



OFFICE OF THE PRESIDENT  
1111 Franklin Street  
Oakland, California 94607-5200

January 24, 2023

CHANCELLORS  
ACADEMIC COUNCIL CHAIR SUSAN COCHRAN  
LABORATORY DIRECTOR MICHAEL WITHERELL  
ANR VICE PRESIDENT GLENDA HUMISTON

**Re: Systemwide Review of Proposed Presidential Policy – Anti-Discrimination**

Dear Colleagues:

Enclosed for systemwide review is a proposed new systemwide Presidential Policy - Anti-Discrimination (Policy).

The proposed Policy is responsive to a request from President Drake for a systemwide analysis of the University's policies and procedures for responding to complaints of all forms of discrimination and harassment based on protected categories. This analysis led to the development of a systemwide policy on discrimination, harassment, and retaliation that applies to all staff, faculty and academic appointees, and students. With this Policy, the University is rising to meet ongoing challenges and ensuring equal and equitable access to University employment, programs, and activities.

**Background**

In spring 2021, President Drake convened a systemwide working group with representatives from a variety of leadership positions from all campus locations as well as the Office of the President. After key decisions were made by the working group, a smaller writing group convened to draft the Policy. Throughout the evaluation and drafting processes, key subject matter experts across the system were consulted to ensure the draft Anti-Discrimination Policy reflects best practices.

President Drake recently accepted the recommendation from the working group to establish a central office to oversee the implementation of this Policy. This systemwide office will develop standard procedures, guidance, and training for campus offices that handle complaints of harassment and discrimination related to protected categories, ensuring consistency across the system.

## Key Policy Principles

The proposed systemwide Policy affirms the University's commitment to maintaining a community where all individuals can work and learn together in an atmosphere free of discrimination and harassment. The proposed Policy contains the following key provisions:

**Policy Coverage.** The Policy addresses harassment, discrimination, and retaliation on University property, in connection with University activities, or in the context of a University program, and is applicable to all staff, faculty and academic appointees, and students.

**Prohibited Conduct.** The Policy prohibits harassment, discrimination, and retaliation, including but not limited to physical actions, any form of communication, non-verbal means, and other forms of contact.

**Free Speech and Academic Freedom.** The Policy is intended to protect University community members from harassment and discrimination, not to regulate protected speech. The Policy affirms that academic freedom and free speech are essential to the mission of the University and upholds protections for these types of speech.

**Confidential Resources.** The Policy includes the use of confidential resources to encourage Complainants to speak confidentially with someone about alleged harassment, discrimination, and/or retaliation. Confidential Resources do not need to report information they receive while acting in their confidential capacity.

**Reporting and Investigation Procedures.** The Policy provides reporting and investigation procedures, which will help ensure consistency in responding to allegations of harassment, discrimination, and retaliation across UC campuses.

Except as otherwise expressly provided in applicable collective-bargaining agreements, this Policy will supersede any existing guidance, local policies, or procedures that address discrimination, harassment, and retaliation across the UC system.

## Management Consultation

Summarized below are some of the key issues identified and addressed as a result of feedback from management consultation. These include:

**Policy Name.** The words "Harassment and Retaliation" were removed from the name of the proposed policy. The updated name of the proposed Policy was simplified to "Anti-Discrimination."

**Definitions.** Several of the definitions were edited or reorganized for increased clarity and understanding.

**Protected Status.** The term "Protected Status" was changed to "Protected Category" to reflect more common terminology and increase shared understanding.

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**Responsible Employees.** Individuals who must adhere to Responsible Employee obligations remained at the supervisor level and above. Although some commentators advocated for a broadening of Responsible Employee obligations consistent with UC's SVSH Policy, many others supported the narrower scope, citing the need to protect campus spaces from these obligations to encourage openness and sharing (i.e., campus resource centers).

**Alternative Resolution.** Alternative Resolution availability was broadened to include employees. However, consistent with UC's SVSH Policy, Alternative Resolution is not available when the Complainant is a student and the Respondent is an employee.

### **Systemwide Review**

Systemwide review is a public review distributed to the Chancellors, the Chair of the Academic Council, the Director of the Lawrence Berkeley National Laboratory, and the Vice President of Agriculture and Natural Resources requesting that they inform the general University community, especially affected employees, about policy proposals. Systemwide review also includes a mandatory, 90-day full Academic Senate review.

Employees should be afforded the opportunity to review and comment on the draft policy. Attached is a Model Communication which may be used to inform non-exclusively represented employees about these proposals. The Labor Relations Office at the Office of the President is responsible for informing the bargaining units representing union membership about policy proposals.

We would appreciate receiving your comments no later than April 24, 2023. Please submit your comments and questions to Abigail K. Bates at [NDPolicyReview@ucop.edu](mailto:NDPolicyReview@ucop.edu). The proposed Policy can be found at [UCnet](http://UCnet).

Sincerely,



Yvette Gullatt  
Vice President for Graduate  
and Undergraduate Affairs  
and Vice Provost for Equity,  
Diversity and Inclusion



Cheryl Lloyd  
Vice President  
Systemwide Human  
Resources



Douglas M. Haynes  
Vice Provost  
Academic Personnel and  
Programs

Enclosures:

- Proposed Draft Presidential Policy - Anti-Discrimination Policy
- Model Communication

cc: President Drake

Provost and Executive Vice President Newman  
Executive Vice Chancellors/Provosts  
Executive Vice President and Chief Operating Officer Nava  
Executive Vice President Byington  
Senior Vice President and Chief Compliance Officer Bustamante

Vice President Maldonado  
Academic Council Vice Chair Steintrager  
Vice Provosts/Vice Chancellors for Academic Affairs/Personnel  
Vice Chancellors for Equity and Inclusion  
Vice Chancellors for Health Sciences  
Vice Chancellors for Student Affairs  
Associate Vice Provost Lee  
Associate Vice President Matella  
Deputy General Counsel Nosowsky  
Deputy General Counsel Woodall  
Assistant Vice Provosts/Vice Chancellors - Academic Personnel  
Health System Chief Executive Officers  
Chief Human Resources Officers  
Campus Ethics and Compliance Officers  
Campus Policy Managers  
Executive Director and Chief of Staff Henderson  
Executive Director Lin  
Executive Director Silas  
Interim Chief of Staff Halimah  
Chief of Staff Kao  
Chief of Staff Levintov  
Chief Policy Advisor McAuliffe  
Director Anders  
Director Hairston  
Director Heng  
Director Roller  
Director Sykes  
Associate Director DiCaprio  
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Associate Director Woolston  
Assistant Director LaBriola  
Manager Crosson  
Managing Counsel Chin  
Administrative Manager Garcia  
Manager Garza  
Senior Principal Counsel Sanchez  
Principal Counsel Elconin  
Senior Analyst Bates  
Policy Specialist Norris  
Analyst Durrin  
Administrative Officer Babbitt  
Policy Advisory Committee



