

UC SAN DIEGO POLICY FOR REPORTING AND RESPONDING TO REPORTS OF DISCRIMINATION AND HARASSMENT

I. POLICY SUMMARY

UC San Diego is committed to creating and maintaining an environment in which all persons who participate in University programs and activities can work together in an atmosphere free of all forms of discrimination and harassment. Such behavior is prohibited by law and by University policy. The University will respond promptly and effectively to reports of discrimination and harassment and will take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates this UC San Diego Policy for Reporting and Responding to Reports of Discrimination and Harassment (*Policy*).

Conduct by an employee that is harassment or discrimination on the basis of a protected category in violation of this *Policy* is considered to be outside the course and scope of employment.

II. PURPOSE AND APPLICATION

This *Policy* applies to all members of the UC San Diego community, including faculty and other academic personnel, staff employees, students, and those participating in University programs (hereafter referred to as students, staff and faculty). This *Policy* implements:

(1) University of California policies regarding nondiscrimination that apply to faculty, students or staff, such as the [University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment](#) and the [UC Nondiscrimination Policy Statement Regarding Student-Related Matters](#), as well as the sexual harassment portion of the [University of California Sexual Harassment and Sexual Violence Policy](#)

(2) provides a process through which all members of the University community may report alleged discrimination or harassment or other conduct that violates this *Policy*.

This *Policy* also covers reports of retaliation related to reports of discrimination or harassment and reports of making or providing intentionally false complaints or information to University officials in connection with a report of discrimination or harassment.

Consensual romantic relationships between members of the University community are governed by *Conflicts of Interest Arising Out of Consensual Relationships (PPM 200-11)* and the Faculty Code of Conduct ([APM 015](#)) and may be subject to other University policies.

This *Policy* **does not** apply to reports of sex offenses, including sexual assault, domestic violence, dating violence and stalking. Such complaints are addressed in the UC San Diego Policy for Reporting and Responding to Sex Offenses.

III. DEFINITIONS

- A. Discrimination** is defined as unequal treatment of an individual or group of people based upon race, color, national origin, religion, sex, gender, gender expression, gender identity, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), ancestry, marital status, age, sexual orientation, citizenship, or service in the uniformed services (“protected category”) where there is no legitimate reason for such treatment.
- B. Harassment** is defined as unwelcome conduct based on a category set forth in III.A of this *Policy*, including verbal, nonverbal, or physical conduct, such that it explicitly or implicitly affects a person’s employment or education or interferes with a person’s work or educational performance or creates an environment such that a reasonable person would find the conduct intimidating, hostile, or offensive.

Prohibited harassment may include incidents between any members of the University community, including faculty and other academic appointees, staff, student employees, students, coaches, residents, interns, and non-student or non-employee participants in University programs (e.g., vendors, contractors, visitors, and patients). Prohibited harassment may occur in hierarchical relationships, between peers, or between individuals of the same protected groups or dissimilar protected groups. For example, a complaint of harassment on the basis of religion could involve members of the same religious affiliation or different religious affiliations. To determine whether the reported conduct constitutes harassment based on a protected category, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

Student Harassment

Consistent with the [University of California Policies Applying to Campus Activities, Organizations, and Students, Policy 100.00 on Student Conduct and Discipline, Section 102.09](#), harassment of one student by another student is defined as unwelcome conduct based on a protected category 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.

- C. Sexual Harassment** includes harassment in the form of unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.

Harassment that is not sexual in nature but is based on gender, gender identity, gender expression, sex- or gender-stereotyping, or sexual orientation also is prohibited by the University’s nondiscrimination policies if it denies or limits a person’s ability to participate in or benefit from University educational programs, employment, or services. While discrimination based on these factors may be distinguished from sexual harassment, these types of discrimination may contribute to the creation of a hostile work or academic environment. Thus, in determining whether a hostile environment due to sexual harassment exists, the University may take into account acts of discrimination based on

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

Student Sexual Harassment

Consistent with the [University of California Policies Applying to Campus Activities, Organizations, and Students, Policy 100.00 on Student Conduct and Discipline, Section 102.09](#), harassment of one student by another student is defined as unwelcome conduct of a sexual nature 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.

