

## University of California Merced

### PROCEDURES FOR IMPLEMENTATION OF THE STUDENT ADJUDICATION MODEL

#### I. PREFACE

The University of California Merced is committed to creating and maintaining a community where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of sexual violence and sexual harassment. Consistent with its legal obligations under Title IX of the Education Amendments of 1972, the Violence Against Women Reauthorization Act of 2013, and California Education Code section 67386, the University responds promptly and effectively to reports of sexual violence and sexual harassment, and takes appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates the University's policy on Sexual Violence and Sexual Harassment.

The University's student disciplinary procedures emphasize education, personal growth, accountability, and ethical behavior -- upholding standards of responsible conduct to protect the welfare of the University community. When formal fact-finding procedures are used, the procedures are designed to provide a prompt, fair, and impartial resolution of the matter.

The following describes the University's procedures for resolving complaints of sexual violence and sexual harassment where the parties are students, including the discipline of students found in violation of University policy.

Please contact UC Merced Title IX Officer (Michael Z. Salvador, 209-285-9510, [msalvador2@ucmerced.edu](mailto:msalvador2@ucmerced.edu)) for additional information and updates to adjudication procedures contained herein.

#### II. RESOURCES RELATING TO SEXUAL VIOLENCE AND SEXUAL HARASSMENT

The University has a Title IX Office that is responsible for receiving and responding to reports of sexual violence and sexual harassment. Confidential resources also are available both before and after a person communicates with the Title IX Office about potential violations of

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the Sexual Violence and Sexual Harassment policy. Confidential resources include CARE advocates office (Valara Villanueva, 209-386-2051, [vvillanueva2@ucmerced.edu](mailto:vvillanueva2@ucmerced.edu)), Ombuds (Callale Concon, 209-228-4410, [cconcon@ucmerced.edu](mailto:cconcon@ucmerced.edu)) and licensed counselors in student counseling centers. These resources can provide confidential advice and counseling without that information being disclosed to the Title IX Office or law enforcement without the student's consent, 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).

### III. REPORT OF SEXUAL VIOLENCE AND SEXUAL HARASSMENT

- A. For purposes of this model, the University will consider any alleged victim of sexual violence or sexual harassment a "complainant," whether or not he or she makes a report or participates in the investigation and resolution process.
- B. The University will strive to honor the stated wishes of the complainant concerning whether to move forward with an investigation. There may be circumstances, however, in which the University may need to move forward against the complainant's wishes, or in which the University may determine that an investigation will not occur despite the complainant's wish to pursue an investigation.
- C. Throughout the resolution process, the University will offer and provide support services for complainants through the CARE office, and for respondents through the Respondent Services Coordinator (Fuji Collins, 209-228-4331, [fcollins@ucmerced.edu](mailto:fcollins@ucmerced.edu))
- D. 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. Interim measures include, but are not limited to, the following: no contact orders; housing assistance; academic support and accommodations; and counseling. The University may place the respondent on an Interim Suspension as appropriate and consistent with the *Policies Applying to Campus Activities, Organizations and Students (PACAOS)* - 105.08.
- E. At all stages of the process, the complainant and respondent have the right to an advisor and a support person of their choosing.

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- F. Neither the complainant nor the respondent is required to participate in the resolution process. The University will not draw any adverse inferences from a complainant or respondent's decision not to participate or to remain silent during the process. An investigator, decision-maker, or appeal body will reach findings and conclusions based on the information available. An investigator, decision-maker, or appeal body may draw adverse inferences when a student selectively participates in the process, such as choosing to answer some but not all questions posed.
- G. The campus Case Management Team (CMT) will track all stages of the resolution process – from receipt of the report through the investigation and, if applicable, the University student discipline process.
- H. All University officials involved in the resolution process will be trained to carry out their roles in an impartial manner in keeping with trauma-informed practices.
- I. The standard of proof at all stages of the process is preponderance of the evidence.
- J. The University will complete the process, including all appeals, within 120 business days from the date of Title IX's receipt of a report. This deadline and all deadlines contained herein may be extended for good cause shown and documented. The complainant and respondent will be notified in writing of any extension.

