

Investigation and Adjudication Framework for Senate and Non-Senate Faculty

INTRODUCTION

Consistent with the UC Policy on Sexual Violence and Sexual Harassment (“SVSH Policy”), the following describes the University’s process for investigating and adjudicating alleged violations of the SVSH Policy in instances where the respondent is a University faculty member whose conduct is governed by Section 015 of the Academic Personnel Manual ([APM-015](#)), The Faculty Code of Conduct (“Code of Conduct”).¹ A flow chart illustrating the process for complaints against Academic Senate faculty can be found in Attachment 1. A flow chart illustrating the process for complaints against non-Senate faculty can be found in Attachment 2.

These documents should be read in conjunction with the SVSH Policy, as well as applicable [APM provisions](#), including APM-015, [APM-016](#) (University Policy on Faculty Conduct and the Administration of Discipline), and [APM-150](#) (Non-Senate Appointees/Corrective Action and Dismissal), and applicable [Senate Bylaws](#), including Senate Bylaw 336 (procedures for disciplinary hearings) and Senate Bylaw 335 (procedures for considering grievances). The documents also incorporate recommendations issued by the Joint Committee of the Administration and the Senate, as accepted by President Napolitano.

Applicable definitions can be found in the SVSH Policy and are incorporated herein. Other definitions can be found in applicable APM sections and Senate Bylaws and are incorporated herein.

The SVSH Policy is available at <http://policy.ucop.edu/doc/4000385/SVSH>. The Faculty Code of Conduct (APM-015) is available at <http://www.ucop.edu/academic-personnel-programs/files/apm/apm-015.pdf>. APM-016 is available at <http://www.ucop.edu/academic-personnel-programs/files/apm/apm-016.pdf>. APM-150 is available at <http://ucop.edu/academic-personnel-programs/files/apm/apm-150.pdf>. All provisions of the APM are accessible at <http://www.ucop.edu/academic-personnel-programs/academic-personnel-policy/general-university-policy-regarding-academic-appointees/index.html>.

¹ For represented faculty who are covered by a Memorandum of Understanding with an exclusive bargaining agent, where there is a conflict with their collective bargaining agreement and this Investigation and Adjudication Framework, the collective bargaining agreement provision will apply. When the respondent is represented, please refer to the relevant complaint resolution, investigation, grievance, and disciplinary procedures contained in the represented respondent’s collective bargaining agreement in conjunction with this Framework.

I. REPORTING OPTIONS AND RESOURCES (Stage 0)

A. Reporting Options

Any person may make a report, including anonymously, of conduct prohibited under the SVSH Policy (“Prohibited Conduct”) to the Title IX Office, which on the Berkeley campus is named the Office for the Prevention of Harassment and Discrimination ([OPHD](#)). OPHD is responsible for receiving and responding to reports of Prohibited Conduct.

A person may also make a report to a Responsible Employee as defined by the SVSH Policy. The SVSH Policy requires a Responsible Employee who becomes aware of an incident of Prohibited Conduct to report it to the University by contacting OPHD.

While there is no time limit for reporting, reports of Prohibited Conduct should be brought forward as soon as possible.

A complainant may choose to make a report to the University and may also choose to make a report to law enforcement. A complainant may pursue either or both of these options at the same time. Anyone who wishes to report to law enforcement can contact the UC Police Department.

B. Confidential Resources

The University offers access to confidential resources for individuals who have experienced Prohibited Conduct and are seeking counseling, support or information about how to make a report to the University. Confidential Resources are defined pursuant to the SVSH Policy and include individuals who receive reports in their confidential capacity such as advocates in the [PATH to Care Center](#), as well as licensed counselors (e.g., [Be Well At Work/Employee Assistance](#), [Counseling and Psychological Services \(CAPS\)](#), and [Social Services](#)), the [Staff Ombuds Office](#), and the [Ombuds Office for Students and Postdoctoral Appointees](#).

These employees can provide confidential advice and counseling without that information being disclosed to OPHD or law enforcement, unless there is a threat of serious harm to the individual or others or a legal obligation that requires disclosure (such as suspected abuse of a minor).

II. INITIAL ASSESSMENT (Stage 1)

Upon receipt of a report of or information about alleged Prohibited Conduct, OPHD will make an initial assessment in accordance with the SVSH Policy, which shall include making an immediate assessment concerning the health and safety of the complainant and the campus community.