IV. RESPONSIBILITIES AND RESOURCES

A. Director, Office for the Prevention of Harassment & Discrimination (OPHD Director)

The OPHD Director ensures the University's compliance with nondiscrimination policies. Responsibilities include the following duties, which may be delegated:

- a. Plan and manage nondiscrimination education and training programs that will disseminate policy information to the UC San Diego community; provide educational materials that promote policy compliance and familiarity with local reporting procedures; and inform employees of their responsibility to report or respond to reports of discrimination.
- b. Develop and implement procedures for a prompt and effective response to reports of discrimination.
- c. Maintain records of reports of discrimination and actions taken in response to reports, including records of investigations, voluntary resolutions, and disciplinary actions. Identify and address patterns or systemic problems that arise during the review of discrimination or harassment complaints.

B. Title IX Compliance Coordinator / Sexual Harassment Officer (Title IX Officer)

UC San Diego has designated the OPHD Director as its Title IX Officer. Responsibilities include the following duties, which may be delegated:

- a. Plan and manage the sexual harassment prevention education and training programs for the UC San Diego community. Programs will disseminate policy information to the UC San Diego community; provide educational materials that promote policy compliance and familiarity with local reporting procedures; and inform employees of their responsibility to report or respond to reports of sexual harassment. Consistent with [California Government Code 12950.1](#) (AB 1825), sexual harassment training and education will be provided to every supervisory employee.
- b. Provide a prompt and effective response to reports of sexual harassment.

- c. Maintain records of reports of sexual harassment, and actions taken in response to reports, including records of investigations, voluntary resolutions, and disciplinary actions. Identify and address patterns or systemic problems that arise during the review of sexual harassment complaints.

C. Administrator Responsibilities

Administrators, including those at the UC San Diego Health System, are responsible for understanding and implementing relevant policies and guidelines and for ensuring that their units are free of discrimination and harassment. This includes the Chancellor, Vice Chancellors, Deans, Directors, academic department chairs, and administrative department heads. These employees are obliged to respond to reports, even if the individual making the report requests that no action be taken. Any manager, supervisor or designated employee responsible for reporting or responding to a report, and who knew about an incident and took no action to stop it or failed to report it, may be subject to disciplinary action.

- D. **Resources for Confidential Consultation** Confidential resources are available to anyone considering making a Report. Information can be obtained in a safe place where concerns can be discussed and a complainant can learn about procedures and potential outcomes while remaining anonymous. When consulting with confidential resources, the individual will be advised that their discussions in these settings are not considered reports and that, without their additional action, the University will not take any action to resolve their concerns.

[Counseling and Psychological Services](#)

[Faculty Staff Assistance Program](#)

[Office of the Ombuds](#)

[Student Legal Services](#)

[CARE: Center for Advocacy, Resources, and Education](#)

Other resources can be found on the [Office for the Prevention of Harassment & Discrimination \(OPHD\) website](#).

V. FREE SPEECH AND ACADEMIC FREEDOM

As participants in a public university, the faculty and other academic appointees, staff, and students of the University of California enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section I of the California Constitution. This *Policy* is intended to protect members of the University community from discrimination, not to regulate protected speech. This *Policy* shall be implemented in a manner that recognizes the importance of rights to freedom of speech and expression. The University also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with

these principles, no provision of this *Policy* shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws.

VI. PROCEDURES FOR REPORTING INCIDENTS OF DISCRIMINATION AND HARASSMENT

This *Policy* is designed to provide a prompt and effective response to reports of harassment and discrimination. A prompt and effective response may include early resolution, formal investigation, and/or targeted training or educational programs. When appropriate, the University may offer interim remedies, including counseling, an opportunity to repeat course work without penalty, changes to student housing assignments, or other appropriate interventions, such as changes in academic, living, transportation, or working situations.

Any member of the University community who is found to have engaged in harassment or discrimination based on a protected category is subject to disciplinary action, including dismissal, in accordance with the applicable University disciplinary procedure ([Appendix II: University Disciplinary Procedures](#)) or other University policy. Generally, disciplinary action will be recommended when the offending conduct is sufficiently severe, persistent, or pervasive that it alters the conditions of employment or limits the opportunity to participate in or benefit from educational programs.

A. Reporting Harassment or Discrimination

All members of the University community are encouraged to report conduct they observe or encounter that may be subject to this *Policy*. This includes conduct by employees, students, or third parties.

