

**UC Berkeley Center for Student Conduct**  
**Sexual Violence and Sexual Harassment Cases**  
**Under 1/1/2016 UC Policy on Sexual Violence and Sexual Harassment**  
**January 1, 2016- December 31, 2018**

<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 violence and sexual harassment).		<b>01/01/16-06/30/16</b>	<b>07/01/16-12/31/16</b>	<b>01/01/17-06/30/17</b>	<b>07/01/17-12/31/17</b>	<b>1/01/18-06/30/18</b>	<b>07/01/18-12/31/18</b>
		389	471	258	256	306	501
<b>Cases Involving Sexual Violence and Sexual Harassment (SVSH)</b> (SVSH is defined later in this document).	Total Sexual Misconduct Cases Resolved	1	11	15	12	11	6
	Total Students Found Responsible	1	2	11	4	4	2
	<i>Students Dismissed</i>	0	0	1	3	0	0
	<i>Students Suspended*</i>	1	1	10	0	2	2
	<i>Other Sanctions Issued (Disciplinary Probation or Warning)</i>	0	1	0	1	2	0

	Total Cases Dropped	0	0	2	0	1	0
	Total Students Found Not Responsible for Violating SVSH Policy	0	9	2	5	6	4
<b>Case Resolution Type</b>	Total Cases Resolved Without an Appeal	0	11	9	11	7	1
	Total Cases Appealed	1	0	6	2	3	5
	<i>Appeals Submitted**</i>	1	0	7	2	3	5
	Sexual Assault - Penetration (SAP)	1	3	6	1	4	2
	<i>SA + Aggravating Factors</i>	1	0	4	7	1	1
	Sexual Assault - Contact (SAC)	0	2	2	4	2	2

<b>Sexual Misconduct Type</b>	SAC + Aggravating Factors	0	0	1	0	0	1
	Relationship Violence: Dating Violence	0	1	3	1	1	0
	Relationship Violence: Domestic Violence	0	0	0	0	0	0
	Stalking	0	4	2	1	1	1
	Sexual Harassment	0	8	2	0	2	2
	Other Prohibited Behavior	0	0	2	0	0	0
	Retaliation	0	0	1	0	1	1
<b>Active Investigation Pending in Office for the Prevention of Harassment and Discrimination (Title IX Office)</b>	0	0	20	17	10	18	
<b>Active Adjudication Pending in Center for Student Conduct</b>	0	0	3	5	8	9	

\* Respondents found responsible who are suspended may receive disciplinary probation in addition to educational sanctions.

\*\*Includes all appeals submitted by the Respondent and/or Complainant(s).

## Applicable Policies and Definitions Regarding Sexual Violence and Sexual Harassment

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

[University of California, Berkeley Campus Code of Student Conduct](#)

[University of California, Berkeley - Procedures for Implementation of the Student Adjudication Model](#)

### Definitions:

**A. Respondent:** A person alleged to have engaged in Prohibited Conduct and about whom a report of sexual violence, sexual harassment, other prohibited behavior, or retaliation is made.

**B. Complainant:** Any person who files a report of sexual violence or sexual harassment or other prohibited behavior or retaliation or any person who has been the alleged subject of such Prohibited Conduct or retaliation

**C. Retaliation**

Retaliation includes threats, intimidation, reprisals, and/or adverse employment or educational actions against a person based on their report of Prohibited Conduct or participation in the investigation, report, remedial, or disciplinary processes provided for in this Policy.

**D. Prohibited Conduct**

**1. Sexual Violence:**

**a. Sexual Assault - Penetration:** Without the consent of the Complainant, penetration, no matter how slight, of the vagina, anus, or mouth by a penis; or the vagina or anus by any body part or object.

**b. Sexual Assault - Contact:** Without the consent of the Complainant, touching an intimate body part (genitals, anus, groin, breast, or buttocks) (i) unclothed or (ii) clothed.