# Anti-Discrimination

<b>Responsible Officer:</b>	Director of the Office for Systemwide Accountability, Fairness, and Equity
<b>Responsible Office:</b>	Office for Systemwide Accountability, Fairness, and Equity
<b>Issuance Date:</b>	August 1, 2023
<b>Effective Date:</b>	August 1, 2023
<b>Last Review Date:</b>	NA
<b>Scope:</b>	This Anti-Discrimination Policy (“Policy”) applies to all University employees as well as undergraduate, graduate, and professional students (“students”), and third parties. The Policy applies at all University campuses, the Lawrence Berkeley National Laboratory, Medical Centers, the Office of the President, Agriculture and Natural Resources, and to all University programs and activities.

<b>Contact:</b>	TBD
<b>Title:</b>	TBD
<b>Email:</b>	<a href="mailto:Name@ucop.edu">Name@ucop.edu</a>
<b>Phone:</b>	(510) 987-XXXX

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## I. POLICY SUMMARY

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The University of California (“University”) is committed to maintaining a community dedicated to the advancement, application and transmission of knowledge and creative endeavors through academic excellence, where all people who participate in University programs and activities can work and learn together in an atmosphere free of discrimination, harassment and retaliation.

This policy addresses the University’s responsibilities and procedures related to Discrimination, Harassment, and Retaliation, as defined in this policy (together, “Prohibited Conduct”) in order to ensure an equitable and inclusive education and employment environment. This policy will be implemented in a manner that recognizes rights to freedom of speech and expression. However, freedom of speech and academic freedom are not limitless and, for example, do not protect speech or expressive conduct that violates federal and state anti-discrimination laws.

This Policy defines Prohibited Conduct and explains the administrative procedures the University uses to resolve reports of such conduct. The University will respond promptly and equitably to reports of Prohibited Conduct. This includes action to stop, prevent, correct, or discipline behavior that violates this Policy.

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## II. DEFINITIONS

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### A. Prohibited Conduct

1. **Harassment:** Unwelcome conduct based on a Protected Category (See [Section II.B.7](#)) that is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, denies, or adversely limits an individual’s participation in or benefit from the education, employment, or other programs or activities of the University, and creates an environment that a reasonable person would find to be intimidating or offensive.

In evaluating whether conduct is harassment, the Local Implementation Officer will consider the totality of the circumstances, including but not limited to:

- The frequency, nature, and severity of the conduct;
- Whether the conduct was physically threatening;
- Whether the conduct arose in the context of other discriminatory conduct or other misconduct;
- The effect of the conduct, objectively viewed as intimidating or offensive by a reasonable person; and
- Whether the conduct may be protected as academic freedom or protected speech. When the investigation implicates academic freedom, the Local Implementation Officer will, based on locally developed procedures, consult with the appropriate academic officer for relevant academic expertise.

This Policy addresses Harassment that is not covered under the University's [Policy on Sexual Violence and Sexual Harassment](#).

**2. Discrimination:** An Unfavorable Action taken because of an individual's Protected Category.

- a. Unfavorable Action:** Adverse or unequal treatment that unreasonably denies, unreasonably limits, or materially interferes with an individual's ability to participate in University programs, activities, or employment, and/or receive services, benefits or aid, unless required or authorized by law.

An Unfavorable Action is taken because of an individual's Protected Category. An Unfavorable Action will not exist where the action or inaction would have been taken regardless of the individual's Protected Category.

Applying for or accepting research awards that contain eligibility restrictions that are permitted by state and federal law and that are required as a condition for funding does not constitute Prohibited Conduct under this Policy.

- b. Failure to Accommodate:** Failure of the University to provide reasonable accommodations to individuals when required by law.

For specific information about the provision of accommodations and the interactive process, please refer to the [Guidelines Applying to Nondiscrimination on the Basis of Disability \(PACAOS 140\)](#), [Personnel Policies for Staff Members 81 \(Reasonable Accommodation\)](#), and [Academic Personnel Manual - 711 \(Reasonable Accommodation for Academic Appointees with Disabilities\)](#)

Note: Disparate Impact occurs when there is sufficient evidence that a University policy or practice, although neutral on its face, results in an adverse and material disproportionate impact on individuals within a particular Protected Category, unless the policy or practice has a substantial legitimate justification. The investigative process in this Policy is inapplicable to Disparate Impact concerns. Allegations of Disparate Impact raised by individuals allegedly adversely impacted by the policy or practice will be reviewed and addressed, as appropriate, by the Local Implementation Officer.

**3. Retaliation:** An adverse action against an individual based on:

- a.** their report or other disclosure of alleged Discrimination and/or Harassment to a University employee, or
- b.** their participation in, or assistance with, the investigative process, reporting, remedial, or corrective action/disciplinary processes provided for in this Policy.

An adverse action is conduct that would discourage a reasonable person from reporting Discrimination and/or Harassment or participating in a process provided for in this Policy, such as threats, intimidation, coercion, reprisals and adverse employment or educational actions. Good faith actions lawfully pursued in response to a report of Discrimination and/or Harassment (such as gathering evidence) are not, without more, Retaliation.

**B. Other Definitions:**

University of California – Anti-Discrimination Policy  
Anti-Discrimination

1. **Complainant:** An individual alleged, in a report to the Local Implementation Officer, to have experienced Prohibited Conduct.
2. **Confidential Resources:** The following employees who receive information about Prohibited Conduct in their confidential capacity are Confidential Resources:
  - a. Ombuds Office,
  - b. Licensed counselors in student counseling centers and in employee assistance programs,
  - c. Any individuals with a professional license requiring confidentiality (including health center employees but excluding campus legal counsel), or someone who is supervised by such an individual, and
  - d. Pastoral counselors (individuals associated with a religious order or denomination, who are recognized by that religious order or denomination as someone who provides confidential counseling).

