

Office of Judicial Affairs Sexual/Interpersonal Violence Response Procedures for Sexual Assault, Dating or Domestic Violence, and Stalking

Last revised July 15, 2015

These procedures are intended to supplement section 102.08, 102.09, and 102.10 of the 'Campus Regulations Applying to Students and Campus Organizations' published in September 2009, and the 'University of California Interim Policy on Sexual Harassment and Sexual Violence,' last revised June 17, 2015.

General Policies

The University of California is committed to creating and maintaining a community where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Every member of the community should be aware that the University prohibits sexual harassment and sexual violence, and that such behavior violates both law and University policy. The University will respond promptly and effectively to reports of sexual harassment and sexual violence, and will take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates the policy on Sexual Harassment and Sexual Violence (full policy text available at <http://policy.ucop.edu/doc/4000385/SHSV>).

The Campus Regulations Applying to Students and Campus Organizations prohibit sexual assault, dating and domestic violence, stalking, and other behaviors as described in sections 102.08, 102.09, and 102.10. The *Campus Regulations*, as well as the laws on sexual abuse and physical assault, apply whether the alleged perpetrator is a stranger, acquaintance, family member or friend.

Section 102.08 of the *Campus Regulations* prohibits:

“Physical abuse, sexual assault, threats of violence, or conduct that threatens the health or safety of any persons. Such abuse, threats, or conduct may include arson (and other penal or health code violations such as setting public fires).”

Section 102.09 of the *Campus Regulations* prohibits:

“Harassment, defined as conduct that is so severe and/or pervasive, and objectively offensive, and that so substantially impairs a person’s access to University programs or activities that the person is effectively denied equal access to the University’s resources and opportunities. Harassment includes, but is not limited to, conduct that is motivated on the basis of a person’s race, color, national or ethnic origin, citizenship, sex, religion, age, sexual orientation, gender identity, pregnancy, marital status, ancestry, service in the uniformed services, physical or mental disability, medical condition, or perceived membership in any of these classifications. Pursuant to section 104.90, sanctions may be enhanced for conduct motivated on the basis of the above classifications.

Sexual harassment as defined in University policy (see SW Section 160.00), reads in part: “Sexual harassment is unwelcome sexual advances, requests for sexual favors, and

other verbal or physical conduct of a sexual nature when submission to or rejection of this conduct explicitly or implicitly affect a person's employment or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment." In the interest of preventing sexual harassment, the University will respond to reports of any such conduct. In determining whether the alleged conduct constitutes sexual harassment, consideration shall be given to the record of the incident as a whole and to the totality of the circumstances, including the context in which the alleged incidents occurred."

Section 102.10 of the *Campus Regulations* prohibits:

"Stalking behavior in which a student repeatedly engages in a course of conduct directed at another person and makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her family; where the threat is reasonably determined by the University to seriously alarm, torment, or terrorize the person; and where the threat is additionally determined by the University to serve no legitimate purpose."

Definitions

1. **Sexual Violence** is defined as physical sexual acts engaged without the consent of the other person or when the other person is unable to consent to the activity. Sexual violence includes sexual assault, rape, battery, and sexual coercion; domestic violence; dating violence; and stalking.
2. **Domestic Violence** is defined as abuse committed against an adult or a minor who is a spouse or former spouse, cohabitant or former cohabitant, or someone with whom the abuser has a child, has an existing dating or engagement relationship, or has had a former dating or engagement relationship.
3. **Dating Violence** is defined as abuse committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
4. **Sexual Assault** occurs when physical sexual activity is engaged without the consent of the other person or when the other person is unable to consent to the activity. The activity or conduct may include physical force, violence, threat, or intimidation, ignoring the objections of the other person, causing the other person's intoxication or incapacitation through the use of drugs or alcohol, or taking advantage of the other person's incapacitation (including voluntary intoxication).
5. **Consent** is *informed*. Consent is an affirmative, unambiguous, and conscious decision by each participant to engage in mutually agreed-upon sexual activity.