**Note:** As this definition encompasses a broad spectrum of conduct, not all of which constitutes sexual violence. The Title IX Officer will determine whether the allegation should be treated as sexual violence or sexual harassment. (See FAQ #4 for more information)

**Note:** Sexual Assault—Penetration and Sexual Assault—Contact are aggravated when it includes the following:

- Overcoming the will of Complainant by:
- force (the use of physical force or inducing reasonable fear of immediate or future bodily injury);
- violence (the use of physical force to cause harm or injury);
- menace (a threat, statement, or act showing intent to injure);

- duress (a direct or implied threat of force, violence, danger, hardship, or retribution that is enough to cause a reasonable person of ordinary sensitivity, taking into account all circumstances including age and relationship, to do or submit to something that they would not otherwise do).
- deliberately causing a person to be incapacitated (through drugs or alcohol);
- Intentionally taking advantage of the other person's incapacitation (including voluntary intoxication).
- Recording, photographing, transmitting, or distributing intimate or sexual images without the prior knowledge and consent of the parties involved.

c. **Relationship Violence**

- d. **Dating Violence:** Conduct by a person who is or has been in a romantic or intimate relationship with the Complainant that intentionally, or recklessly, causes bodily injury to the Complainant or places the Complainant in reasonable fear of serious bodily injury. The nature of the relationship between the Complainant and Respondent is determined by the length, type, and frequency of interaction between them.
- e. **Domestic Violence:** Conduct by a current or former spouse or intimate partner of the Complainant; or a person with whom the Complainant shares a child in common, that intentionally, or recklessly, causes bodily injury to the Complainant or another, or places the Complainant or another in reasonable fear of serious bodily injury.
- f. **Stalking:** Repeated conduct directed at a Complainant (e.g., following, monitoring, observing, surveilling, threatening, communicating or interfering with property), of a sexual or romantic nature or motivation, that would cause a reasonable person to fear for their safety, or the safety of others, or to suffer substantial emotional distress. Stalking of a nonsexual nature is addressed by other University policies including but not limited to the Policy on Student Conduct and Discipline Section 102.10.

**2. Sexual Harassment:**

- a. Sexual Harassment is unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal or physical conduct of a sexual nature when:
- i. *Quid Pro Quo:* a person's submission to such conduct is implicitly or explicitly made the basis for employment decisions, academic evaluation, grades or advancement, or other decisions affecting participation in a University program; or
  - ii. *Hostile Environment:* such conduct is sufficiently severe or pervasive that it unreasonably denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment

or other programs and services of the University and creates an environment that a reasonable person would find to be intimidating or offensive.

- b. Consideration is given to the totality of the circumstances in which the conduct occurred. Sexual harassment may include incidents:
    - i. between any members of the University community, including faculty and other academic appointees, staff, student employees, students, coaches, residents, interns, and non-student or non-employee participants in University programs (e.g., vendors, contractors, visitors, and patients);
    - ii. in hierarchical relationships and between peers; and
    - iii. between individuals of any gender or gender identity.
  - c. This Policy shall be implemented in a manner that recognizes the importance of the rights to freedom of speech and expression and shall not be interpreted to prohibit expressive conduct that is protected by the free speech and academic freedom principles discussed in Section III.F.
- 3. Other Prohibited Behavior:**
- a. Invasions of Sexual Privacy
    - i. Without a person's consent, watching or enabling others to watch that person's nudity or sexual acts in a place where that person has a reasonable expectation of privacy;
    - ii. Without a person's consent, making photographs (including videos) or audio recordings, or posting, transmitting or distributing such recorded material depicting that person's nudity or sexual acts in a place where that person has a reasonable expectation of privacy; or
    - iii. Using depictions of nudity or sexual activity to extort something of value from a person.
  - b. Sexual intercourse with a person under the age of 18.
  - c. Exposing one's genitals in a public place for the purpose of sexual gratification.
  - d. Failing to comply with the terms of a no-contact order, a suspension of any length, or any order of exclusion issued under this Policy.