A. Interim Measures

The University will also consider and take interim measures as appropriate to ensure the safety, well-being and equal access to University programs and activities of its students and employees. Interim measures include, but are not limited to, the following: no contact orders; housing assistance; academic support; and counseling.

Involuntary leave of a Senate faculty respondent may be imposed in accordance with APM-016. Investigatory leave of a non-Senate faculty respondent may be imposed in accordance with APM-150.

B. Written Rights & Options

OPHD will ensure that the complainant, if their identity is known, is provided a written explanation of rights and available options as outlined in the SVSH Policy, including:

1. How and to whom to report alleged violations;
2. Options for reporting to and/or notifying law enforcement and campus authorities;
3. Information regarding confidential resources;
4. The rights of complainants regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by criminal or civil courts;
5. The importance of preserving evidence that may assist in proving that a criminal offense occurred or in obtaining a protection order;
6. Counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, and other services available both within the institution and the community; and
7. Options for, and available assistance to, a change to academic living, transportation, and working situations, if the complainant requests and if such options are reasonably available—regardless of whether the complainant chooses to report alleged conduct to law enforcement.

III. INVESTIGATING AND RESOLVING REPORTS OF PROHIBITED CONDUCT (Stage 1)

Provided the University has sufficient information to respond, and in accordance with the SVSH Policy, the University may resolve reports of Prohibited Conduct by Alternative Resolution or Formal Investigation. Throughout the resolution process, the complainant and the respondent may be accompanied by an advisor. In addition, the University will offer to provide access to resources and information for complainants and respondents.

A. Alternative Resolution

After a preliminary inquiry into the facts, OPHD may initiate an Alternative Resolution in accordance with the [SVSH Policy](#).

B. Formal Investigation

In cases where Alternative Resolution is inappropriate or unsuccessful, OPHD may conduct a Formal Investigation, as contemplated in the SVSH Policy.

1. Notification to Chancellor

OPHD will notify the Chancellor and the Vice Provost for the Faculty when a Formal Investigation is commenced against a faculty respondent. OPHD will be sensitive in their communication to protect the neutrality of the Chancellor and the Vice Provost for the Faculty, as well as the privacy of the complainant and the respondent.

Thereafter, OPHD will regularly communicate with the Chancellor and the Vice Provost for the Faculty regarding the status of the Formal Investigation.

2. Notice of Charges

When a Formal Investigation will be conducted, OPHD will send written notice of the charges to the complainant and respondent.

The written notice will include:

- a. A summary of the allegations and potential violations of the SVSH Policy;
- b. The purpose of the investigation;
- c. A statement that the investigative report, when issued, will make factual findings and a determination whether there has been a violation of the SVSH Policy;
- d. A statement that the findings under the SVSH Policy will be based on the preponderance of the evidence standard and that a finding of a violation of the SVSH Policy will establish probable cause under APM-015;
- e. A summary of the Title IX and faculty discipline process, including the expected timeline;
- f. A summary of the rights of the complainant and respondent, including the right to an advisor;
- g. A description of the resources available to complainant and respondent;
and
- h. An admonition against intimidation or retaliation.

3. Investigative Process

OPHD will designate an investigator to conduct a fair, thorough, and impartial investigation.

a. Overview:

During the investigation, the complainant and the respondent will be provided an equal opportunity to meet with the investigator, submit information, and identify witnesses who may have relevant information.

The investigator will meet separately with the complainant, the respondent, and the third party witnesses who may have relevant information, and will gather other available and relevant information. The investigator may follow up with the complainant or the respondent as needed to clarify any inconsistencies or new information gathered during the course of the investigation.

Disclosure of facts to persons interviewed will be limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation may be asked to maintain confidentiality when essential to protect the integrity of the investigation.

The complainant or the respondent may have an advisor present when personally interviewed and at any related meeting. Other witnesses may have a representative present at the discretion of the investigator or as required by University policy or collective bargaining agreement.

b. Coordination with Law Enforcement:

When a law enforcement agency is conducting its own investigation into the alleged conduct, OPHD will make every effort to coordinate their fact-finding efforts with the law enforcement investigation. At the request of law enforcement, the OPHD investigation may be delayed temporarily to meet specific needs of the criminal investigation.

