

# Interim Sexual Violence and Sexual Harassment Student Adjudication Framework

(PACAOS – Appendix E) | March 2019

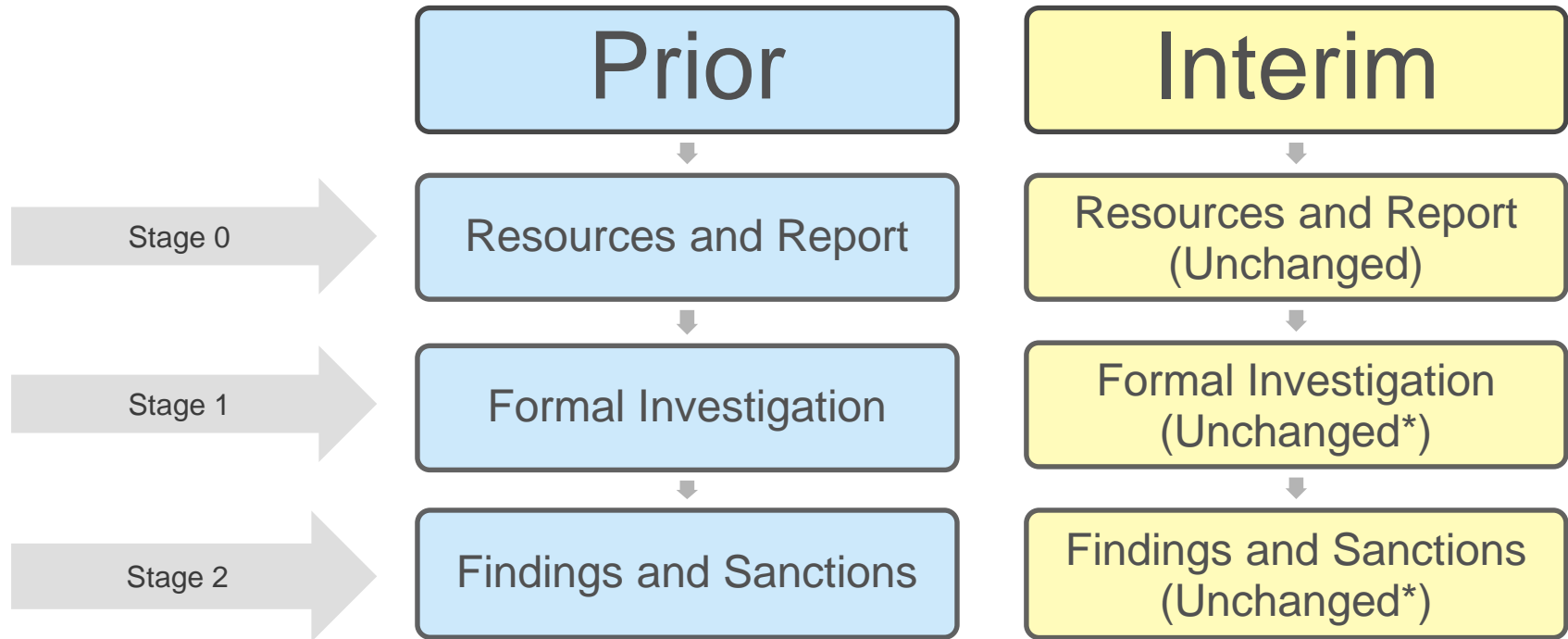
# California Court Ruling

- In January 2019, a California appellate court held, for the first time under California law, that colleges and universities in the state must provide live hearings to resolve sexual misconduct cases involving student respondents in which sanctions are severe and credibility of witnesses is a central issue.
- Since UC's current student adjudication process does not provide live hearings in all such cases, the University has made immediate changes to comply with this ruling.
- The March 1, 2019 issuance of an interim Appendix E - Sexual Violence and Sexual Harassment (SVSH) Student Adjudication Framework implements changes to address the court's ruling, while still protecting the parties involved and the integrity of the process.
- The interim Appendix E also includes clarifications to the policy, consistent with the changes proposed during the University's review and revision process initiated in spring 2018.

# Appendix E

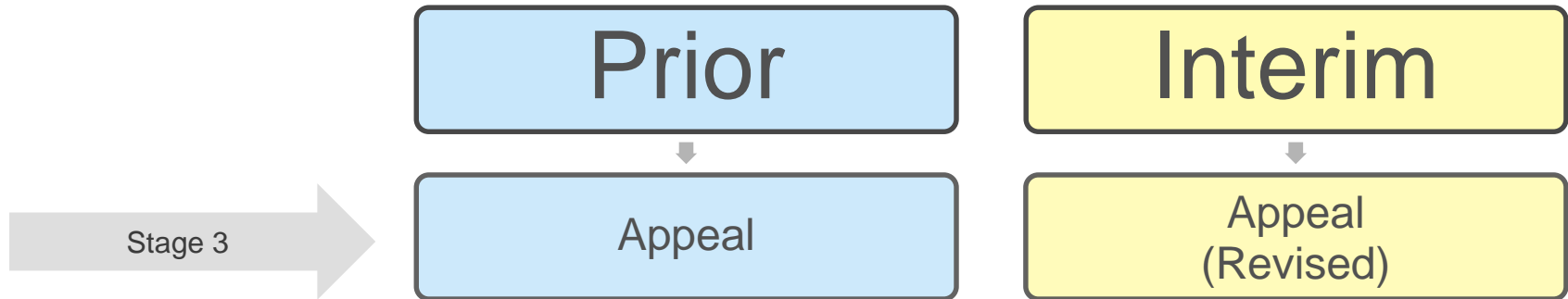
- The Appendix E process includes four stages:
  - Stage 0 – Resources Relating to SVSH and Report
  - Stage 1 – Investigation
  - Stage 2 – Findings and Sanctions
  - Stage 3 – Appeal
- The process for Stages 0, 1, and 2 remains largely the same in the interim Appendix E.
- To provide a hearing consistent with the court's requirement, the appeal process (Stage 3) has been revised in the interim Appendix E to provide a broad evidentiary hearing for cases involving suspension or dismissal.
- Appendix E already allowed either party to appeal the outcome of their cases with a possible hearing. Interim Appendix E expands the parties' rights to appeal in cases resulting in the Respondent's suspension or dismissal, by allowing the appeal to be made for any reason.