Consent is *voluntary*. It must be given without coercion, force, threats, or intimidation. Consent means positive cooperation in the act or expression of intent to engage in the act pursuant to an exercise of free will.

Consent is *revocable*. Consent to some form of sexual activity does not imply consent to other forms of sexual activity. Consent to sexual activity on one occasion is not consent to engage in sexual activity on another occasion. A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be

mutual consent to engage in sexual activity. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Once consent is withdrawn, the sexual activity must stop immediately.

Consent cannot be given when a person is *incapacitated*. A person cannot consent if s/he is unconscious or coming in and out of consciousness. A person cannot consent if s/he is under the threat of violence, bodily injury or other forms of coercion. A person cannot consent if his/her understanding of the act is affected by a physical or mental impairment.

For purposes of this *Policy*, the age of consent is consistent with California Penal Code Section 261.5.

6. **Incapacitation** is defined as the physical and/or mental inability to make informed, rational judgments. States of incapacitation include, but are not limited to, unconsciousness, sleep, and blackouts. Where alcohol, drugs, or other medication are involved, incapacitation is defined with respect to how the alcohol or other drugs consumed affects a person's decision-making capacity, awareness of consequences, ability to make fully informed judgments, and inability to communicate. Being intoxicated by drugs, alcohol, or other medication does not absolve one's responsibility to obtain consent. The factors to be considered when determining whether consent was given include whether the accused knew, or whether a reasonable person should have known, that the complainant was incapacitated.
7. **Stalking** is behavior in which a person repeatedly engages in conduct directed at a specific person that places that person in reasonable fear of his or her safety or the safety of others.
8. **Campus Advocacy Resources and Education (CARE) Program** (located in the Women's Center). CARE Advocates assist students who have experienced or who have questions about sexual assault, dating or domestic violence, or stalking. CARE provides confidential assistance to anyone who desires help with any of the procedures outlined here.

CARE staff will maintain confidentiality; advise on campus or local resources including legal, medical, judicial, emotional or academic, and schedule any necessary appointments; accompany survivors to meetings or appointments, including forensic examinations; speak with friends or family, if requested; outline and explore reporting options and next steps; and respect a survivor's wishes about moving forward.

Options for Survivors of Sexual Assault, Dating/Domestic Violence, and Stalking

Reporting is the decision of the survivor. Understanding that reporting is an intensely personal process, the University respects the rights of the survivor to decide whether or not to report.

Even if a clear decision has not been made as to whom the survivor would like to report, it is still important for the survivor to preserve evidence for possible proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order. This includes writing down details about the assault, not eating, drinking, washing, showering, using the bathroom, or cleaning up the scene of the assault.

Survivors may pursue one, multiple, or none of the following options, any of which may be coordinated, if desired, with the assistance of a CARE advocate.

- 1. Report to law enforcement.** Survivors have the right to report incidents of sexual and interpersonal violence to law enforcement. If the incident happened on University property, a report may be made to the UC Police Department. If the incident happened off campus, a report may be made to the Isla Vista Foot Patrol or Santa Barbara Sheriff's Office.

If the survivor was under the influence of alcohol or drugs, this may be relevant to the case and should be disclosed to the police.

The officer will provide a business card with the case number on it.

In order to provide protection for the privacy of survivors of sexual assault, California law allows complainants to request that the police not release personal information - name, address, phone numbers and date of birth. This will ensure a degree of confidentiality but does not guarantee complete anonymity. The UC Police will not release identifying information in Timely Warnings that go out to the campus community, nor in information released to the media.

- 2. File a criminal report with the police without requesting prosecution.** Ultimately the decision to prosecute is made by the District Attorney, although the cooperation of the survivor is considered necessary. The District Attorney chooses to pursue cases based upon availability of evidence and cooperation of witnesses.
- 3. File a complaint with the University Office of Title IX Compliance.** If the alleged perpetrator is a UCSB student, then this will initiate a University investigation with likely adjudication by the Office of Judicial Affairs.
- 4. Report to both law enforcement and the University Office of Title IX Compliance.**
- 5. Seek to obtain an emergency protective order** (short-term restraining order), if the threat is immediate, from the UC Police Department or Isla Vista Foot Patrol when they respond and/or obtain a temporary restraining order through the court system. There is a fee associated with a temporary restraining order.
- 6. Seek to obtain a "no contact" order if the accused is a UCSB student.** This may be coordinated through a CARE advocate with the Office of Judicial Affairs.
- 7. Request academic assistance** for missed classes or exams, or help with rearranging course schedules. This may be coordinated through a CARE advocate.
- 8. Ask about housing relocation options** if either the survivor or the accused live in University-owned housing. This can be coordinated through a CARE advocate with Residential and Community Living.