#### IV. **INVESTIGATION OF ALLEGATION OF SEXUAL VIOLENCE AND SEXUAL HARASSMENT**

- A. Upon receipt of a report of or information about alleged sexual violence and/or sexual harassment, the Title IX Officer for the campus will determine, consistent with the University's policy on Sexual Violence and Sexual Harassment, whether an investigation should be initiated.
- B. If an investigation will not be conducted, the Title IX Officer will notify the complainant in writing and explain the rationale for the determination.
- C. If an investigation will be conducted, the Title IX Officer and Student Conduct office will jointly send written notice of the charges to the complainant and respondent. The written notice will include:
  - 1. A summary of the allegations and potential policy violations;

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2. The purpose of the investigation;
  3. A statement that the investigative report, when issued, will make factual findings and a recommendation regarding whether there has been a violation of University policy;
  4. A statement that the findings and recommendation will be based on a preponderance of the evidence standard;
  5. A summary of the process, including the expected timeline; and
  6. A summary of the rights of the complainant and respondent.
- D. The Title IX Officer will oversee the investigation and will designate an investigator to conduct a fair, thorough, and impartial investigation.
- E. During the investigation, the complainant and respondent will be provided an equal opportunity to meet with the investigator, submit information, and identify witnesses who may have relevant information.
- F. The investigator will meet separately with the complainant, respondent, and third party witnesses who may have relevant information, and will gather other available and relevant evidence and 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.
- G. The investigator may determine the relevance of any witness or other evidence to the findings and may exclude certain types of evidence or information that is irrelevant or immaterial.
- H. When a law enforcement agency is conducting its own investigation, the investigator should coordinate his or her fact-finding efforts with the law enforcement investigation. At the request of law enforcement, the investigation may be delayed as needed to meet any specific needs of the criminal investigation. Such a delay may be cause for

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extending the timelines to complete the process and delay will be communicated and documented.

- I. The investigator will prepare a written report that includes a statement of the allegations and issues, the positions of the parties, a summary of the evidence, findings of fact, and a recommendation regarding whether there are any policy violations. If the complainant or respondent offered witnesses or other evidence that was not considered by the investigator, the investigation report will include an explanation why it was not considered.
- J. The investigation file must be retained and made available to the parties on request, and may be redacted as necessary to protect student privacy rights.

#### **V. DECISION ON RESPONSIBILITY AND DISCIPLINARY SANCTIONS**

- A. Upon completion of the Title IX Investigation, the Title IX Officer and Student Conduct office will jointly send to the complainant and the respondent (a) written notice of the investigation findings and the investigator's recommended determinations, and (b) will provide a copy of the investigation report. The investigation report may be redacted if necessary to protect student privacy rights.
- B. The written notice of the findings and recommended determinations will include the following:
  - 1. A statement of the factual findings and recommendations regarding whether the charge(s) have been substantiated, including whether policies have been violated;
  - 2. An admonition against intimidation or retaliation;
  - 3. An explanation of any interim measures that will remain in place;

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4. A statement of the right to appeal that will be explained further in the notice of decision;
  5. A statement that the Student Conduct office will determine whether the charges have been substantiated and policies have been violated and, if so, assess the disciplinary sanctions and inform the complainant and respondent of the sanctions within ten (10) business days of the notice of findings; and
  6. A statement that the complainant and/or respondent may schedule a meeting with the Student Conduct office and/or submit a statement in writing to be heard on the question of the findings of any policy violations and the discipline prior to the decision and the imposition of sanctions.
- C. If the Student Conduct office determines that disciplinary sanctions are appropriate, the sanctions will be determined in accordance with the sanctioning guidelines that are included as an Appendix to these procedures.
1. Disciplinary sanctions for sexual assault, domestic/dating violence, or stalking in which one or more of the following factors are present will result in a minimum sanction of Suspension for at least two years, up to dismissal:
    - i. force, violence, menace, or duress;
    - ii. deliberately causing a person to become incapacitated or deliberately taking advantage of a person's incapacitation; or
    - iii. recording, photographing, transmitting, viewing, or distributing intimate or sexual images without consent.
  2. Disciplinary sanctions for sexual assault involving penetration, domestic/dating violence, or stalking will, absent exceptional circumstances, result in a minimum sanction of Suspension for two years, up to dismissal.