Designation as a “Confidential Resource” under this Policy only exempts an individual from reporting to the Local Implementation Officer. It does not affect other mandatory reporting obligations under other policies or laws that require reporting to campus or local law enforcement, or Child Protective Services.

3. **Location:** Any University campus, the Lawrence Berkeley National Laboratory, Medical Centers, the Office of the President, and Agriculture and Natural Resources.
4. **Preponderance of Evidence:** A standard of proof that requires that a fact be found when its occurrence, based on evidence, is more likely than not.
5. **Protected Category:** An identity protected by federal or state law, including the following: race, religion, color, citizenship, national or ethnic origin, ancestry, sex (including pregnancy, childbirth, breastfeeding or related medical conditions), gender, gender identity, gender expression, gender transition, sexual orientation, physical or mental disability (including having a history of a disability or being regarded as being disabled), medical condition (cancer-related or genetic characteristics), predisposing genetic information (including family medical history), marital status, age (over 40), or veteran or military status. This definition applies for the purposes of this Policy only.
6. **Respondent:** An individual who is alleged to have engaged in Prohibited Conduct and/or who has been reported to have violated this Policy.
7. **Responsible Employee:** Any of the following who is not a Confidential Resource:
  - Campus Police
  - Human Resources Administrators, Academic Personnel Administrators, and Discrimination and Title IX Professionals.
  - Managers and Supervisors including Deans, Department Chairs, and Directors of Organized Research Units
  - Faculty Members



If a Responsible Employee learns, in the course of employment, that any individual affiliated with the University may have experienced Prohibited Conduct, as defined in this Policy, the Responsible Employee must promptly notify the Local Implementation Officer or designee.

## 8. Supportive and Remedial Measures

- a. Supportive Measures include both Interim Measures and Mitigating Measures. The University provides Supportive Measures as appropriate and reasonably available, without fee or charge.
  - i. Interim Measures: Services, accommodations, or other measures put in place temporarily after the Local Implementation Officer receives a report of Prohibited Conduct to assist or protect the Complainant, the Respondent, or the University community; restore or preserve a party's access to a University program or activity; or deter Prohibited Conduct. Interim Measures may:
    - remain in place until the final outcome of a Resolution Process (see [Section V.A.5](#)) or a subsequent disciplinary or appeal process;
    - change or terminate depending on the parties' evolving needs, as assessed by the Local Implementation Officer; or
    - become permanent as part of the resolution of a report.
  - ii. Mitigating Measures: Services, accommodations, or other measures for a Complainant who is not in a Resolution Process (see [Section V.A.5](#)), including a Complainant who was previously in a Resolution Process that did not result in a finding of a policy violation. Mitigating Measures may be implemented to provide support, restore or preserve access to a University program or activity, or deter Prohibited Conduct.
- b. Remedial Measures: Services, accommodations, or other measures put in place as a result of a completed Resolution Process (see [Section V.A.5](#)).

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## III. POLICY TEXT

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### A. General

Discrimination and Harassment pose a serious threat to the University's mission, values, and reputation. As such, the University is committed to creating and maintaining a community where all individuals can work and learn together in an inclusive environment. Prohibited Conduct violates this Policy and may violate the law.

Any individual can report conduct that may be Prohibited Conduct. The University will respond promptly and equitably to such reports. This includes appropriate action to stop, prevent, and remedy the Prohibited Conduct and, when appropriate, to impose corrective action/disciplinary measures on the Respondent.

This Policy addresses Prohibited Conduct that is not covered under the University's [Policy on Sexual Violence and Sexual Harassment \(SVSH\)](#). Local SVSH resource information can be found at [Sexual Violence Prevention and Response](#).

This Policy is intended to be consistent with applicable state and federal laws and University policies.

## **B. Policy Coverage**

This Policy covers acts of Prohibited Conduct committed by University students (as defined in [Section 14.00 of the Policies Applying to Campus Activities, Organizations, and Students](#), including applicants who become students and former students as described in [Section 101.00 of the Policy on Student Conduct and Discipline](#)); employees; and third parties (such as contractors, volunteers, vendors, visitors, guests, and patients), and acts of Prohibited Conduct committed against students, employees, and third parties, when the conduct occurs:

1. on University property; or
2. in connection with University employment (including, for example, remote-work environments); or
3. in the context of a University program or activity (including, for example, University-sponsored study abroad, research, online courses, health services, or internship programs).

Consistent with Section 101.00 of the Policy on Student Conduct and Discipline, and as specified in implementing campus regulations, this Policy may cover Prohibited Conduct by students that occurs off campus.

Not every report of Prohibited Conduct will result in a Resolution Process in accordance with [Section V.A.5](#), even if it is covered by this Policy. Rather, the Local Implementation Officer will close some reports after making an initial assessment (see [Section V.A.4](#)).

## **C. Conduct that Violates this Policy**

This Policy prohibits Prohibited Conduct as defined in [Section II.A](#). Individuals may engage in Prohibited Conduct in person or through other means. This includes, but is not limited to, conduct involving physical actions and/or any form of communication, including, but not limited to, spoken, written, and non-verbal communication through any means including, but not limited to, electronic media, such as the internet, social networks, cell phones, texts, and other devices or forms of contact.

In addition, Prohibited Conduct may occur between individuals with the same Protected Category or different Protected Categories.

#### **D. Protection of Complainants, Respondents, and Witnesses**

1. The University prohibits Retaliation against someone for reporting possible Discrimination and/or Harassment or participating in a process under this Policy (See [Section II.A.3](#)).
2. The University must balance the privacy interests of individuals involved in a report of Prohibited Conduct against the need to gather information, ensure a fair process, and stop, prevent and remedy Prohibited Conduct. In this context, the University tries to protect an individual's privacy to the extent permitted by law and University policies. The University otherwise keeps confidential the identities of parties, witnesses and those who report Prohibited Conduct, except as required by law or permitted by the Family Educational Rights and Privacy Act (FERPA) and protects the privacy of personally identifiable information pursuant to all applicable state and federal privacy laws, and University policies.