4. Investigation Report and Finding

Following the conclusion of its investigation, OPHD will prepare a written report. The written investigation report will include a statement of the allegations and issues, the positions of the parties, and a summary of the evidence.

If the complainant or the respondent offered witnesses or other evidence that was not relied upon by the investigator, the investigation report will explain why it was not relied upon.

The investigation report will include findings of fact and a determination regarding whether, applying the preponderance of the evidence standard,

there is sufficient evidence to conclude that the respondent violated the SVSH Policy.

A finding that the respondent violated the SVSH Policy will establish probable cause as defined in the Code of Conduct. ([APM-015](#) at III.A.4.)

5. Notice of Investigation Outcome

Upon completion of the OPHD investigation report, OPHD will send to the complainant and the respondent a written notice of investigation outcome regarding whether a violation of the SVSH Policy was found. The notice of investigation outcome will generally be accompanied by a copy of the investigation report, which may be redacted as necessary to protect privacy rights.

OPHD will also send the notice of investigation outcome and accompanying investigation report to the Vice Provost for the Faculty.

The notice of investigation outcome will include:

- a. A statement of whether a preponderance of the evidence demonstrated that respondent violated the SVSH Policy;
- b. An admonition against intimidation or retaliation;
- c. An explanation of any interim measures that will remain in place;
- d. A statement that the complainant and respondent have an opportunity to respond in writing and/or in person to the Vice Provost for the Faculty; and
- e. A statement indicating whether it appears that further investigation by the Vice Provost for the Faculty or other appropriate body may be necessary to determine whether other violations of the Code of Conduct occurred, separate from any allegations of Prohibited Conduct that were investigated under the SVSH Policy.

In addition, if the investigation determined that the faculty respondent violated the SVSH Policy, the notice of investigation outcome will also include:

- a. A statement that the finding that respondent violated the SVSH Policy constitutes a finding of probable cause as defined in APM-015;
- b. For matters involving Senate faculty respondents, a description of the process for deciding whether and what discipline to impose, including a statement that the Vice Provost for the Faculty will engage the Peer Review Committee to advise on appropriate resolution, which may include pursuing discipline in accordance with APM-016;
- c. For matters involving non-Senate faculty respondents, a description of the process for deciding whether and what discipline to impose, including a statement that the Vice Provost for the Faculty will consult with the

Academic Personnel Office to advise on appropriate resolution, which may include corrective action or termination in accordance with APM-150;

- d. A statement of the anticipated timeline and a statement that both complainant and respondent will be informed of the final resolution of the matter.

6. Timeframe for Completion of Investigation; Extension for Good Cause

The notice of investigation outcome and accompanying investigation report will be issued promptly, typically within sixty (60) to ninety (90) business days of initiation of the Formal Investigation, unless extended by the Title IX Officer for good cause, with written notice to the complainant and the respondent of the reason for the extension and the projected new timeline.

OPHD will keep the complainant and the respondent regularly informed concerning the status of the investigation.

IV. ASSESSMENT AND CONSULTATION (Stage 2)

The Vice Provost for the Faculty has the authority and responsibility to decide what action to take in response to the findings of the OPHD investigation report. The Vice Provost for the Faculty may determine that additional investigation is required to determine whether other Code of Conduct violations occurred, but will not reinvestigate the allegations of Prohibited Conduct investigated by OPHD. The Vice Provost for the Faculty may consult with OPHD, the Academic Personnel Office, or other appropriate entities at any time during the decision-making process.

A. Opportunity to Respond

The Vice Provost for the Faculty will offer the complainant and the respondent an opportunity to respond to the notice of investigation outcome and accompanying investigation report, either through an in-person meeting with the Vice Provost for the Faculty, a written statement to the Vice Provost for the Faculty, or both.

The purpose of this response is not to challenge the factual findings in the OPHD investigation report or present new evidence, but to provide the complainant and the respondent with an opportunity to express their perspectives and address what outcome they wish to see.

B. Peer Review Committee for Senate Faculty

In the event that the OPHD investigation finds a Senate faculty respondent responsible for violating the SVSH Policy, the Vice Provost for the Faculty will engage the campus Peer Review Committee to advise on appropriate resolution.