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3. Disciplinary sanctions for other sexual contact in violation of policy will, absent exceptional circumstances, result in a minimum sanction of Suspension for one year.
- D. The Student Conduct office may consult with the Title IX office at any point in the decision-making process.
- E. Within ten (10) business days of the notice of findings and recommended determinations, the Student Conduct office will send written notice to the complainant and respondent setting forth the decision on whether the charges have been substantiated and any policies have been violated, and any sanctions to be imposed. The written notice will include the following:
1. A description of the determinations on whether the charges have been substantiated and any policies have been violated, and if so, a description of the sanctions;
  2. The rationale for the determinations<sup>1</sup> and the sanctions;
  3. A statement of the right to appeal, the procedure that will be followed in hearing the appeal, the grounds upon which the appeal may be based, and the office to which the appeal may be submitted; and
  4. An explanation that both the complainant and respondent will receive a copy of any appeal prior to a hearing. The Title IX investigation and the Student Conduct office's determination of responsibility and sanctions will be completed within 60 business days from Title IX's receipt of a report absent an extension for good cause.

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<sup>1</sup> If the Student Conduct office adopts the investigator's recommended determinations, the notice may incorporate the investigation report by reference as the rationale for the decision. If the determinations differ from the investigator's recommendations, then the notice will explain the rationale for that decision.

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**VI. APPEAL PROCESS**

- A. The complainant and respondent may contest the decision and/or the sanctions by submitting an appeal. The appeal should identify the reason(s) why the party 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;
- B. An appeal must be submitted in writing to the designated campus office within ten (10) business days following written notice of the decision and disciplinary sanctions, if imposed. The appeal must identify the grounds for appealing and contain a brief statement of the reasons supporting each ground for appeal.
- C. If an appeal is submitted, any disciplinary sanctions ordinarily will not be imposed until the appeal process is completed. Interim measures, such as no contact orders, academic accommodations, etc. will remain in effect during the appeal process.
- D. The appeal will be decided at a hearing by an Appeal Body composed of one to three individuals who may be University staff or academic appointees, or non-University officials, such as administrative law judges or experienced investigators. The Appeal Body will be appropriately trained. A Hearing Coordinator may assist the Appeal Body with the administration of the process.
- E. The Appeal Body will review the information and decide whether it contains sufficient information concerning the grounds for appeal and the reasons related to



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those grounds. The purpose of this review is not to decide the merits of the appeal, but to identify the nature and scope of the issues to be addressed in the hearing. If the written appeal is defective or incomplete, the appealing party should be given an opportunity to correct and resubmit the appeal.

#### F. Conducting the Appeal Hearing

##### 1. Pre-Hearing Procedures

- a. Not less than ten (10) business days before the appeal hearing, the Hearing Coordinator will send written notice to the complainant and respondent of the hearing date, time, location and procedures. The notice will include a copy of the appeal(s) to be considered at the hearing.
- b. Prior to the hearing, the complainant and respondent will submit to the Appeal Body the information they intend to present at the appeal, including all documents to be presented, the names of all witnesses, and a brief summary of all witnesses' expected testimony.
- c. At least two days prior to the appeal hearing, the complainant and respondent will receive copies of all the information that will be considered at the appeal hearing, including the names of potential witnesses and a summary of the information they are expected to provide.
- d. Prior to the appeal hearing and/or during the hearing, the Appeal Body may:

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- i. Exclude information and/or witness testimony that is irrelevant in light of the grounds for appeal, not in dispute, or unduly repetitive.
  - ii. Decide any procedural issues for the appeal hearing.
  - iii. Make any other determinations necessary to ensure an orderly, productive, and procedurally proper appeal hearing.
2. Appeal Hearing Procedures:
  - a. The Title IX investigator will be present at the appeal hearing. The Appeal Body may question the investigator, the complainant, and/or the respondent. The investigation report and any supporting documents or materials will be entered as evidence at the appeal hearing.
  - b. The Appeal Body may allow the complainant, respondent, and/or witnesses to be visually or physically separated during the appeal hearing. This may include, but is not limited to, the use of a physical partition, a separate physical location, videoconference and/or any other appropriate technology. The Appeal Body must be able to see the complainant, respondent and any witnesses when they are presenting information.
  - c. The complainant and respondent will have the opportunity to present the information they submitted pursuant to Section VI.F.1.b (unless excluded by the Appeal Body pursuant to Section VI.F.1.d.).