#### **E. Free Speech and Academic Freedom**

The faculty and other academic appointees, staff, and students of the University enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section II of the California Constitution. This Policy is intended to protect members of the University community from Discrimination, Harassment, and Retaliation, not to regulate protected speech. This Policy will be implemented in a manner that recognizes rights to freedom of speech and expression.

The University also has a compelling interest in free inquiry and the collective search for knowledge; it thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this Policy will be interpreted to prohibit conduct that is legitimately related to course content, teaching methods, scholarship, or the public commentary of an individual faculty member, other academic appointee, or the educational, political, artistic, or literary expression of students in classrooms and public forums. Academic freedom, as described in [Academic Personnel Manual - 010 \(Academic Freedom\)](#), [APM - 011 \(Academic Freedom, Protection of Professional Standards, and Responsibilities of Non-Faculty Academic Appointees\)](#), and [APM - 015 \(The Faculty Code of Conduct\)](#), includes the right to express views, even in passionate terms, on matters of public importance. This right extends to curriculum and instruction within the classroom, which includes discussions, perspectives, information, and challenges to conventional beliefs.

Freedom of speech, freedom of expression, and academic freedom are essential to the mission of the University; the free exchange of ideas is necessary for the discovery and dissemination of knowledge. However, freedom of speech and academic freedom are not limitless and, for example, do not protect speech or expressive conduct that violates federal or state anti-discrimination laws.

## **F. Confidential Resources**

Individuals who have experienced Prohibited Conduct may speak confidentially with a Confidential Resource (see [Section II.B.2](#)). Confidential Resources are not Responsible Employees and need not report information they receive while acting in their confidential capacity to the Local Implementation Officer.

Disclosures to Confidential Resources while they are acting in their confidential capacity are not “reports” under this Policy and will not, alone, result in any formal University action. Confidential Resources may inform an individual who discloses experiencing possible Prohibited Conduct of the discloser’s right to report directly to the Local Implementation Officer.

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## **IV. COMPLIANCE / RESPONSIBILITIES**

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### **A. Implementation of the Policy**

Executive Officers (the University President, Chancellor, Lawrence Berkeley National Laboratory Director, or Vice President of Agriculture and Natural Resources or Executive Vice President of UC Health) can develop supplementary information to support implementation of this Policy. The Director of the Office for Systemwide Accountability, Fairness, and Equity (SAFE) will interpret this Policy consistently and in a way that does not substantively change the Policy.

The Executive Officer at each Location must establish and implement local procedures consistent with this Policy. Exceptions to local implementation procedures required by the Policy must be approved by the Executive Officer or designee.

### **B. Revisions to the Policy**

The President approves this Policy and any revisions. The Director of the Office for Systemwide Accountability, Fairness, and Equity (SAFE) may recommend revisions to the Policy consistent with approval authorities and applicable Bylaws, Standing Orders, and Policies of The Regents. The Director of the Office for Systemwide Accountability, Fairness, and Equity (SAFE) will ensure that the Policy is reviewed regularly and updated in a manner that is consistent with other University policies.

### **C. Approval of Actions**

Actions within the Policy must be approved according to local procedures. Actions related to Senior Management Group employees must be approved by the President.

### **D. Compliance with the Policy**

The Executive Officer at each Location will designate the local management office that is responsible for monitoring, enforcing, and reporting policy compliance. The Senior Vice President – Chief Compliance and Audit Officer will periodically audit and monitor compliance with the Policy.

## E. Additional Enforcement Information

The U.S. Equal Employment Opportunity Commission ([EEOC](#)), the Office of Federal Contract Compliance Programs ([OFCCP](#)), and the California Civil Rights Department ([CRD](#)) investigate reports of unlawful discrimination and harassment in employment. The U.S. Department of Education Office for Civil Rights ([DOE-OCR](#)) investigates complaints of discrimination and harassment of students and employees in University programs or activities. The U.S. Department of Health & Human Services Office for Civil Rights ([HHS-OCR](#)) investigates complaints of discrimination and harassment occurring in the context of clinical, health, research, education, and employment programs. These agencies may serve as fact finders and attempt to facilitate the voluntary resolution of disputes. For more information, contact the nearest EEOC, OFCCP, DFEH, DOE-OCR or HHS-OCR offices.

## F. Noncompliance with the Policy

Noncompliance with this Policy may result in remediation, educational efforts, informal counseling, adverse performance evaluations, corrective action/discipline, and termination/dismissal.

For students, consequences of engaging in Prohibited Conduct are governed by the [Policy on Student Conduct and Discipline \(PACAOS 100\)](#).

For policy-covered staff employees, corrective action/discipline is governed by [Personnel Policies for Staff Members 62 \(Corrective Action\)](#), [63 \(Investigatory Leave\)](#), and [64 \(Termination and Job Abandonment\)](#); [Personnel Policies for Staff Members II-64 \(Termination of Appointment\)](#), which applies to Senior Management Group (SMG) employees; and as applicable, other policies and procedures.

For academic personnel, formal corrective action/discipline is governed by [Academic Personnel Manual - 015 \(The Faculty Code of Conduct\)](#) and [APM - 016 \(University Policy on Faculty Conduct and the Administration of Discipline\)](#); [APM - 150 \(Non-Senate Academic Appointees/Corrective Action and Dismissal\)](#) and, as applicable, other policies and procedures. This Policy does not supplant disciplinary processes described in the APM or in the Academic Senate's Bylaws or regulations.

For represented employees, formal corrective action/discipline is governed by collective bargaining agreements.

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## V. PROCEDURES

### A. Procedures for Reporting and Responding to Reports of Prohibited Conduct

This section provides an overview of the procedures the University uses to respond to reports of Prohibited Conduct. While the Local Implementation Officer has responsibility for oversight of the reporting and response processes, other offices at each Location will be involved and consulted as necessary. The specific procedures for investigating and resolving complaints of Prohibited Conduct depend on the

Respondent's affiliation with the University. The Complainant and the Respondent are sometimes referred to together in this section as "the parties."

## 1. Reporting

Any individual can report Prohibited Conduct. Reports can be made anonymously. Individuals may make a report to the Local Implementation Officer, any Responsible Employee, or another appropriate office such as the Academic Personnel Office, Student Affairs, Office of the Provost, or Human Resources Office. The individual or office that receives the report must forward it to the Local Implementation Officer. If the Responsible Employee to whom a report normally would be made is the Respondent, reports may be made to another Responsible Employee or office. Upon receipt of a report of Prohibited Conduct from a Responsible Employee, the Local Implementation Officer will attempt to contact the Complainant, if known, to inform them of their rights, options, and resources.