The Peer Review Committee, appointed by the Chancellor in consultation with the Academic Senate, will advise the Vice Provost for the Faculty regarding how to resolve the matter, including whether the Vice Provost for the Faculty should

pursue a formal charge for violation of the Code of Conduct or pursue an early resolution. The Peer Review Committee should also provide advice on the appropriate discipline or other corrective or remedial measures.

The Peer Review Committee will be engaged in all cases where the OPHD investigation has found a Senate faculty respondent has violated the SVSH Policy.

C. Consultation with Academic Personnel for Non-Senate Faculty

In the event that the OPHD investigation finds a non-Senate faculty respondent responsible for violating the SVSH Policy, the Vice Provost for the Faculty will consult with the Academic Personnel Office, depending on what form of consultation the campus decided to employ. Such consultation, as decided by the campus, will occur in all cases where the OPHD investigation has found that the non-Senate faculty respondent has violated the SVSH Policy.

D. Title IX Officer Consultation for Senate and Non-Senate Faculty

In all cases where the OPHD investigation finds a Senate or non-Senate faculty respondent responsible for violating the SVSH Policy, the Vice Provost for the Faculty will consult with the campus Title IX Officer on how to resolve the matter, including the appropriate discipline or other corrective measures.

V. DECISION ON SANCTIONS FOR SENATE FACULTY (Stage 3)

A. Decision by the Vice Provost for the Faculty

Following consultation with the Peer Review Committee and Title IX Officer, in accordance with APM-016, the Vice Provost for the Faculty, who is the Chancellor's designee in these matters, will decide what action to take to resolve the matter.

As stated in APM-015, "The Chancellor must initiate related disciplinary action by delivering notice of proposed action to the respondent no later than three years after the Chancellor is deemed to have known about the alleged violation." As further stated in APM-015, "[f]or an allegation of sexual violence or sexual harassment, the Chancellor is deemed to know about an alleged violation of the Faculty Code of Conduct when the allegation is first reported to any academic administrator at the level of department chair or above or the campus Title IX Officer." (APM-015, Part III, A.3.)

1. No Formal Discipline

In the event the Vice Provost for the Faculty determines to resolve the matter without taking any formal disciplinary action, the Vice Provost for the Faculty will promptly communicate this decision and its rationale to both the complainant and the respondent.

2. Early Resolution

The Vice Provost for the Faculty can enter into an early resolution with the respondent in accordance with APM 016. An early resolution can be achieved at any time prior to the final imposition of discipline.

Subsequent to the respondent agreeing to the terms of the early resolution, the Vice Provost for the Faculty will promptly inform complainant of those terms, including any discipline or other corrective or remedial measures, and the rationale for these terms.

3. Charge Filed with Academic Senate Committee on Privilege & Tenure

The Vice Provost for the Faculty can take steps to propose discipline and file a charge with the Academic Senate's Committee on Privilege & Tenure without first pursuing early resolution, or if respondent does not agree to early resolution.

The Vice Provost for the Faculty will promptly inform complainant that the charge has been filed.

B. Timeframe for Decision; Extension for Good Cause

The Vice Provost for the Faculty should implement their decision promptly, typically within 40 business days of receipt of the notice of investigation outcome and accompanying investigation report. If the matter has not been otherwise resolved within forty (40) business days, a charge will be filed with the Academic Senate's Committee on Privilege & Tenure. A charge will not be held in abeyance or suspended while an early resolution is being pursued or finalized.

Extensions to this timeline may be granted by the Chancellor for good cause with written notice to the complainant and respondent stating the reason for the extension and the projected new timeline.

C. Process Following the Filing of a Senate Charge

The procedures following the filing of a charge with the Academic Senate's Committee on Privilege & Tenure are set forth in APM-015 and APM-016, Senate Bylaw 336, and other applicable Senate bylaws, as well as divisional bylaws on each campus.

The OPHD investigation report will be accepted as evidence in the Privilege & Tenure hearing. The Vice Provost for the Faculty will ensure that complainant and respondent receive regular updates regarding the status of the proceedings.