Reports of alleged harassment or discrimination may be made in any of the following ways:

- (a) By telephone by calling the Office for the Prevention of Harassment & Discrimination (OPHD) at 858-534-8298
- (b) In person by visiting the OPHD office, located at 201 University Center (corner of Gilman and Myers)
- (c) Online by visiting [OPHD and filing a report using "Report Bias"](#)

Reports may also be brought to any manager or supervisor. If the person to whom harassment or discrimination would normally be reported is the individual accused of harassment, reports may be made to another manager or supervisor. Managers or supervisors are required to notify OPHD to review and investigate reports of harassment or discrimination when a report is received. Any manager or supervisor responsible for reporting or responding to harassment or discrimination who knew about the incident and took no action to stop it or failed to report the prohibited act may be subject to disciplinary action.

Reports of harassment or discrimination should be brought forward as soon as possible after the alleged conduct occurs. While there is no required timeframe for reporting, prompt reporting will better enable the University to respond to the report, determine the issues, and provide an appropriate remedy and/or action. All incidents should be reported even if a significant amount of time has passed. However, delaying a report may impede the University's ability to conduct an investigation and/or to take appropriate remedial actions. Reports may be made anonymously; however, anonymous reporting may limit the University's ability to respond to the report.

B. Options for Resolution

Individuals reporting harassment or discrimination will be provided with a copy of this *Policy*, which set forth options for resolution and include policies applying to confidentiality of reports under these Procedures (see section [VII. F](#) below).

Individuals reporting harassment or discrimination will be informed about the range of possible outcomes, including interim protections, remedies for the individual harmed by the harassment or discrimination, and disciplinary actions that might be taken against the respondent as a result of the report, including information about the procedures that may lead to such outcomes.

1. Procedures for Early Resolution

The goal of Early Resolution is to resolve concerns at the earliest stage possible with the cooperation of all parties involved. Early Resolution options may be appropriate when the parties desire to resolve the situation cooperatively and/or when a Formal Investigation is not likely to lead to a satisfactory outcome. Participation in the Early Resolution process is voluntary. Early Resolution may include an inquiry into the facts, but typically does not include a formal investigation. Means for Early Resolution are flexible and encompass a full range of possible appropriate outcomes. Early Resolution includes options such as mediating an agreement between the parties, separating the parties, referring the parties to counseling programs, negotiating an agreement for disciplinary action, conducting targeted preventive educational and training programs, or providing remedies for the individual harmed by the offense. Early Resolution also includes options such as discussions with the parties, making recommendations for resolution, and conducting a follow-up review after a period of time to assure that the resolution has been implemented effectively. Early Resolution may be appropriate for responding to anonymous reports and/or third party reports. Agreements reached through Early Resolution efforts are documented.

While the University supports early resolution of complaints, the University does not require that parties participate in Early Resolution, and parties who have agreed to participate in Early Resolution may withdraw at any time. Complainants are never required to try to resolve their concerns directly with the respondent, meet with the respondent without appropriate involvement by the University (such as a counselor or administrator), or otherwise participate in any resolution activity that is not supervised by the University. Some reports of discrimination may not be appropriate for Early Resolution, but may require a formal investigation at the discretion of the OPHD Director (see "Procedures for Formal Investigation" below). A complainant who has requested Early Resolution may request a Formal Investigation at any time during the resolution process. The University will not compel a complainant to engage in mediation.

2. Procedures for Formal Investigation

In response to reports of discrimination or harassment in cases where Early Resolution is inappropriate (such as when the facts are in dispute in reports of serious misconduct, or when reports involve individuals with a pattern of inappropriate behavior or allege criminal acts such as physical assault) or in cases where Early Resolution is unsuccessful, the individual making the report may be encouraged to file a written request for Formal Investigation. Accommodations shall be provided for complainants unable to make a written request for Formal Investigation due to a disability. In the decision to initiate a Formal Investigation of a report of discrimination, the wishes of the individual making the request will be considered, but are not determinative.

In cases where a Complainant states he or she does not want to pursue a Formal Investigation, the complainant will be informed that the University's ability to investigate may be limited. Even if a complainant does not want to pursue an investigation, under some circumstances, OPHD may investigate a complaint, such as when there is a risk to the campus community if the individual accused remains on campus. In cases where OPHD learns of potential harassment or discrimination from third parties, such as the media, witnesses, or an anonymous report, OPHD has the discretion to initiate a Formal Investigation, after considering the source and nature of the information, the seriousness of the alleged incident, the specificity of the information, the objectivity and credibility of the source of the report, and the ability to effectively gather evidence, including obtaining cooperation from those harmed by the alleged actions.

OPHD may decline to initiate a Formal Investigation despite a complainant's request if OPHD concludes, in its judgment, that the facts as alleged by the complainant and/or as found by a preliminary inquiry demonstrate that the alleged conduct does not meet the standards for discrimination or harassment under University policy or federal law.