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- d. The complainant and respondent have the right to hear all individuals who testify at the hearing and to propose questions to be asked of all individuals who testify at the hearing.
  - e. The Appeal Body will determine the order of questioning. Whenever possible, the Appeal Body will ask the questions as they are submitted by the complainant and respondent and will not rephrase or change them. The Appeal Body may, however, exclude questions that are unduly repetitive, clearly not relevant, or unduly time consuming.
  - f. The appeal hearing will be audio recorded.
  - g. Formal rules of evidence will not apply. The Appeal Body may consider the form in which information is presented, as well as the credibility of any party or witness, in weighing the information and reaching findings.
- G. Appeal Decision:
- 1. The Appeal Body will deliberate in private and reach a decision based on a preponderance of the evidence standard. The Appeal Body shall attempt to reach consensus on a decision, but the majority shall make the decision if consensus cannot be reached.
  - 2. The Appeal Body shall take into account the record developed by the investigator and the evidence presented at the hearing, and may make its own findings and credibility determinations based on all of the evidence before it.
  - 3. The Appeal Body may:
    - a. Uphold the findings and disciplinary sanctions;

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- b. Overturn the findings or sanctions; or
    - c. Modify the findings or sanctions.
4. The Appeal Body will summarize its decision in a written report that includes the following:
  - a. A statement of the grounds for the appeal;
  - b. A summary of the process undertaken by the Appeal Body;
  - c. A summary of the information considered by the Appeal Body; and
  - d. The decision of the Appeal Body and the rationale for the decision including, where the findings or sanctions are overturned or modified, an explanation of why the findings were not reasonable or the sanctions were disproportionate, either at the time they were made or in light of the evidence considered by the Appeal Body.
5. The Hearing Coordinator will send the Appeal Body's written decision to complainant and respondent.
  - a. If the findings and the sanctions are upheld, the Hearing Coordinator will inform the respondent and complainant that the matter is closed with no further right to appeal.
  - b. If the findings or sanctions are overturned or modified, the Hearing Coordinator will inform the respondent and complainant of the right to submit a written appeal to the Chancellor's designee within five (5) business days based on:
    - i. Procedural error that materially affected the outcome, or

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- ii. A sanction that is disproportionate to the findings.
  - c. If an appeal is submitted, the other party will receive a copy of the written appeal and may submit a written statement as well.
- 6. The Chancellor's designee will issue a written decision to the complainant and respondent, normally within ten (10) business days. There is no further right to appeal.

The appeal process described above, including the appeal hearing and any appeal to the Chancellor's designee, will normally be completed within 60 business days of the date of the notice of decision and sanctions (where imposed).

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October 12, 2015

### ***APPENDIX: DISCIPLINARY PROCESS FOR STUDENT SANCTIONS***

#### I. INTRODUCTION

These standards are intended to ensure the consistent application of disciplinary sanctions by the University of California in responding to conduct that violates the University's *Policy on Sexual Violence and Sexual Harassment* and the University's *Policies Applying to Campus Activities, Organizations, and Students* (PACAOS) Section 100 (Policy on Student Conduct and Discipline).<sup>2</sup> The following describes the University's procedures for assigning disciplinary sanctions when the respondent is a student.

#### II. PRINCIPLES

- A. The administration of student discipline will be consistent with the UC PACAOS Policy on Student Conduct and Discipline.
- B. When a student is found responsible for violating the University's Policy on Sexual Violence and Sexual Harassment and the UC PACAOS Policy on Student Conduct and Discipline, the University will assign disciplinary sanctions that are appropriate to the violation, taking into consideration the context and seriousness of the violation.
- C. When a student is found not responsible for violating the University's Policy on Sexual Violence and Sexual Harassment and the UC PACAOS Policy on Student Conduct, the University is committed to taking reasonable efforts to assist any student who has been disadvantaged with respect to employment or academic status as a result of the unsubstantiated allegations.
- D. Disciplinary sanctions are designed to hold a student accountable for violating University standards of conduct and to promote personal growth and development.