Within 14 calendar days of receiving the recommendation from the Academic Senate's Committee on Privilege & Tenure, in accordance with APM-016 and other applicable procedures, the Chancellor will make a final decision regarding discipline, unless the decision involves curtailment of emeritus status or dismissal

for a faculty who has tenure or security of employment. As stated in [APM-016](#), “Authority for the denial or curtailment of emeritus status of a faculty member rests with the President, on recommendation of the Chancellor” and “Authority for dismissal of a faculty member who has tenure or security of employment rests with The Regents, on recommendation of the President, following consultation with the Chancellor” (APM-016, Section II.6.) Extensions to this timeline may be granted for good cause with written notice to the complainant and respondent stating the reason for the extension and the projected new timeline.

The complainant and the respondent will be promptly informed of the decision regarding discipline and its rationale.

VI. DECISION ON SANCTIONS FOR NON-SENATE FACULTY (Stage 3)

A. Decision by the Vice Provost for the Faculty

Following consultation with the Title IX Officer and Academic Personnel Office, and in accordance with APM-150, the Vice Provost for the Faculty shall decide what action to take to resolve the matter.

As stated in APM-015, “The Chancellor must initiate related disciplinary action by delivering notice of proposed action to the respondent no later than three years after the Chancellor is deemed to have known about the alleged violation.” As further stated in APM-015, “[f]or an allegation of sexual violence or sexual harassment, the Chancellor is deemed to know about an alleged violation of the Faculty Code of Conduct when the allegation is first reported to any academic administrator at the level of department chair or above or the campus Title IX Officer.” (APM-015, Part III, A.3.)

1. No Disciplinary Action

In the event the Vice Provost for the Faculty determines to resolve the matter without taking any disciplinary or corrective action, the Vice Provost for the Faculty will promptly communicate this decision and its rationale to both the complainant and respondent.

2. Informal Resolution

The Vice Provost for the Faculty can pursue an informal resolution in accordance with APM-150, which may include discipline and/or other corrective or remedial measures. Informal resolution can be achieved at any time prior to the final imposition of dismissal or corrective action.

Subsequent to respondent agreeing to the terms of an informal resolution, the Vice Provost for the Faculty will promptly inform complainant of those terms, including any discipline or other corrective or remedial measures, and the rationale for these terms.

3. Notice of Intent

The Vice Provost for the Faculty can issue a notice of intent instituting dismissal or other corrective action in accordance with APM-150.

B. Timeframe for Decision; Extension for Good Cause

The Vice Provost for the Faculty should implement their decision promptly, typically within forty (40) business days of receipt of the notice of investigation outcome and accompanying investigation report. If the matter has not been otherwise resolved within forty (40) business days, a notice of intent shall be issued.

Extensions to this timeline may be granted by the Chancellor for good cause with written notice to the complainant and respondent stating the reason for the extension and the projected new timeline.