Procedure and Process When Reporting to the University

Survivors of sexual assault, dating or domestic violence, and/or stalking may file a complaint with the Office of Title IX Compliance. Proceedings will provide a prompt, fair, and impartial investigation and resolution. Investigations will be conducted by officials who receive annual training on issues related to domestic violence, dating violence, sexual assault, and stalking, and how to conduct an investigation and hearing process that protects the safety of survivors and promotes accountability.

A. Jurisdiction. Any person who experiences sexual assault, dating or domestic violence, or stalking by a UCSB student on University property or at an official University function may file a complaint with the Office of Title IX Compliance for adjudication by the Office of Judicial Affairs. Every case is considered individually and a determination of whether to investigate is done on a case by case basis. Sexual assaults occurring off University property may also be considered for investigation/adjudication if the alleged perpetrator is a UCSB student. Any request to extend jurisdiction for adjudication purposes will be reviewed by the Office of Judicial Affairs and the vice chancellor for student affairs.

B. Initial assessment. An initial assessment by the Office of Title IX Compliance will determine whether “interim suspension” should be recommended to be invoked by the vice chancellor for student affairs (see section 105.08, Campus Regulation). If an interim suspension is warranted, any person deemed an imminent threat or danger to any member of the campus community is removed from campus. “Imminent threat” is a high standard to meet, and a survivor should not be discouraged if the accused is not immediately removed. The Office of Title IX Compliance, in conjunction with CARE, will also determine if any other interim measures are warranted or required to protect individuals involved.

C. Determining if the case will move forward with a charge. Following an investigation and fact-finding report by the Office of Title IX Compliance, the Office of Judicial Affairs will determine if there is enough evidence to move forward with a charge and if the case should go to a conduct hearing. In cases in which an accused student may complete their degree before a report is issued by the Office of Title IX Compliance, the Office of Judicial Affairs may place a hold on the student’s registration account and subsequent processing of their degree until the case has reached a resolution.

D. Student Amnesty. Complainants and witnesses, who are students, and who participate in an investigation of sexual violence will not be subject to disciplinary sanction for a violation of the University’s student conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

E. University hearing or University early/administrative resolution. If a hearing is held, in most cases, the complainant (survivor) will be asked to testify, although the complainant has the right to testify without directly facing the respondent (accused), and to refuse to testify if the complainant prefers. The complainant and the respondent will each, separately, work with the Office of Judicial Affairs throughout the adjudication of a complaint. The Office of Judicial Affairs will contact a CARE advocate for the complainant to utilize for the duration of the process, if the complainant is not already connected with an advocate. The choice of whether or not to utilize the services of the CARE advocate rests with the complainant. The Office of Judicial Affairs will contact and then provide contact information to the respondent for a Judicial Process Advisor. The choice of whether or not to utilize the services of the Judicial Process Advisor rests with the respondent.

Throughout the judicial process, the complainant and respondent will be apprised of the status of the case by the Office of Judicial Affairs. Should a hearing occur, both parties will be asked to describe the incident in question by the Sexual/Interpersonal Violence Conduct Committee. The Committee or conduct officer will hear all testimony and then render a decision about the case based on the preponderance of evidence standard. If the accused student is found responsible, the conduct committee or conduct officer will recommend disciplinary action (a sanction) to either the Vice Chancellor of Student Affairs or Associate Dean of Students, depending on the recommended sanction, who will make the final determination on the case.

