

**UC Berkeley Center for Student Conduct  
Sexual Misconduct Cases 2016**

<b>Total Student Conduct Cases</b> (Student conduct cases involve a range of matters including, but not limited to, academic dishonesty, alcohol/drug issues, theft, physical abuse, hazing & sexual misconduct).		1/1/16 - 7/31/16	08/1/16- 12/31/16	1/1/16- 12/31/16					
		481	365	846					
<b>Cases Involving Sexual Misconduct</b> (“Sexual Misconduct” is defined later in this document).	Total Sexual Misconduct Cases Resolved	12	11	23					
	# of Students Found Responsible	9	8	17					
	<i># of Students Dismissed</i>	2	7	9					
	<i># of Students Suspended</i>	6	2	8					
	<i># of Other Sanctions Issued</i> ( <i>Disciplinary Probation &amp; Warnings</i> )	1	3	4					
	# of Students Found Not Responsible for Violating Policy	3	7	10					
	# of Notifications Issued (“Notification” defined later in document)	0	0	0					
<b>Case Resolution Type</b>	Formal Hearings	5	1	6					
	Informal Resolutions	4	0	4					
	No Findings****	2	0	2					
	Case Appealed by Either Party**	2	3	5					
	Sexual Harassment/Stalking	6	5	11					

<b>Sexual Misconduct Type</b>	Dating/Domestic Violence	1	1	2					
	Non-Consensual Sexual Contact	1	4	5					
	Non-Consensual Sexual Intercourse***	3	9	12					
<b>Active Investigation Pending in Office for the Prevention of Harassment and Discrimination (Title IX Office)</b>		16	18	18					
<b>Active Adjudication Pending in Center for Student Conduct</b>		4	1	1					

\*Note that this column represents a seven month period, unlike the other columns that represent a full calendar year.

\*\*Complainant rights to appeal began in September 2013

\*\*\*The university's definition of "non-consensual sexual intercourse" includes conduct well below the legal/criminal standard for rape, and includes penetration of any kind, including oral sex.

\*\*\*\*Case resulted in a no finding from CSC per the recommendation from OPHD based on the new adjudication model. New model started Spring 2016.

## **Applicable Policies and Definitions Regarding Sexual Misconduct**

### **The University of California Policy on Sexual Harassment and Violence**

**The Policy Defines Sexual Harassment as:** Unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment is conduct that 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. Sexual harassment includes sexual violence (see definition below). 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.

**The Policy Defines Sexual Violence as:** Physical sexual acts engaged without the consent of the other person or when the other person is unable to consent to the activity. Sexual violence includes sexual assault, rape, battery, and sexual coercion; domestic violence; dating violence; and stalking.

**The Policy Defines Sexual Assault as:** Physical sexual activity is engaged without the consent of the other person or when the other person is unable to consent to the activity. The activity or conduct may include physical force, violence, threat, or intimidation, ignoring the objections of the other person, causing the other person's intoxication or incapacitation through the use of drugs or alcohol, or taking advantage of the other person's incapacitation (including voluntary intoxication).

**The Policy Defines Domestic Violence as:** Abuse committed against an adult or a minor who is a spouse or former spouse, cohabitant or former cohabitant, or someone with whom the abuser has a child, has an existing dating or engagement relationship, or has had a former dating or engagement relationship.

**The Policy Defines Dating Violence as:** Abuse committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

**The Policy Defines Consent as:**

- Consent is *informed*. Consent is an affirmative, unambiguous, and conscious decision by each participant to engage in mutually agreed upon sexual activity.
- Consent is *voluntary*. It must be given without coercion, force, threats, or intimidation. Consent means positive cooperation in the act or expression of intent to engage in the act pursuant to an exercise of free will.
- Consent is *revocable*. Consent to some form of sexual activity does not imply consent to other forms of sexual activity. Consent to sexual activity on one occasion is not consent to engage in sexual activity on another occasion. A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be mutual consent to engage in sexual activity. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Once consent is withdrawn, the sexual activity must stop immediately.
- Consent cannot be given when a person is *incapacitated*. A person cannot consent if s/he is unconscious or coming in and out of consciousness. A person cannot consent if s/he is under the threat of violence, bodily injury or other forms of coercion. A person cannot consent if his/her understanding of the act is affected by a physical or mental impairment.