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<sup>2</sup> This supplements the Policies Applying to Campus Activities, Organizations and Students (PACAOS, 5/10/2012). In the event of any conflict this document shall take precedence.

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### ***APPENDIX: DISCIPLINARY PROCESS FOR STUDENT SANCTIONS***

Disciplinary sanctions also serve the purpose of stopping the behavior that violated this policy and preventing its recurrence.

- E. The University of California recognizes that acts of sexual violence and sexual harassment are contrary to its goals of providing an educational environment that is safe and equal for all students.
- F. University of California campuses are permitted to inform other UC campuses of a student's disciplinary record for violating the University's Sexual Violence and Sexual Harassment Policy and the UC PACAOS Policy on Student Conduct and Discipline.

## II. DISCIPLINARY SANCTIONS

- A. University disciplinary sanctions include, but are not limited to:
  - 1. Dismissal from the University of California,
  - 2. Suspension from the campus,
  - 3. Exclusion from Areas of the Campus or from Official University Functions,
  - 4. Loss of Privileges and Exclusion from Activities,
  - 5. Restitution,
  - 6. Probation
  - 7. Censure/Warning, and/or
  - 8. Other actions as set forth in University policy and campus regulations.
- B. The definitions of disciplinary sanctions are found in University of California PACAOS Section 105.00 (Types of Student Disciplinary Action) and local campus regulations.
- C. The posting of disciplinary sanctions on academic transcripts will follow University policy as defined in University of California PACAOS, Section 106.00.

## PROCEDURES FOR IMPLEMENTATION OF THE STUDENT ADJUDICATION MODEL

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### ***APPENDIX: DISCIPLINARY PROCESS FOR STUDENT SANCTIONS***

#### II. PROCESS

- A. When a respondent has been found in violation, the University will provide written notice of the assigned disciplinary sanctions and a brief rationale for the sanctions.
  
- B. Disciplinary sanctions will be assigned as follows:
  1. Sexual assault, domestic/dating violence, or stalking in which one or more of the following factors are present will result in a minimum sanction of Suspension for at least two years, up to dismissal:
    - i. force, violence, menace, or duress;
    - ii. deliberately causing a person to become incapacitated or deliberately taking advantage of a person's incapacitation; or
    - iii. recording, photographing, transmitting, viewing, or distributing intimate or sexual images without consent.
  2. Sexual assault involving penetration, domestic/dating violence, or stalking will, absent exceptional circumstances, result in a minimum sanction of Suspension for two years, up to dismissal.
  3. Other sexual contact in violation of policy will, absent exceptional circumstances, result in a minimum sanction of Suspension for one year.
  
- C. Assigned disciplinary sanctions and the factors considered for each case will be documented and reported to the University of California Office of the President on a quarterly basis. The report is to ensure a reasonable level of consistency from campus to campus.