C. Process Following the Provision of a Written Notice of Intent.

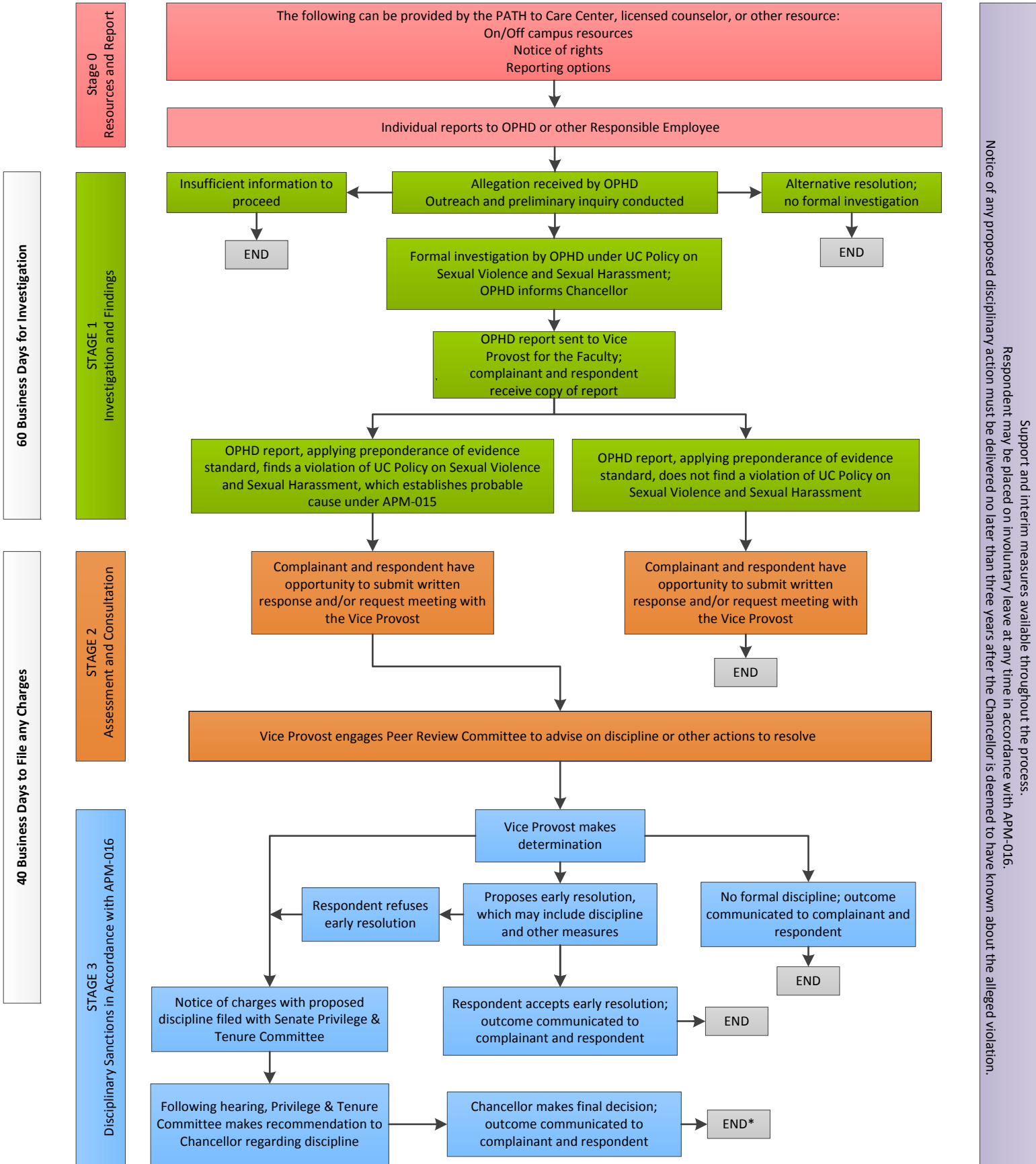
The procedures following the provision of a notice of intent are set forth in APM-150.

Should the respondent submit a grievance under [APM-140](#) alleging a violation of APM-150 or otherwise challenging an administrative decision described in this process, the Vice Provost for the Faculty will ensure that both the complainant and respondent receive regular updates regarding the status of the grievance.

As stated in APM-140, “When a non-Senate faculty member receives notice of termination before the expiration of his or her appointment, he or she may select as a grievance mechanism either APM-140, as described in this policy, or Section 103.9 of the Standing Orders of The Regents (S.O. 103.9), the procedures of which are described in Academic Senate Bylaw 337. In selecting either APM-140 or S.O. 103.9, the non-Senate faculty member waives the right to invoke the other mechanism to review the same grievance.” (APM-140-14e.)

Subsequent to any final decision, the Vice Provost for the Faculty will promptly inform the complainant and the respondent of the decision, including any final decision on discipline and its rationale.

