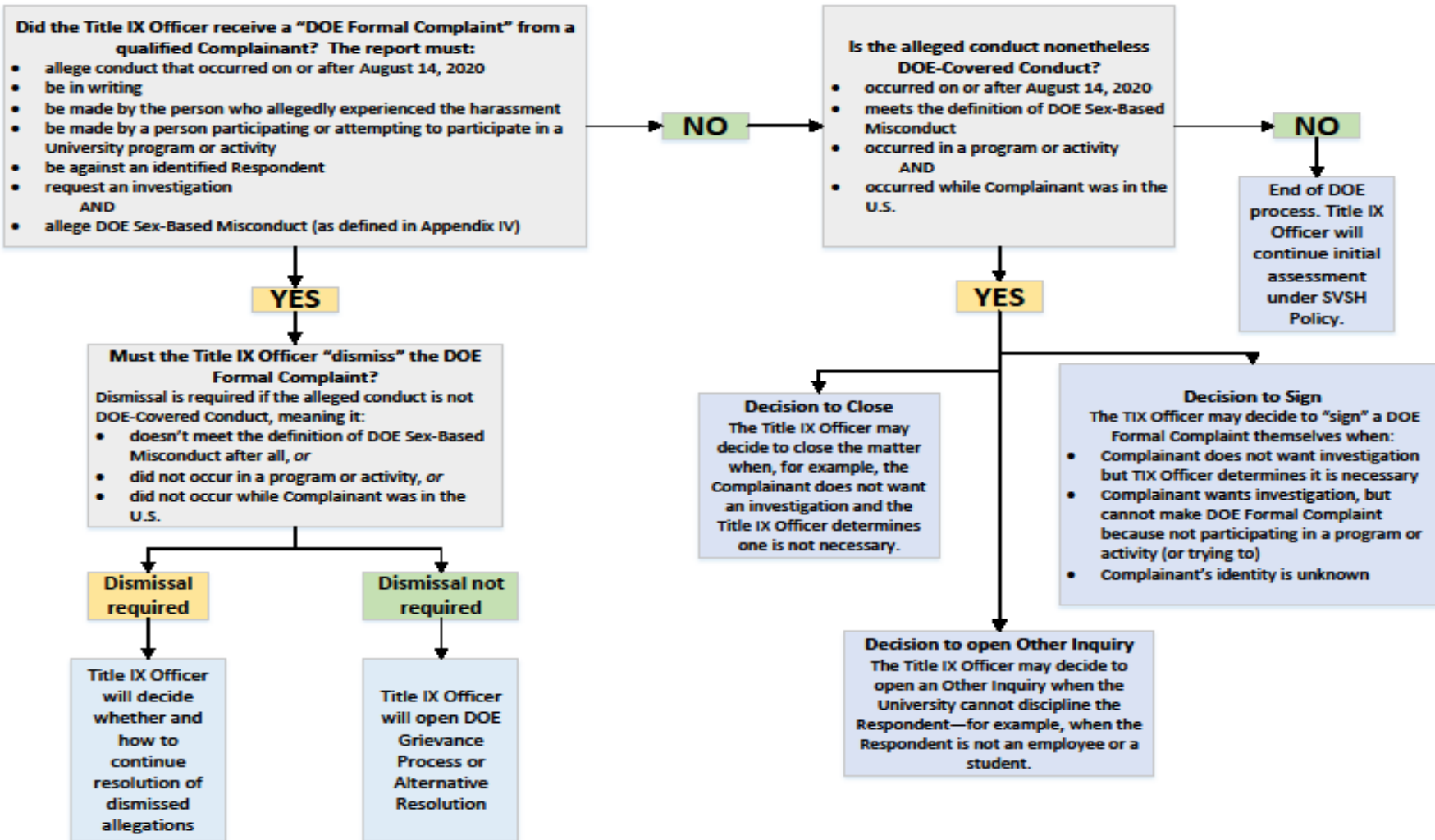
- Did the Title IX Officer receive a DOE Formal Complaint from a qualified complainant?
- Must the Title IX Officer “dismiss” the DOE Formal Complaint?
- Is the conduct DOE-Covered Conduct?
- If conduct is DOE-Covered Conduct, will the Title IX Officer close the matter, or open a Resolution Process (a DOE Grievance Process, Alternative Resolution or Other Inquiry)?

Post- 8/14/2020 SVSH Resolution Process Flowchart

v13aug2020



**UC SEXUAL VIOLENCE AND SEXUAL HARASSMENT POLICY
INITIAL ASSESSMENT UNDER APPENDIX IV: DOE-COVERED CONDUCT**



Hypothetical One—

DOE Formal Complaint?

On 7:00pm on September 30, you receive an email reading:

Two weeks ago, I had an awful experience that I can't shake. As George, a GSI in the Molecular Biology Department brushed by me at a party, he groped my breast, hard. It was painful and humiliating. I'm sure he was drinking, but that's no excuse. He shouldn't be allowed to do this again, and I want to register a complaint against him.

Have you received a DOE Formal Complaint?

Is there any additional information you need to know to make that determination?

Hypothetical
One—

DOE Formal
Complaint?

Later that night, Complainant sends another email:

I just wanted you to know that this is really bothering me. I don't know if I can continue on as a student in George's class. I want an investigation, and I want him kicked out of the Department.

Now have you received a DOE Formal Complaint?

Hypothetical One—

Dismissal or No Dismissal?

In a Zoom intake with complainant you learn that the party was to celebrate a research grant to a professor in the Molecular Biology Department. The MB Chair hosted it at her private home, a mile off campus. It was potluck and BYOB, though the Chair provided snacks and soda. The guests were mostly students, faculty and staff from the MB Department, but a few neighbors also stopped by.

Must you “dismiss” the complaint? On what does this hinge?

If you do dismiss:

- ***will you open a different Resolution Process?***
- ***which party is most likely to appeal?***

Can you open an Alternative Resolution?

Hypothetical Two—

DOE Formal Complaint?

On October 1, you receive an email reading:

I am a proud alumnus, and was so glad when my little brother was also admitted. Last week, I attended a party at his fraternity. I know they should be social distancing, but it was just the guys in the house, and it was my first time on campus in two years. I wore a mask—most of the night anyway. Except I drank way too much, and must have passed out. When I woke up the next morning this guy Mark was asleep next to me. My pants were down, and his were undone. Whatever happened, I wasn't in the right frame of mind to say yes. I remember dancing with him, but nothing else.

Have you received a DOE Formal Complaint?

Hypothetical Two—

DOE-Covered Conduct?

When you interview Complainant, you learn:

- he graduated two years ago, and works out of state
- one of his brother's friends said he saw Mark touching Complainant's penis, and also Mark moving Complainant's hands on Mark's penis
- the fraternity is recognized by the University
- the fraternity house is off campus, and owned by the sponsoring national organization

Is the conduct DOE-Covered Conduct?

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DOE-Covered Conduct?

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If the conduct is DOE-Covered Conduct, how do you proceed?

If there are two allegations, do you treat them the same?

You learn Respondent withdrew from the University before the complaint was made. Now what?

Questions and Discussion