## 2. Timelines for Making Reports

There is no time limit for reporting. Individuals should report incidents even if significant time has passed. However, the sooner the University receives a report, the better able it will be to respond, investigate, remedy, and impose corrective action/discipline if appropriate.

## 3. Initial Assessment of a Report / Immediate Health and Safety

As soon as practicable after receiving a report, the Local Implementation Officer will make an initial assessment, including a limited factual inquiry when appropriate, to determine how to proceed.

The Local Implementation Officer will next determine:

- whether the report on its face alleges an act of Prohibited Conduct as defined in [Section II.A](#); and
- if so, whether the Prohibited Conduct is covered by this Policy, as described in [Section III](#).

The Local Implementation Officer may consult with other offices as necessary. This may include Academic Personnel Offices for complaints involving faculty and other academic appointees, Student Affairs Offices for complaints involving students, Human Resources or Employee and Labor Relations Offices for complaints involving staff and health professionals or complaints stemming from a clinical encounter.

The Local Implementation Officer will:

- make an immediate assessment of the health and safety of the Complainant in consultation with the Complainant when possible,
- make an immediate assessment of the health and safety of the campus community,

- determine and oversee Supportive Measures that are immediately necessary, and
- engage in outreach to the Complainant that includes for example, an explanation of rights and reporting options, a request to meet with the Local Implementation Office, and available campus and community resources.

The Local Implementation Officer will also inform the Complainant of the range of possible outcomes of the report, including Supportive and Remedial Measures and corrective/disciplinary actions, and the procedures leading to such outcomes.

#### 4. Closure After Initial Assessment

Not all reports that the Local Implementation Officer receives are reports of Prohibited Conduct that can be resolved through a Resolution Process as described below. This includes reports for which the Local Implementation Officer determines that:

- even if true, the alleged conduct is not Prohibited Conduct (see [Section II.A](#) and [Section III.C](#), as limited by [Section III.E](#)); or
- the alleged conduct is not covered by this Policy (see [Section III.B](#)); or
- there is not enough information to carry out a Resolution Process (for example, the identities of the people involved are unknown); or
- a Complainant's request that no Formal Investigation occur can be honored (see [Section V.A.5.b](#)); or
- there is not enough nexus between the alleged conduct and the University to carry out a Resolution Process (for example, the conduct did not occur in the context of a University program or activity and involved only third parties).

The Local Implementation Officer will close such matters pursuant to written guidelines issued by the Office for Systemwide Accountability, Fairness, and Equity (SAFE). When appropriate, the Local Implementation Officer will take steps to stop the reported conduct, prevent its escalation or recurrence, and address its effects. Such steps may include, but are not limited to, offering resources, providing Mitigating Measures to the Complainant, providing targeted preventive education (including to the Respondent), and training programs.

When the reported conduct is not Prohibited Conduct under this Policy but may be conduct prohibited by or addressed by other University policy or policies, the Local Implementation Officer will, if appropriate, refer the matter to another office for review and resolution.

To determine whether there is enough nexus between the alleged conduct and the University to carry out a Resolution Process, the Local Implementation Officer will consider factors such as:

- whether there is a connection between the Prohibited Conduct and University property or a University program or activity;

- whether the Complainant or Respondent were University community members when the Prohibited Conduct allegedly occurred;
- whether the Complainant or Respondent were University community members at the time of the report; and
- whether there is information indicating an ongoing threat to the University community.

## 5. Overview of Resolution Processes

Reports of Prohibited Conduct that are not closed after the Local Implementation Officer's initial assessment may be addressed through Alternative Resolution, Formal Investigation, a separate employee grievance or complaint process, or Other Inquiry. Each of these is described below. Resolution Processes are non-adversarial proceedings. At the beginning of any Resolution Process, the Local Implementation Officer will inform the parties of the University's rules of conduct during the process.

### a. Alternative Resolution

Alternative Resolution is not available when the Complainant is a student and the Respondent is an employee. In other cases, after an initial assessment of the alleged facts, the Local Implementation Officer may—if the Complainant and Respondent agree in writing—begin an Alternative Resolution process (which may incorporate restorative principles and practices). The Local Implementation Officer will, if appropriate, begin the process in consultation with other offices depending on whether the Complainant and Respondent are faculty, other academic appointees, staff, student employees, or students. Alternative Resolution may include, among other responses:

- separating the parties;
- providing for safety;
- referring the parties to counseling;
- mediation;
- referral for corrective action/discipline;
- an agreement between the parties;
- conducting targeted preventive educational and training programs; and
- conducting a follow-up review to ensure that the resolution has been carried out effectively.

Alternative Resolution may be especially useful when:

- an investigation is not likely to lead to a resolution;
- both parties prefer an informal process; or
- a case involves less serious allegations.



The Local Implementation Officer has discretion to determine whether the complaint is appropriate for Alternative Resolution; to determine the type of resolution to pursue; and to stop the process at any time before its conclusion and move to a Formal Investigation.

Participation in Alternative Resolution is voluntary, meaning that both the Complainant and the Respondent must agree to participate. If Alternative Resolution is selected, the Local Implementation Officer will provide timely written notice to both parties that includes the allegations and states that:

- the Local Implementation Officer has begun the process;
- the process is voluntary and will end upon either party's request;
- termination of the Alternative Resolution process may result in Formal Investigation;
- the parties may be accompanied by an advisor throughout the process;
- the Local Implementation Officer will notify both parties of the process's outcome; and
- the process is private but not confidential: the Local Implementation Officer should maintain a record of the process and may share information with others if needed to carry out the resolution, and information shared by parties may be considered in any subsequent Resolution Process.

The Local Implementation Officer will oversee the Alternative Resolution process and, if other campus officials are involved in the process, maintain an appropriate level of involvement.

Once the parties have agreed to the terms of an Alternative Resolution, the University will not conduct a Formal Investigation unless the Local Implementation Officer determines that the Respondent failed to satisfy the terms of the Alternative Resolution, or that the Alternative Resolution was unsuccessful in stopping the Prohibited Conduct or preventing its recurrence.