Any interpersonal violence violation of *Campus Regulations* that would usually warrant suspension or dismissal from the University will be heard by the Sexual/Interpersonal Violence Conduct Committee. The Sexual/Interpersonal Violence Conduct Committee shall be composed of staff from around campus (at least 6 members) who receive annual and on-going training on issues of sexual and interpersonal violence. A quorum is considered to be 2 or more members. The respondent may waive their right to a quorum and request to proceed with only one member.

Rights of the Complainant

- i. To anticipate a timely hearing or resolution after charges have been filed. (Cases reported just prior to the end of a quarter, or during the summer may be delayed by the quarter or summer break period.)
- ii. To receive written notification of existing counseling, health, mental health, victim advocacy, legal assistance, and other services available to survivors both on-campus and in the community.
- iii. To receive written notification of available assistance with changing academic, living, transportation, and working situations, if requested and if reasonable, regardless of whether or not campus police or local law enforcement are notified.
- iv. To be accompanied to the hearing and any preliminary meetings by a CARE advocate and/or a person (or persons) of support, of their choice.
- v. To be present for the duration of the hearing.
- vi. To have the opportunity to make statements regarding the incident and/or personal impact.
- vii. To be informed as soon as possible, and simultaneously with the accused, of the outcome of the hearing, the procedures for appealing the results of the proceeding, any change to the results that occur prior to the time that such results become final, and when such results become final.

All hearings are closed and information pertaining to a conduct case is controlled by federal and state privacy laws.

Rights of the Accused. The accused has the right to due process as outlined in the *Campus Regulations*. Among these rights are:

- i. The right to written notice of the charges.
- ii. To be accompanied at the hearing by an advisor and/or person of support of the respondent's choice.
- iii. To be present for the duration of the hearing.

- iv. To produce witnesses and evidence pertaining to the case.
- v. To have the opportunity to make statements regarding the incident.
- vi. To question all witnesses.
- vii. To simultaneously with the complainant, be informed in writing of the outcome of any institutional disciplinary proceeding, the institution's procedures for appealing the results of the disciplinary proceeding, any change to the results that occur prior to the time that such results become final.

For a full description of accused rights and responsibilities, please see Chapter VII of the UCSB *Campus Regulations*.

All hearings are closed and information pertaining to a conduct case is controlled by federal and state privacy laws.

Students are to represent themselves in judicial hearings and investigatory meetings. The role of the advisor is to assist the student in making his/her own case. The advisor may not make statements on the student's behalf.

Should a respondent student not wish to make a statement or participate in the investigatory process, the investigation and/or conduct proceedings will still occur. The existence of a criminal investigation shall not delay the University's process.

Possible Sanctions. Students found responsible for a sexual assault, incidents of dating or domestic violence, and/or stalking, may be placed on University probation, suspended or dismissed from the University as well as restricted from areas of campus and/or from activities.

Sanctions apply only to UCSB. No other UC campus will be informed of the incident except on a "need-to-know" basis ("duty to warn," "clear and present danger," etc.). However, all suspensions will be noted on the student's transcript for the duration of the suspension. All dismissals will be permanently noted on student's transcript.

Discipline records are normally purged after five years from the sanctioning date, however, the Director of the Office of Judicial Affairs may decide to keep a file active for a longer period of time in cases of sexual assault, dating or domestic violence, or stalking.

The University cannot require counseling but can highly recommend it and in certain cases make it mandatory for re-admission of a suspended student.

Early/administrative resolution. In cases where a hearing is not requested, there may still be an administrative response by the University, which may include a University sanction for the accused student.

Appeals. Both parties have the right to appeal the finding of the case in writing to the appropriate appeal point within 10 working days of the date appearing on the notification of the imposition of a sanction. Any such appeal must specify in detail one or more of the following alleged conditions:

[1] lack of substantial bases of fact to support the sanction; [2] Incongruity of the sanction with the offense; [3] Unfairness in the proceedings; [4] Newly discovered important evidence not known at the time of the hearing.

For a full description of the criteria for appeals and appeal procedures, please see section D.1.d).(f) of the Student Conduct Code.