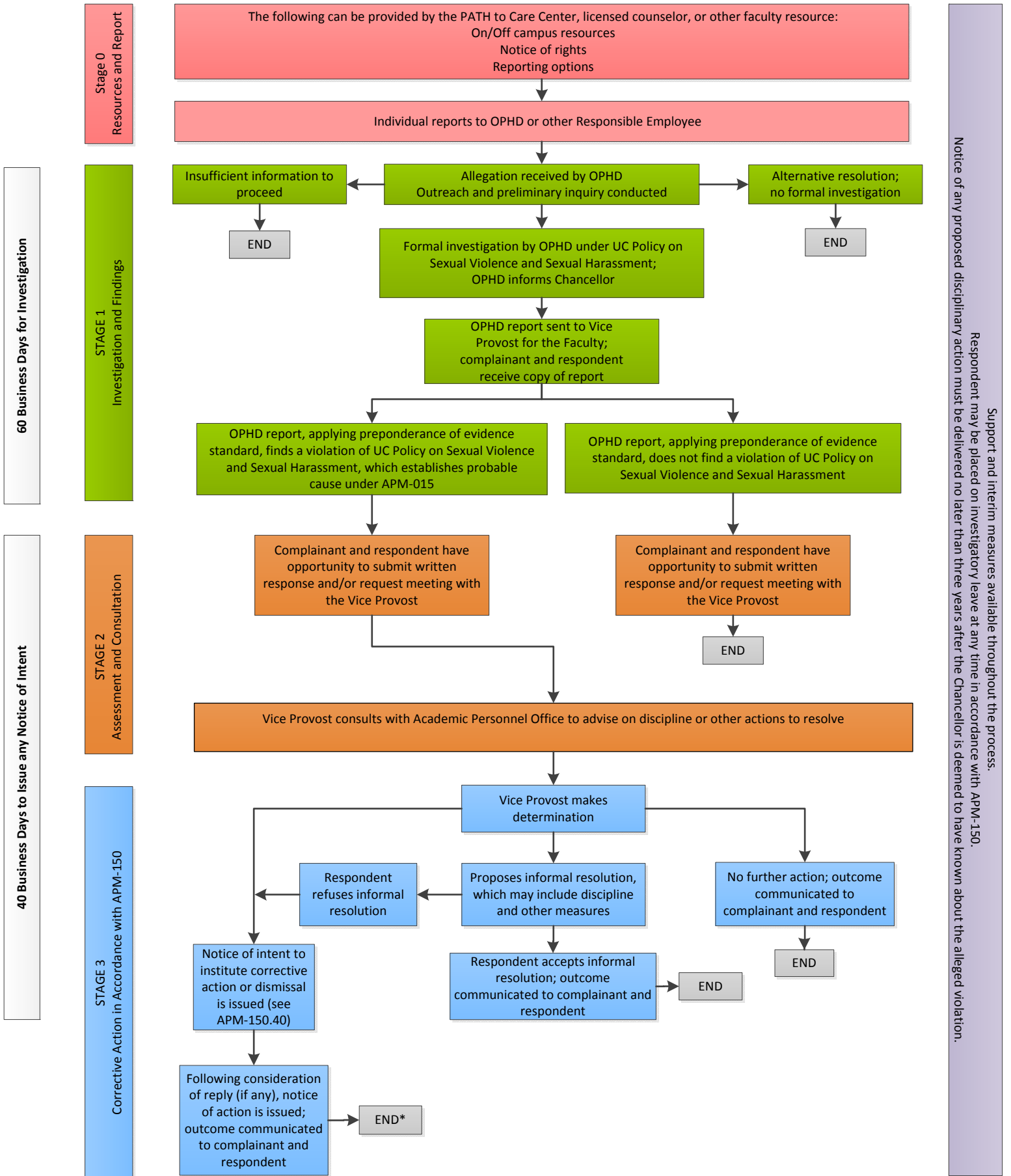
UNIVERSITY OF CALIFORNIA
SENATE FACULTY ADJUDICATION MODEL – PROCESS FLOW CHART



See APM-016 regarding denial of emeritus status or dismissal of faculty respondent with tenure or security of employment

Support and interim measures available throughout the process.
Respondent may be placed on involuntary leave at any time in accordance with APM-016.
Notice of any proposed disciplinary action must be delivered no later than three years after the Chancellor is deemed to have known about the alleged violation.

UNIVERSITY OF CALIFORNIA
NON-SENATE (NON-REPRESENTED) FACULTY ADJUDICATION MODEL – PROCESS FLOW CHART



*Respondent may grieve decision pursuant to APM-140

Support and interim measures available throughout the process. Respondent may be placed on investigatory leave at any time in accordance with APM-150. Notice of any proposed disciplinary action must be delivered no later than three years after the Chancellor is deemed to have known about the alleged violation.

60 Business Days for Investigation

40 Business Days to Issue any Notice of Intent

Stage 0
Resources and Report

STAGE 1
Investigation and Findings

STAGE 2
Assessment and Consultation

STAGE 3
Corrective Action in Accordance with APM-150