The Local Implementation Officer will keep records of all reports and conduct addressed through Alternative Resolution.

#### **b. Formal Investigation**

The Local Implementation Officer will begin a Formal Investigation when a decision has been made not to close a report after the initial assessment and either (i) Alternative Resolution and Other Inquiry are not appropriate, or (ii) the parties do not agree to participate in Alternative Resolution or it ends before they agree on terms. The Local Implementation Officer may coordinate the Formal Investigation with other offices, depending on the Complainant's and Respondent's affiliation with the University (that is, faculty, other academic appointees, staff, or students).

If the Complainant does not want a Formal Investigation, the Local Implementation Officer will give serious consideration to such a request. The

Local Implementation Officer may, however, determine that a Formal Investigation is necessary to mitigate a risk to the campus community. If the Local Implementation Officer decides to open a Formal Investigation despite the Complainant's request, the Local Implementation Officer will:

- inform the Complainant of the decision before beginning the Formal Investigation or otherwise notifying the Respondent of the Complainant's identity;
- inform the Respondent that the Complainant did not request a Formal Investigation but the Local Implementation Officer determined one was necessary; and
- provide the Complainant with all information required by this Policy unless the Complainant states in writing that they do not want it.

If the Local Implementation Officer does not begin a Formal Investigation, the Local Implementation Officer will inform the Complainant that this limits possible resolution options. The Local Implementation Officer will nonetheless provide Mitigating Measures as appropriate and consistent with Complainant's privacy and the absence of a Formal Investigation.

At the beginning of a Formal Investigation, the Local Implementation Officer will provide the parties a written summary of the allegations, an explanation of their rights, the procedures that will be followed, available resources, and this Policy. While the parties have the right to identify evidence and witnesses, the University bears the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility.

- i. *Timeframe.* The Local Implementation Officer will complete the Formal Investigation promptly, typically within 60 to 90 business days of notifying the parties in writing of the charges. However, the Local Implementation Officer may extend the timeframe past 90 business days for good cause. The Local Implementation Officer will periodically update parties on the status of the Formal Investigation and notify them in writing of the reason for any extension and the projected new timeline. The actual time required depends on the specific circumstances, including the complexity of the matter and the severity and extent of the alleged conduct. The Local Implementation Officer will consider, approve, and communicate extensions pursuant to written guidelines from the Office for Systemwide Accountability, Fairness, and Equity (SAFE).

If the police are also investigating the alleged conduct, the Local Implementation Officer will coordinate with the police but must nonetheless act promptly without delaying the Formal Investigation until the end of the criminal investigation.

- ii. *Disclosure of Information.* The Formal Investigation generally includes interviews with the parties and any witnesses, and a review of evidence. The Local Implementation Officer or designee will:

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- share information with witnesses only as reasonably necessary to conduct a fair and thorough investigation;
  - counsel witnesses about keeping confidential and private any information that they may learn through the Formal Investigation, to protect both the people involved and the integrity of the Formal Investigation; and
  - inform witnesses that information they provide directly related to the Formal Investigation and their identities will likely be disclosed to the Complainant and Respondent.
- iii. *Right to an Advisor.* The Complainant and Respondent may have an advisor present when they are interviewed and at meetings. They may have other support persons present under other policies. In addition, witnesses may have an advisor present at the discretion of the Local Implementation Officer or in accordance with University policy or a collective bargaining agreement.
- iv. *Academic Freedom.* When the Formal Investigation implicates academic appropriateness or academic freedom, the Local Implementation Officer will consult with the appropriate academic officer for relevant academic expertise.
- v. *University-Initiated Investigation.* The Local Implementation Officer may choose to begin and conduct a Formal Investigation without a Complainant when there is, for example:
- information indicating an ongoing threat to the University community; or
  - a pattern of alleged conduct toward multiple people by the same Respondent that would, in the aggregate, constitute Prohibited Conduct (see [Section II.A.](#)) for a reasonable person; or
  - an allegation of Prohibited Conduct covered by this Policy in the public realm (such as reports in the news or social media).
- vi. *Administrative Closure.* The Local Implementation Officer may close a Formal Investigation before completing it if they determine that a significant change in circumstances has so substantially impaired the Formal Investigation that the Local Implementation Officer cannot reach reasonably reliable conclusions about whether the alleged conduct occurred. The Local Implementation Officer will, when appropriate, still take steps to stop the reported conduct, prevent its escalation or recurrence, and address its effects, including offering appropriate resources to the parties and Mitigating Measures to the Complainant.

**c. Grievance/Complaint Procedures for Employees**

In addition to reporting to the Local Implementation Officer or other Responsible Employee, a University employee may file a grievance or

complaint. That grievance or complaint must meet all of the requirements, including time limits for filing, under the applicable complaint resolution or grievance procedure listed in [Appendix I: University Complaint Resolution and Grievance Procedures](#). Any such grievance or complaint will be forwarded to the Local Implementation Officer for processing under this Policy, and the grievance or complaint procedure may be held in abeyance pending resolution under this Policy, unless an applicable collective bargaining agreement provides otherwise. After completion of the process under this Policy, the grievance or complaint may be reactivated under the applicable grievance or complaint procedure.

**d. Other Inquiry**

When a report is not closed after initial assessment, yet is not appropriate for Alternative Resolution nor Formal Investigation because there is no individual identifiable Respondent over whom the Local Implementation Officer has jurisdiction, the Local Implementation Officer may:

- conduct an inquiry to try to determine what occurred and
- take prompt steps reasonably calculated to stop any substantiated conduct, prevent its recurrence, and, as appropriate, remedy its effects.

Such an inquiry may be appropriate when, for example, the Complainant alleges Prohibited Conduct by an organization, an individual whose identity is unknown, or a third party, or alleges conduct by multiple people that rises to the level of Prohibited Conduct only when considered in the aggregate.

The extent of the inquiry and responsive steps will depend on the specific circumstances. This includes, for example:

- the nature and location of the alleged conduct,
- the University's relationship to the Complainant, and
- the University's relationship to and level of control over the organization or individual alleged to have engaged in the conduct.

The Local Implementation Officer will complete the inquiry promptly and notify the Complainant of the outcome.

**e. Notifications and Documentation**

When engaging in a Resolution Process provided for in this [Section V.A.5.](#), the Local Implementation Officer should provide written notices to the parties and keep records.