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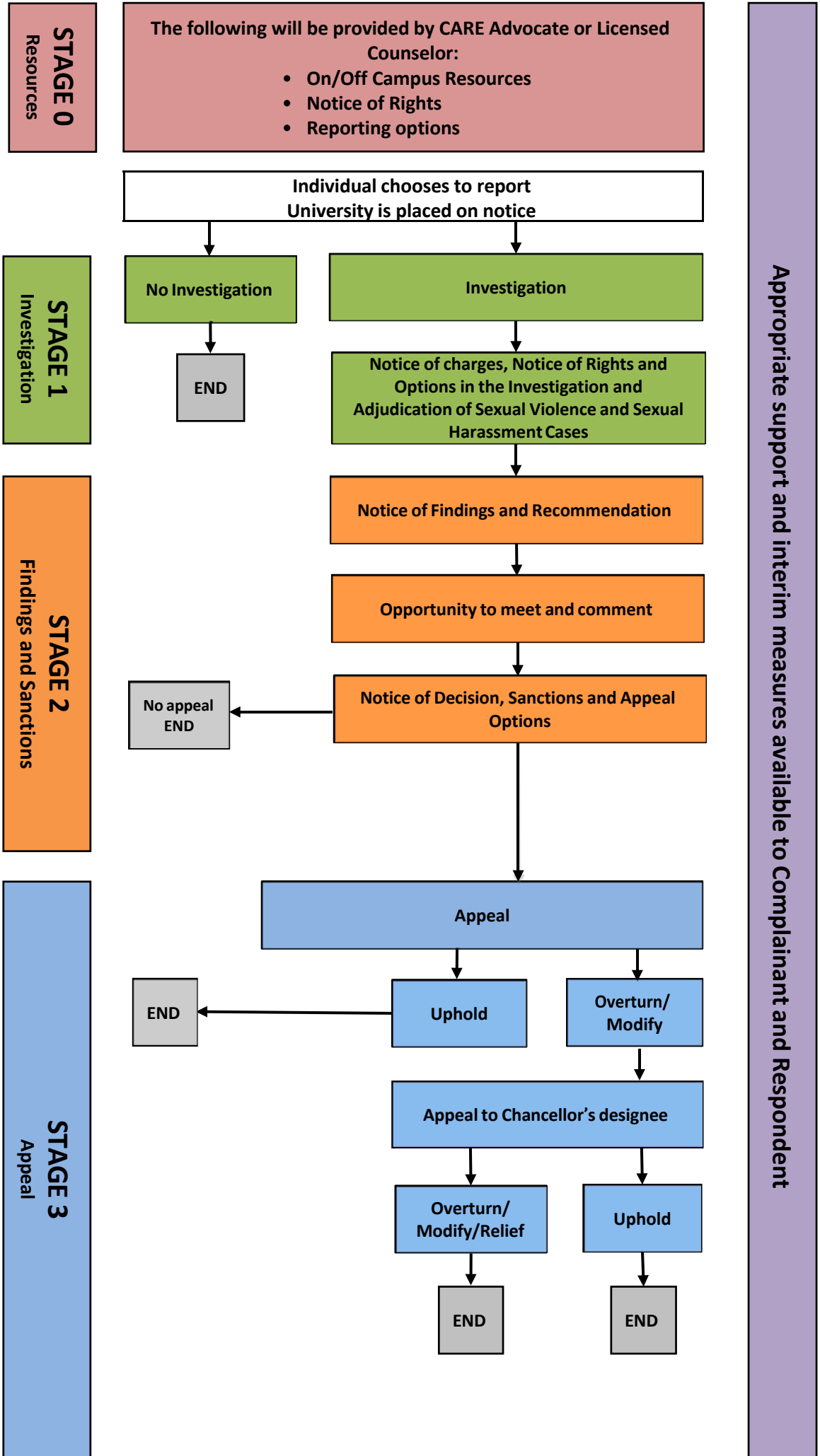
### ***APPENDIX: DISCIPLINARY PROCESS FOR STUDENT SANCTIONS***

#### III. FACTORS CONSIDERED IN DETERMINING DISCIPLINARY SANCTIONS

- A. In determining the appropriate sanction, the following factors may be taken into account:
1. Seriousness of violation: location and extent of touching; duration of conduct; single or repeated acts; multiple policy violations in connection with the incident; verbal or physical intimidation; presence of weapons, use of force, violence, physical injury.
  2. Intent or motivation behind violation: no intent to cause harm; passive role in violation; pressured or induced by others to participate in the violation; use of authority to abuse trust or confidence; planned or predatory conduct; deliberately causing a person to become incapacitated or deliberately taking advantage of a person's incapacitation; recording, photographing, transmitting, viewing, or distributing intimate or sexual images without consent; hate or bias based on the complainant's membership or perceived membership in a protected group as defined in UC PACAOS Section 104.90.
  3. Response following violation: voluntarily acknowledged wrongdoing at early stage of the process; failure to follow no contact order; attempt to influence witnesses; obstructed or disrupted the process.
  4. Disciplinary history: prior violations unrelated, prior violations related.
  5. Impact on others: input from the complainant, protection or safety of the community.

*Note: Please contact your local Title IX Officer for additional information and updates to adjudication procedures*

**University of California  
Student Adjudication Model – Process Flow Chart\***



\*Procedures for Implementation of the Student Adjudication Model provides detailed explanation.