# Prior Process vs. Interim Process



\*While the process is unchanged, the timeframe to complete Stages 1 and 2 was extended by a total of 15 days.

# Prior Process vs. Interim Process



- Interim Appendix E expands the parties' rights to appeal in cases resulting in the Respondent's suspension or dismissal, by allowing the appeal to be made for any reason.

# Interim Appendix E – Appeal

## Opportunity to Appeal

- For Suspension/Dismissal Cases: either party may commence the appeal process by submitting an appeal and may appeal any case in which they seek to change the finding or sanction, for any reason.
- For all other cases: The prior appeal grounds apply. Parties may only commence the appeal process by submitting a request for an appeal on one or more of the four grounds:
  - 1) procedural error;
  - 2) decision was unreasonable;
  - 3) new information; and
  - 4) disciplinary sanctions were disproportionate to the findings.The appeal body will then determine whether to grant the appeal.

# Interim Appendix E - Hearing

**In the interim Appendix E, the procedures for the hearing remain unchanged in important ways:**

1. The investigation file from the Title IX investigator will still be entered into evidence at the hearing.
2. Parties will still be allowed to be visually or physically separated at the hearing, and allowed to participate in the hearing from separate physical locations, to make the experience less intimidating.
3. Cross-examination conducted by parties' lawyers or parties themselves is still not allowed. Instead, the appeal body will continue to ask the questions at the hearing, and may exclude questions it deems harassing, irrelevant or unduly repetitive.

# Department of Education's Proposed Title IX Rules

- The U.S. Department of Education published proposed Title IX rules in November 2018 that would dictate how schools respond to sexual harassment complaints.
- UC has serious concerns about several aspects of the proposed rules, and has taken a strong and public stance against them.
- The process revisions contained in the interim Appendix E are primarily to implement the changes required by the January 2019 California appellate court decision. They do not implement the proposed Title IX rules.
- When the Department eventually issues the rules, UC will respond thoughtfully, keeping the security and well-being of our students and the broader community paramount. Until then, the University will continue its efforts to persuade the Department of Education to revise the rules to address the concerns UC has identified.



# SVSH Student Adjudication Framework Workgroup

- The University has already formed a workgroup to carefully consider what a hearing model that makes sense for UC should look like.
- While the interim Appendix E is in place the workgroup will help develop a longer-term approach to a live hearing that is fair, treats parties with respect and compassion, and results in just and reliable outcomes.
- Comprised of dedicated representatives of stakeholder groups across the system – including students, faculty, Title IX, CARE, and Student Conduct — this workgroup will help the University work through difficult questions and arrive at an approach that is not only legally compliant but also ensures that we are true to our values and to our mission.
- Separate from the workgroup, the University will also dedicate its attention to ensuring our informal resolution process is as robust and meaningful an option as possible for those who prefer an alternative to a live hearing.

# Resources

- Policy on Sexual Violence and Sexual Harassment: <https://policy.ucop.edu/doc/4000385/SVSH>
- Interim PACAOS Appendix E: Sexual Violence and Sexual Harassment Student Adjudication Framework: <https://policy.ucop.edu/doc/2710641/PACAOS-Appendix-E>
- Systemwide Title IX Office – Resources: <https://www.ucop.edu/title-ix/resources/index.html>
- UC’s comment letter to Department of Education: <http://sexualviolence.universityofcalifornia.edu/files/documents/uc-title-ix-letter.pdf>
- President Napolitano’s op-ed: [https://www.washingtonpost.com/opinions/janet-napolitano-dont-let-the-trump-administration-undermine-title-ix/2018/12/04/6c91f316-f7fc-11e8-863c-9e2f864d47e7\\_story.html?utm\\_term=.787f7886f219](https://www.washingtonpost.com/opinions/janet-napolitano-dont-let-the-trump-administration-undermine-title-ix/2018/12/04/6c91f316-f7fc-11e8-863c-9e2f864d47e7_story.html?utm_term=.787f7886f219)
- Press Release: <https://www.universityofcalifornia.edu/press-room/university-california-troubled-proposed-changes-sexual-harassment-rules>
- UC Sexual Violence Prevention & Response: <http://sexualviolence.universityofcalifornia.edu/>
- Student Advisory Board: <https://www.ucop.edu/title-ix/resources/student-advisory-board/index.html>