**6. Formal Investigation Report and Outcome**

If a Formal Investigation is conducted, the Local Implementation Officer will prepare a written report that includes:

- the factual allegations and alleged Policy violations;
- statements of the parties;

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- a summary of the evidence;
- credibility determinations when appropriate;
- findings of fact; and
- an analysis and determination of whether this Policy was violated.

In determining whether this Policy was violated, the Local Implementation Officer will apply the Preponderance of Evidence standard.

At the end of the Formal Investigation, the Local Implementation Officer will simultaneously provide the parties the Formal Investigation report. The report may be redacted to protect privacy (see APM - 160 and other University policies governing privacy). The Local Implementation Officer will also inform the parties in writing of the outcome of the Formal Investigation and its rationale, and of any available next steps.

**7. Remedy**

- a. If the University finds Prohibited Conduct, the University will take prompt and effective steps reasonably calculated to stop the violation, prevent its recurrence, and, as appropriate, remedy its effects. For examples of available Remedial Measures, see [Appendix II](#).
- b. If the remedy has not already been provided, the Local Implementation Officer will oversee its implementation in consultation with appropriate administrators. The Local Implementation Officer will also consider whether any systemic remedies are appropriate.

**8. Corrective Action/Discipline**

- a. The Local Implementation Officer will forward the Formal Investigation Report (with attachments) to the appropriate administrator responsible for possible further action, including corrective action/discipline.
- b. Any member of the University community who is found to have engaged in Prohibited Conduct may be subject to corrective/disciplinary action, up to and including termination/dismissal pursuant to the applicable University disciplinary procedure or other policy.
- c. At the end of any corrective/disciplinary procedure the Complainant and the Respondent will be informed, in writing, of:
  - the outcome, including the final determination regarding the alleged offense, if there was any appropriate action taken, and the rationale for the results;
  - any available next steps; and
  - any subsequent change to the results and when results become final.

The University tries to finalize and notify parties of corrective action/disciplinary decisions reasonably promptly pursuant to applicable

procedures, depending on the severity and extent of the Prohibited Conduct and the complexity of the matter.

## **B. Location Responsibilities**

Each Location must do the following:

1. Designate and provide adequate resources and independence to a Local Implementation Officer. The responsibilities of the Local Implementation Officer include, but may not be limited to, the following duties:
  - a. Coordinate compliance with this policy, including investigations, reports, and remedies.
  - b. Coordinate with other responsible units to ensure that Supportive and Remedial Measures determined necessary by the Local Implementation Officer are provided.
  - c. Provide educational materials to promote compliance with the Policy and familiarity with local reporting procedures.
  - d. Respond promptly and equitably to reports of Prohibited Conduct according to the Policy.
2. Designate individuals who can offer confidential consultations, without reporting the incident to the Local Implementation Officer, to any member of the University community seeking information or advice about making a report of Prohibited Conduct. Each Location will post information about how and where to contact Confidential Resources on its website.

Individuals who consult with such Confidential Resources should be advised that their discussions in these settings are not considered actual reports of Prohibited Conduct and that without additional action by the individual, these discussions will not, alone, result in any formal action by the University to resolve their concerns.
3. Follow University established and approved processes for investigation, adjudication, and corrective action/discipline.
4. Publicize a Location-specific process for reporting incidents of Prohibited Conduct.

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## **VI. RELATED INFORMATION**

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A. [University of California Standards of Ethical Conduct](#)

B. [University of California Statement of Ethical Values](#)

### **Academic Personnel Manual**

A. [APM - 010 \(Academic Freedom\)](#)

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- B. [APM - 011 \(Academic Freedom, Protection of Professional Standards, and Responsibilities of Non-Faculty Academic Appointees\)](#)
- C. [APM - 015 \(The Faculty Code of Conduct\)](#)
- D. [APM - 016 \(University Policy on Faculty Conduct and the Administration of Discipline\)](#)
- E. [APM - 035 \(Affirmative Action and Nondiscrimination in Employment\)](#)
- F. [APM - 140 \(Non-Senate Academic Appointees/Grievances\)](#)
- G. [APM - 150 \(Non-Senate Academic Appointees/Corrective Action and Dismissal\)](#)
- H. [APM - 160 \(Academic Personnel Records/Maintenance of, Access to, and Opportunity to Request Amendment of\)](#)
- I. [APM - 711 \(Reasonable Accommodation for Academic Appointees with Disabilities\)](#)

**Presidential Policies and Guidelines**

- A. [PPSM-62 \(Corrective Action\)](#)
- B. [PPSM-63 \(Investigatory Leave\)](#)
- C. [PPSM-64 \(Termination and Job Abandonment\)](#)
- D. [PPSM II-64 \(Termination Appointment\)](#)
- E. [PPSM-70 \(Complaint Resolution Staff Personnel\)](#)
- F. [PPSM II-70 \(Complaint Resolution Senior Managers\)](#)
- G. [PPSM-81 \(Reasonable Accommodation\)](#)
- H. [University of California Sexual Violence and Sexual Harassment](#)
- I. [PACAOS \(Policies Applying to Campus Activities, Organizations, and Students\)](#)
- J. [PACAOS 100 \(Policy on Student Conduct and Discipline\)](#)
- K. [PACAOS 140 \(Guidelines Applying to Nondiscrimination on the Basis of Disability\)](#)
- L. [PACAOS 150 \(Student-Related Policy Applying to Nondiscrimination on the Basis of Sex\)](#)

- M. [PACAOS Appendix C \(Nondiscrimination Policy Statement for University of California Publications Regarding Student-Related Matters\)](#)
- N. [Business and Finance Bulletin RMP-2: Records Retention and Disposition: Principles, Processes, and Guidelines](#)

### Federal and State Regulations

- A. [Age Discrimination in Employment Act of 1967 \(81 Stat. 602, as amended, 29 U.S.C. § 621, et seq.\)](#)
- B. [Americans With Disabilities Act of 1990 \(42 U.S.C. § 12101, et seq.\)](#)
- C. [California Fair Employment and Housing Act, Government Code, sections 12900 - 12996](#)
- D. [Fair Employment and Housing Act \(Gov't Code § 12952\)](#)
- E. [Genetic Information Nondiscrimination Act of 2008 \(42 U.S.C. § 2000ff, et seq.\)](#)
- F. [Pregnancy Discrimination Act of 1978 \(Section 703\(a\), 42 U.S.C. § 2000e-2\(a\)\)](#)
- G. [Title VI of the Civil Rights Act: Civil Rights Act of 1964 \(42 U.S.C. § 2000d et seq.\)](#)
- H. [Title VII of the Civil Rights Act: Civil Rights Act of 1964 \(42 U.S.C. § 2000e et seq.\)](#)
- I. [Title IX of the Education Amendments Act of 1972 \(20 U.S.C. § 1681\)](#)
- J. [Uniformed Services Employment and Reemployment Rights Act of 1994 \(38 U.S.C. § 4301 et seq.\)](#)

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## VII. FREQUENTLY ASKED QUESTIONS

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TBD

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## VIII. REVISION HISTORY

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**August 1, 2023:** This is the first issuance of this policy.