Formal Investigations of reports of discrimination or harassment are conducted by an impartial investigator assigned by OPHD. In order to provide a prompt, fair, and impartial investigation and resolution, all Formal Investigation of reports of harassment or discrimination incorporate the following standards:

- a. The individual(s) accused of conduct violating the University Nondiscrimination Policies are provided a copy of the written request for Formal Investigation or otherwise given a full and complete written statement of the allegations, and a copy of the appropriate policy and these procedures within a reasonable period of time following initiation of the investigation, typically within seven (7) working days.
- b. The investigation generally includes interviews with the parties if available, interviews with other witnesses as needed, and a review of relevant documents as appropriate. Disclosure of facts to parties and witnesses is limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation are advised that maintaining confidentiality is important to protect the integrity of the investigation.
- c. Upon request, the complainant and the respondent may each have a representative present when he or she is interviewed. Other witnesses may have a representative present at the discretion of the investigator or as required by applicable University

policy or collective bargaining agreement. Representatives may not obstruct or impede the interview and may be excluded from the interview if they do so.

- d. At any time during the investigation, the investigator may recommend that interim protections or remedies for the complainant or witnesses be provided by appropriate University officials, such as senior supervisors, Office of Student Conduct, or other administrators who have authority over the recommended remedy. These protections or remedies may include separating the parties, placing limitations on contact between parties, or making alternative working or student housing arrangements. Failure on the part of a student or employee to comply with the terms of interim protections or remedies may be considered a separate violation of this *Policy*. The final decision on whether to implement interim protections or remedies rests with the responsible University officials, not OPHD. A decision to implement interim protections or remedies does not constitute a finding or evidence of a violation of policy and shall not be admitted or construed as such in any official proceeding. To the extent interim remedies are provided, they are done so in a manner to minimize impact on the complainant.
- e. The investigator shall apply a preponderance of evidence standard to determine whether there has been a violation of this *Policy*.
- f. The investigation shall be completed as promptly as possible. Generally, OPHD expects that most investigations will be completed within sixty (60) business days of the date the request for Formal Investigation was filed.
- g. An investigation results in a written report that includes a statement of the allegations and issues, the positions of the parties, a summary of the evidence, findings of fact, and a determination by the investigator as to whether this *Policy* has been violated. The report will be submitted to a University official with authority to implement the actions necessary to resolve the complaint. The report may be used as evidence in other related procedures, such as subsequent complaints, grievances, and/or disciplinary actions.
- h. The complainant and the respondent will be informed promptly in writing when the investigation is completed. The complainant will be informed if there were findings made that the UC Nondiscrimination Policies were or were not violated and of actions taken to resolve the complaint, if any, that are directly related to the complainant, such as an order that the respondent not contact the complainant. In addition, the complainant will be informed of any systemic remedies undertaken to resolve the complaint. In accordance with University policies protecting individuals' privacy, the complainant may generally be notified that the matter has been referred for disciplinary action, but will not be informed of the details of the recommended disciplinary action without the consent of the respondent.
- i. The complainant and the respondent may request a copy of the investigative report pursuant to University policy governing privacy and access to personal information (see [UC Business & Finance Manual, RMP-8](#)). However, the report will be redacted to protect the privacy of personal and confidential information regarding all individuals other than the individual requesting the report in accordance with University policy.

- j. Within 15 working days of taking corrective action and/or disciplinary action against the respondent, or a decision not to take any action, the appropriate University official(s) shall provide written notification to the OPHD Director of what action, if any, has been taken, including the results of any appeals in the disciplinary process.

VII. ADDITIONAL CONSIDERATIONS

A. Employee Complaints or Grievances Involving Allegations of Harassment or Discrimination

In addition to making a report to OPHD, an employee who believes that he or she has been subjected to harassment or discrimination may file a complaint or grievance pursuant to an applicable complaint resolution or grievance procedure, such as under a collective bargaining agreement. A complaint or grievance alleging discrimination must meet all the requirements under the applicable complaint resolution or grievance procedure, including time limits for filing.

If an employee files a complaint or grievance alleging harassment or discrimination pursuant to an applicable complaint resolution or grievance procedure and also makes a report of the same alleged conduct to OPHD, the complaint or grievance will be held in abeyance subject to the requirements of any applicable complaint resolution or grievance procedure, pending the outcome of the Early Resolution and/or Formal Investigation procedures. If the individual wishes to proceed with the complaint or grievance, the Early Resolution and Formal Investigation may constitute the first step or steps of the applicable complaint resolution or grievance procedures.