**The Policy Defines Incapacitation as:** Physical and/or mental inability to make informed, rational judgments. States of incapacitation include, but are not limited to, unconsciousness, sleep, and blackouts. Where alcohol or drugs are involved, incapacitation is defined with respect to how the alcohol or other drugs consumed affects a person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments. Being intoxicated by drugs or alcohol does not diminish one's responsibility to obtain consent. The factors to be considered when determining whether consent was given include whether the accused knew, or whether a reasonable person should have known, that the complainant was incapacitated.

**The Policy Defines Stalking as:** Behavior in which a person repeatedly engages in conduct directed at a specific person that places that person in reasonable fear of his or her safety or the safety of others.

**Berkeley Campus Code of Student Conduct**

**Case:** A case is defined as an incident in which the Center for Student Conduct notifies a student or student organization that their alleged behavior may be in violation of the Code of Student Conduct.

**Active OPHD Investigation Pending:** The incident is currently pending an investigation in the Office for the Prevention of Harassment and Discrimination.

**Active CSC Adjudication Pending:** A student/student organization has been charged with violating the Code of Student Conduct but the case has not yet been resolved.

**Respondent:** The student or student organization that has been charged with violating the Code of Student Conduct.

**Complainant:** The person who makes a sexual misconduct complaint.

**Sexual Misconduct:** In order for a case to be considered "sexual misconduct" by the Center for Student Conduct, the respondent must be charged with violating one or more of the following policies within the Code of Student Conduct:

- **102.08 - Physical Abuse:** Physical abuse including but not limited to rape, sexual assault, sex offenses, and other physical assault; threats of violence; or other conduct that threatens the health or safety of any person.
- **102.09 - Sexual, Racial, and Other Forms of Harassment:** Harassment is defined as conduct that is so severe and/or pervasive, and objectively offensive, and that so substantially impairs a person's access to University programs or activities, that the person is effectively denied equal access to the University's resources and opportunities on the basis of the person's race, color, national or ethnic origin, alienage, sex, religion, age, sexual orientation, gender identity, marital status, veteran status, physical or mental disability, or perceived membership in any of these classifications.
- **102.10 Stalking:** Stalking behavior in which a student repeatedly engages in a course of conduct directed at another person and makes a credible threat with the intent to place that person in reasonable fear for the person's safety, or the safety of the person's family; where the threat is reasonably determined by the University to seriously alarm, torment, or terrorize the person; and where the threat is additionally determined by the University to serve no legitimate purpose.
- **102.25 - Expectation of Privacy:** Making a video recording, audio recording, taking photographs, or streaming audio/video of any person in a location where the person has a reasonable expectation of privacy, without that person's knowledge and express consent. Looking through a hole or opening, into, or otherwise viewing, by means of any instrumentality, the interior of a private location without the subject's knowledge and express consent. Photographs and recordings made in private locations of sexual activity or that contain nudity, may not be posted online or otherwise shared or distributed in any manner without the knowledge and express consent of all recorded parties, even if the photograph or recording was originally made with the knowledge and express consent of those parties. Making a video recording, audio recording, or streaming audio/video of private, non-public conversations and/or meetings, without the knowledge and express consent of all recorded parties. These provisions do not extend to public events or discussions, nor to lawful official law or policy enforcement activities. These provisions may not be utilized to impinge upon the lawful exercise of constitutionally protected rights of freedom of speech or assembly.