F. Timely Reporting. The Office of Judicial Affairs encourages early reporting of incidents to either law enforcement of the Office of Equal Opportunity, Sexual Harassment, and Title IX Compliance. While there is no time limit on the reporting of incidents, the University encourages early reporting because the freshness of evidence increases the likelihood of substantiating claims and adjudication of charges. In addition, early reporting also increases the likelihood that the University will be able to exercise jurisdiction over perpetrators who might have otherwise graduated or since left campus due to the passage of time.

G. Adjudicating Sexual Assault, Dating or Domestic Violence, and Stalking, by Location

1. University-Owned Residence Halls, University-Owned Apartments, and Family Student Housing

All University-Owned residence halls, apartment complexes, and other complexes under lease by Housing & Residential Services are under University jurisdiction.

2. Privately-owned student housing

The University has the right to extend jurisdiction over sexual assaults, dating and domestic violence, and stalking that occur off University property, including privately-owned student housing. Survivors of interpersonal violence in privately-owned student housing should follow the general procedures listed above, and contact the Office of Title IX Compliance, if they believe the perpetrator may have been a University student and if they would like the incident to be investigated by the University.

3. Greek Houses

The University has the right to adjudicate violations of sexual assaults, dating and domestic violence, and stalking that occur in Greek houses. Survivors of interpersonal violence in Greek (fraternity or sorority) housing should follow the general procedures listed above, and contact the Office of Title IX Compliance, if they believe the perpetrator may have been a University student and if they would like the incident to be investigated and adjudicated by the University.

4. Interpersonal/Sexual Violence committed by members of Registered Campus Organizations or Athletic Teams

Allegations involving members of any of the above listed organizations or teams may be reported to the Office of Title IX Compliance for an investigation and possible adjudication by the University.

5. Other off-campus or non-campus locations

Allegations involving UCSB students may be reported to the Office of Title IX Compliance for investigation and possible adjudication by the University regardless of location.

H. Reports to both the University and to law enforcement

It is possible that the District Attorney may decide not to prosecute a case that the Office of Judicial Affairs has decided to adjudicate. This is often because the standard of evidence for a criminal case is “beyond a reasonable doubt” whereas the standard of evidence for a University conduct case is “preponderance of evidence.” It is also possible that both the criminal justice system and the Office of Judicial Affairs may or may not decide to hear the case.

The District Attorney and the Office of Judicial Affairs may both refuse a case based on the lack of evidence. This does not mean a sexual assault, incident of dating or domestic violence, or stalking did not occur, but only that it would be difficult, if not impossible, to find an alleged perpetrator responsible for the act, even with the University’s lower standard for evidence.

When a UCSB student is legally convicted of a sexual offense or is accused of committing a sexual offense off campus and there is a concern about the student perpetrator’s continuing presence on campus, the University may exercise jurisdiction. If the survivor does not wish to initiate the campus judicial process, but there is concern about the continuing presence of the perpetrator on campus, the Office of Judicial Affairs, in consultation with the survivor, Office of Title IX Compliance, the police, the District Attorney, the Housing Officials (if applicable), the CARE Program, and any other persons who may have information, will assist in making a judgment as to the action that should be taken against a student solely for the purpose of protecting the UCSB community from possible imminent threats of harm. The primary consideration is the safety of the campus community. In other words, if there is reason to believe that the presence on campus of the accused will lead to further harm to the survivor or harm to others (see Sec. 105.08 of the *Campus Regulations*), then the University will do whatever possible to protect the community.

I. Adjudicating cases in which the perpetrator is a non-student member of the campus community (e.g., faculty, staff, administrator)

Faculty and lecturers fall under the jurisdiction of the Office of Academic Personnel in the Executive Vice Chancellor’s Office.

Teaching assistants who are graduate students are under the jurisdiction of the Office of Judicial Affairs.

Staff members are under the jurisdiction of Human Resources.

Administrators who are not staff should be reported directly to the Chancellor.

J. When a non-student, non-affiliate assaults or stalks a student on or off campus

The University's role may be limited to a police response and providing counseling and support services to the survivor. CARE may assist survivors with filing a restraining order and all other avenues available through the criminal or civil justice system.