B. Remedies and Referral to Disciplinary Procedures

Findings of violations of this *Policy* may be considered in determining remedies for individuals harmed by the discrimination, and violators will be referred to applicable disciplinary procedures. Procedures under this *Policy* will be coordinated with applicable complaint resolution, grievance, and disciplinary procedures to avoid duplication in the fact-finding process whenever possible. The following conduct is a violation of this *Policy*: engaging in discriminatory or harassing behavior, retaliating against a complainant reporting discrimination or any person participating in the resolution of a complaint, failing to follow or implement interim protections, filing intentionally false charges of discrimination, and making intentionally false statements to investigators. Investigative reports made pursuant to these Procedures may be used as evidence in subsequent complaint resolution, grievance, and disciplinary proceedings as permitted by the applicable procedures.

C. Retaliation

This *Policy* prohibits retaliation against a person who reports harassment or discrimination based on a protected category, assists someone with such a report, or participates in any manner in an investigation or resolution of a report of harassment or discrimination on a protected basis. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education.

D. Intentionally False Reports

Because complaints of harassment or discrimination may involve interactions between persons that are not witnessed by others, reports of harassment or discrimination cannot always be substantiated by additional evidence. Lack of corroborating evidence or “proof” should not discourage individuals from reporting harassment or discrimination under this *Policy*. However, individuals who make reports that are later found to have been intentionally false or made maliciously without regard for truth may be subject to disciplinary action under applicable University disciplinary procedures ([Appendix II: University Disciplinary Procedures](#)). This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by an investigation.

E. Privacy

The University shall protect the privacy of individuals involved in a report of discrimination, harassment, or retaliation to the extent required by law and University policy. Such reports may result in the gathering of extremely sensitive information about individuals in the University community. While such information is considered confidential, University policy regarding access to public records and disclosure of personal information may require disclosure of certain information concerning a report of discrimination or harassment. An individual who has made a report may be advised of sanctions imposed against the respondent when the individual needs to be aware of the sanction in order for it to be fully effective (such as restrictions on communication or contact with the individual who made the report). However, information regarding disciplinary action taken against the respondent will not be disclosed without the respondent’s consent, unless it is necessary to ensure compliance with the action or the safety of individuals.

F. Confidentiality of Reports of Discrimination

Many University employees, such as the OPHD Director, Office of Student Conduct, managers, supervisors, and other designated employees have an obligation to respond to reports of discrimination, harassment or retaliation, even if the individual making the report requests that no action be taken. An individual’s requests regarding confidentiality of such reports will be considered in determining an appropriate response; however, such requests will be weighed in consideration of the University’s legal obligation to ensure a working and learning environment free from discrimination, harassment or retaliation and to protect the due process rights of the individual accused to be informed of the allegations and their source.

Individuals wishing complete confidentiality in the exploration of their concerns are directed to consult with the confidential resources for advice and information regarding making a report of discrimination, harassment or retaliation. These resources can provide individuals who may be interested in consulting with someone about such reports with information about the procedures and potential outcomes involved. Individuals who consult with confidential resources are advised that their discussions in these settings are not considered notice to the University of reports of discrimination, harassment or retaliation and that without additional action taken by the individual, the discussions will not result in any action by the University to resolve their concerns. Confidential Resources at UC San Diego include the Ombuds Office, the Faculty and Staff Assistance Program, Counseling and Psychological Services, and the CARE: Center for Advocacy, Resources, and Education.

G. Retention of Records Regarding Reports of Discrimination or Retaliation

OPHD is responsible for maintaining records relating to discrimination and harassment reports, investigations, and resolutions, and for making reports of a statistical nature. Records shall be maintained in accordance with University records policies. All records pertaining to pending litigation or a request for records will be maintained in accordance with instructions from legal counsel.

H. Additional Enforcement Information

The federal Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH) investigate complaints of unlawful harassment, or discrimination in employment. The U.S. Department of Education Office for Civil Rights (OCR) investigates complaints of unlawful harassment and discrimination by students in educational programs or activities. These agencies may serve as neutral fact finders and attempt to facilitate the voluntary resolution of disputes with the parties. For more information, contact the nearest office of the EEOC, DFEH or OCR.

VIII. REFERENCES

1. [University of California Policy – Sexual Harassment and Sexual Violence](#),

Appendix I and Appendix II