### ***Sanctions as a Result of Finding of Responsibility***

- **105.01(a) Non-Reportable Warning:** A warning could be in the form of a non-reportable warning, which is notice that subsequent violations will result in more serious sanctions. A non-reportable warning may be issued when the student's action formally constitutes a violation, but the circumstances and degree of severity of the action do not warrant the creation of a conduct record. Once issued, records of non-reportable warnings are maintained only for in-house reference in case of subsequent violations.
- **105.01(b) Reportable Warning:** A warning could be in the form of a reportable warning, which is notice, maintained as part of the student's conduct record.
- **105.03 Disciplinary Probation:** A status imposed for a specified period of time during which a student must demonstrate conduct that conforms to University standards of conduct. Conditions restricting the student's privileges or eligibility for activities may be imposed. Misconduct during the probationary period or violation of any conditions of the probation may result in further disciplinary action, normally in the form of Suspension or Dismissal. Disciplinary probation will typically be issued in response to more egregious violations and recurring serious violations to communicate to the student that further violations will most likely lead to temporary or permanent removal from campus.
- **105.05 Suspension:** Termination of student status at the campus for a specified period of time with reinstatement thereafter certain, provided that the student has complied with all conditions imposed as part of the suspension and provided that the student is otherwise qualified for reinstatement. Suspensions will typically be issued in cases of extraordinarily serious first-time violations and for subsequent violations of a serious degree after a warning or disciplinary probation has been administered. Violation of the conditions of Suspension or of University policies or campus regulations during the period of Suspension may be cause for further disciplinary action, normally in the form of Dismissal. Students who have been suspended must reapply for admission to the University in order to resume their studies.
- **105.06 Dismissal:** Termination of student status for an indefinite period. Readmission to the University requires the specific approval of the Chancellor of the campus to which a dismissed student has applied. Dismissal will typically be used in cases that cannot be appropriately addressed with a suspension because the recurring nature of multiple violations or the extraordinary caliber of a single violation demonstrates

that the student does not deserve an opportunity to return to campus. Readmission after dismissal may be granted only under exceptional circumstances. Dismissal is a termination of a student's status at all UC campuses.

### ***Other University Action***

- **Interim Responses to Sexual Misconduct Complaints:** An interim suspension or other interim protections and remedies may be imposed pursuant to the Code of Conduct during investigation of a Sexual Misconduct Complaint and/or prior to the completion of the conduct process. Examples of interim responses include, but are not limited to, interim suspensions, no contact directives, and accommodations related to housing or academics.
  - **Interim Suspension:** Exclusion from classes, from other specified activities, from areas of the campus, or from the entire campus, as set forth in a Notice of Interim Suspension issued by the Center for Student Conduct. A student will be restricted only to the minimum extent necessary and when there is reasonable cause to believe that the student's participation in University activities or presence at specified areas of the campus will lead to physical abuse, threats of violence, or conduct that threatens the health or safety of any person on University property or at official University functions, or other disruptive activity incompatible with the orderly operation of the campus.
  - **No Contact Directive:** A No Contact Directive is regularly imposed upon a receipt of a report of sexual misconduct and remains in place indefinitely regardless of the investigation outcome.
- **Notification:** As an alternative to pursuing charges against a student who has allegedly violated the Code, the Center for Student Conduct may issue a written notification to a student that the student's alleged behavior, if it had actually occurred, would have violated University policy, campus regulations or the Code and would be subject to the conduct process. The Notification is not a determination that the allegations against the student are true, does not result in a conduct record, and therefore is not appealable. However, the prior alleged behavior as detailed in the Notification may be introduced in a subsequent conduct process for the purpose of establishing that the student was warned that such behavior violates University policy, campus regulations or the Code.
- **Deferral or Withholding of Degree:** An academic degree may be deferred when disciplinary proceedings are pending or when a student's full compliance with disciplinary sanctions is pending, or withheld when academic dishonesty or fraud affected the acquisition of the student's degree (see Recommendation to Revoke Degree Previously Conferred, section II.D.2.f, for further information regarding this procedure).

### ***Resolution Type***

**Formal Hearing:** Panel and Administrative hearing cases are presented to hearing panels comprised of members of the Committee on Student Conduct or the Independent hearing Officer, which act as the hearing body and make a determination regarding the alleged violation(s).

**Informal Resolution with CSC Staff:** Students charged with Code violations are offered the opportunity to meet with the Center for Student Conduct to resolve their case without a formal hearing.

**Appeals:** Both the responding student and complainant can appeal the outcome of the case regardless if the case is resolved through a formal hearing or informal resolution with CSC staff.