Although this is the first issuance of this Policy, the University has addressed discrimination, harassment, and retaliation in sections of other University policies. This Policy consolidates these sections into a comprehensive Policy, regardless of an



individual’s affiliation with the University. Please see [Section VI](#) for more information on these related policies.

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## IX. APPENDICES

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### Appendix I: Applicable Complaint Resolution and Grievance Policies

#### Academic Personnel:

Members of the Academic Senate	<a href="#">Senate Bylaw 335</a>
Non-Senate Academic Appointees	<a href="#">APM - 140</a>
Exclusively Represented Academic Appointees	<a href="#">Bargaining Units &amp; Contracts</a>

#### Students:

[Policies Applying to Campus Activities, Organizations and Students, Section 110.00](#)

#### Staff Personnel:

Complaint Resolution (Senior Managers)	<a href="#">PPSM II-70</a>
Complaint Resolution (Staff Personnel)	<a href="#">PPSM 70</a>
Exclusively Represented Staff Personnel	<a href="#">Bargaining Units &amp; Contracts</a>
Lawrence Berkeley National Laboratory Employees	<a href="#">Employee Complaint Resolution</a>

#### All members of the University community:

The [University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities \(Whistleblower Policy\)](#) protects the reporting and investigation of violations of state or federal laws or regulations.

#### All University employees and applicants for employment:

The [University’s Whistleblower Protection Policy](#) provides a complaint resolution process for employees and applicants for employment who have been subjected to retaliation as a result of having made a protected disclosure under the Whistleblower Policy or refused to obey an illegal order.

### Appendix II: Supportive and Remedial Measures

In determining Supportive Measures, the Local Implementation Officer will tailor the measures to the circumstances of each case, minimize burdens on the parties, and avoid depriving the parties of educational and employment opportunities as much as

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practicable. Supportive Measures are non-disciplinary and non-punitive and should not unreasonably burden a party.

When determining Supportive and/or Remedial Measures (as defined in [Section II.B.8](#)), the Local Implementation Officer will assess how much the University can protect the parties' privacy while also ensuring the Measures are effective. The Local Implementation Officer will explain to the parties any limits on protecting their privacy. Supportive and Remedial Measures must also be consistent with the parties' First Amendment rights.

The Local Implementation Officer may issue a no-contact order as a Supportive or Remedial Measure, but only where less restrictive measures would be insufficient to protect the safety of the Complainant or the University's environment.

In addition to Supportive and Remedial measures, the Local Implementation Officer may take other actions to stop reported conduct, prevent its escalation or recurrence, and address its effects.

While not required, the Local Implementation Officer, within their sole discretion and in consultation with other offices as appropriate, may provide Supportive and Remedial Measures including, but not limited to:

- A. *Campus Services Generally.***  
Academic, employment, and other support including academic tutoring, counseling, disability services, health and mental health services, housing assistance, legal assistance, referral to employee assistance program, and information about the right to report a crime to campus or local law enforcement.
- B. *Measures that May Be Available to Employees, Including Faculty, Academic Appointees, Staff, and Student Employees:***  
Change to a different workstation, schedule, work location, unit, department, or position for which the employee is qualified provided that, in the case of a Complainant, the change is voluntary and equitable.
- C. *Training and Education of the Respondent.***  
The Respondent may be required to undergo training and/or periodic refresher classes.
- D. *Campus Services Modified:***
  1. If a campus service is not generally available or a fee is imposed, access may be arranged, or fees waived when appropriate.
  2. Comprehensive services including additional medical, counseling, and academic support services.
  3. Any other accommodations or Interim Measures that are reasonably available once a Complainant has requested them.

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**E. *Additional Educational Measures for Students:***

- 1.** Change advisors, composition of dissertation committee, class sections and similar schedule adjustments.
- 2.** Arrange extra time to complete academic requirements of a class or program, or to retake a class or withdraw from a class, without an academic or financial penalty if the University delayed such accommodations after it reasonably should have known of the violation.

**F. *Other Measures Devised by the Local Implementation Officer or Other Administrator.***

DRAFT

## MODEL COMMUNICATION

The University of California Office of the President invites comments on a proposed Presidential Policy on Anti-Discrimination. The proposed policy covers discrimination, harassment, and retaliation by and against members of the University community on University property or in connection with University-sponsored activities.

The proposed policy includes the following key provisions:

- The proposed policy affirms the University of California’s commitment to creating and maintaining a healthy working and learning environment in an inclusive environment free of discrimination, harassment and retaliation.
- The proposed policy defines harassment and discrimination as well as lists the protected categories protected by federal and state law.
- The proposed policy prohibits retaliation against an individual who reports Discrimination and/or Harassment, assists someone with a report of Discrimination and/or Harassment, or participates in an investigation or other process under the policy.
- The proposed policy addresses free speech and academic freedom. The proposed policy is intended to protect members of the University community from Discrimination, Harassment, and/or Retaliation, not to regulate protected speech. The proposed policy recognizes that freedom of speech, freedom of expression, and academic freedom are essential to the mission of the University. 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.
- The proposed policy outlines the possible consequences of noncompliance, which may include remediation, educational efforts, informal counseling, adverse performance evaluations, corrective action/discipline, and termination/dismissal.

The draft policy is posted on [UCnet](#). If you have any questions or if you wish to comment, please contact \_\_\_\_\_ at \_\_\_\_\_ no later than \_\_\_\_\_, 2023.