**Case:** A case is defined as an incident in which the Center for Student Conduct and the Office for the Prevention of Harassment and Discrimination jointly notify a student or student organization that their alleged behavior may be in violation of the Code of Student Conduct and the UC Policy on Sexual Violence and Sexual Harassment.

**Active Investigation Pending in Office for the Prevention of Harassment and Discrimination (Title IX Office):**

The responding student/student organization has been charged with violating the Code of Student Conduct and issued a Notice of Allegations. The case is currently pending an investigation in the Office for the Prevention of Harassment and Discrimination.

**Active Adjudication Pending in Center for Student Conduct (CSC):** The investigation in the Office for the Prevention of Harassment and Discrimination is completed and the investigative report is forwarded to CSC. CSC will determine whether the charges have been substantiated and policies have been violated and, if so, assess the disciplinary sanctions.

**Disciplinary Sanctions Resulting from a Finding of Responsibility**

**University disciplinary sanctions include, but are not limited to:**

**1. Dismissal from the University of California**

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.

**2. Suspension from the Campus**

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.

**3. 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

#### **4. Warning**

Written notice or reprimand to the student that a violation of specified University policies or campus regulations has occurred and that continued or repeated violations of University policies or campus regulations may be cause for further disciplinary action. A warning may be issued in instances of deliberate and serious violations as well as for repeat, non-egregious violations.

### **Appeals**

The Complainant and Respondent may contest the decision and/or the sanctions stated in the Case Outcome Letter by submitting an appeal. The appeal should identify the reason(s) why the complainant or respondent is challenging the outcome under one or more of the following grounds:

1. There was procedural error in the process that materially affected the outcome, such as the investigation was not fair, thorough or impartial;
2. The decision was unreasonable based on the evidence;
3. There is new, material information that was unknown and/or unavailable at the time the decision was made that should affect the outcome;
4. The disciplinary sanctions were disproportionate to the findings.

In addition to the student conduct cases resolved under the 2016 University of California SVSH Policy listed above from January 1, 2017 to June 30, 2018, the following cases were investigated under prior versions of the University of California SVSH policies and adjudicated through other procedures. These procedures are outlined in the University of California, Berkeley Student Code of Conduct.

<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).		<b>01/01/17-06/30/17</b>	<b>07/01/17-12/31/17</b>	<b>01/01/18-06/30/18</b>	<b>07/01/18-12/31/18</b>
<b>Cases Involving Sexual Misconduct</b> ("Sexual Misconduct" is defined later in this document).	Total Sexual Misconduct Cases Resolved	1	1	1	1
	# of Students Found Responsible	1	1	1	0
	<i># of Students Dismissed</i>	0	0	0	0
	<i># of Students Suspended</i>	0	1	1	0
	<i># of Other Sanctions Issued</i> (Disciplinary Probation & Warnings)	0	0	0	0
	# of Students Found Not	0	0	0	0

	Responsible for Violating Policy				
	# of Notifications Issued ("Notification" defined later in document)	0	0	0	0
<b>Case Resolution Type</b>	Formal Hearings	0	0	0	0
	Informal Resolutions	0	1	1	0
	Case Appealed by Either Party**	0	0	0	0
	Total Cases Dropped	1	0	0	1
<b>Sexual Misconduct Type</b>	Sexual Harassment/ Stalking	0	0	0	0
	Dating/ Domestic Violence	0	0	0	0
	Non-Consensual Sexual Contact	1	1	1	1
	Non-Consensual	0	0	0	0

	Sexual Intercourse***				
<b>Active Investigation Pending in Office for the Prevention of Harassment and Discrimination (Title IX Office)</b>		2	1	1	1
<b>Active Adjudication Pending in Center for Student Conduct</b>		2	1	0	0

**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 simply 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.

