



Mary Gauvain  
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*Chair of the Assembly of the Academic Senate  
Faculty Representative to the Regents  
University of California  
1111 Franklin Street, 12th Floor  
Oakland, California 94607-5200*

May 5, 2021

**SUZANNE TAYLOR, SYSTEMWIDE TITLE IX COORDINATOR  
UNIVERSITY OF CALIFORNIA**

**Re: Revised SVSH Frameworks for Faculty and Staff**

Dear Suzanne,

As requested, I distributed for systemwide Senate review proposed revisions to the University's Sexual Violence and Sexual Harassment (SVSH) Investigation and Adjudication Framework for Senate and Non-Senate Faculty, and the corresponding Framework for Staff. Nine Academic Senate divisions submitted comments. These comments were discussed and endorsed at Academic Council's April 28 meeting and are attached for your reference.

We understand that the systemwide Title IX office proposed the revisions to comply with federal regulatory changes that took effect in August 2020. They consist of additional changes to interim policies issued last summer, including a requirement that the University include live hearings and appeals for cases with faculty and staff respondents. The revised frameworks also permit the University to exclude or "carve out" particular groups from the live hearing process in specific instances based on their formal relationship with UC

The Academic Council supports the revisions. In the committee letters, there is some concern that the language of the Frameworks is, in places, overly technical and inaccessible to a lay audience. We encourage you to consider clarifying terms and definitions and, if possible, using more succinct wording where appropriate.

As you know, the Academic Senate has been addressing the impact of the federal regulations on its own Privilege and Tenure procedures. That work includes a revision to Senate Bylaw 336.F.8, approved by the Assembly of the Academic Senate in February, that changes the evidentiary standard to be used in P&T hearings for alleged violations of the SVSH Policy. The Senate is also reviewing a proposed change to Senate Bylaw 336.F.3 that will eliminate unnecessary duplication in hearings at the Title IX and P&T phases. We look forward to working with you on these and other matters.

Please do not hesitate to contact me if you have additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Mary Gauvain". The signature is written in dark ink on a light-colored background.

Mary Gauvain, Chair  
Academic Council

Cc: Academic Council  
Senate Directors  
Systemwide Senate Director Baxter

Encl.



320 STEPHENS HALL  
UNIVERSITY OF CALIFORNIA  
April 23, 2021

MARY GAUVAIN  
Chair, Academic Council

*Subject: Systemwide Review of Proposed Revisions to SVSH Frameworks for Faculty and Staff –  
Stakeholder Input*

Dear Chair Gauvain;

On April 19, 2021, the Council of the Berkeley Division (DIVCO) discussed the proposed revisions to the sexual violence and sexual harassment (SVSH) frameworks for faculty and staff, called the “Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty” and the “Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel.” DIVCO’s discussion was informed by written comments from the Committee on Faculty Welfare (FWEL); Committee on Privilege and Tenure (P&T); and the verbal comments from the Chair of the Committee on Diversity, Equity, and Campus Climate (DECC). DIVCO endorses both letters and includes DECC’s letter.

DIVCO agrees that the recommendation to “carve out” particular groups based on their formal relationship with UC is reasonable course of action, given the challenging and shifting circumstances, and find the related edits to the two documents to be well conceived. DIVCO also discussed that these changes are based on federal requirements, and should therefore be revisited if and when the federal requirements again change.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads 'Jennifer Johnson-Hanks'.

Jennifer Johnson-Hanks  
Professor of Demography and Sociology  
Chair, Berkeley Division of the Academic Senate

Enclosures

cc: Ronald Cohen, Vice Chair, Berkeley Division of the Academic Senate  
Lok Siu, Chair, Committee on Diversity, Equity, and Campus Climate  
David Hollinger, Co-chair, Committee on Faculty Welfare  
Terrance Odean, Co-chair, Committee on Faculty Welfare  
Samuel Otter, Chair, Committee on Privilege and Tenure  
Jocelyn Surla Banaria, Executive Director, Berkeley Division of the Academic Senate  
Linda Corley, Senate Analyst, Committee on Diversity, Equity, and Campus Climate  
Sumali Tuchrello, Senate Analyst, Committee on Faculty Welfare and Privilege & Tenure



320 STEPHENS HALL  
UNIVERSITY OF CALIFORNIA

March 31, 2021

CHAIR JENNIFER JOHNSON-HANKS  
Academic Senate

*Re: Proposed Revisions to SVSH Frameworks*

Dear Jenna,

At our meeting on March 29, 2021, the Faculty Welfare Committee reviewed the proposed revisions to the *Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty* and the *Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel*. Overall, we agree that the recommendation to “carve out” particular groups based on their formal relationship with UC is an acceptable course of action under the shifting circumstances and find the related edits to the two documents to be reasonable.

We appreciate the opportunity to weigh in on these matters.

Sincerely,

A handwritten signature in dark ink, appearing to read 'David Hollinger'.

David Hollinger, Co-Chair

A handwritten signature in blue ink, appearing to read 'Terrance Odean'.

Terrance Odean, Co-Chair

DH/TO/st



320 STEPHENS HALL  
UNIVERSITY OF CALIFORNIA

April 12, 2021

CHAIR JENNIFER JOHNSON-HANKS  
Divisional Council

*RE: Proposed Revisions to SVSH Frameworks*

Dear Chair Johnson-Hanks,

The Committee on Privilege and Tenure reviewed the proposed revisions to the “Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty” and the “Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel.” The Committee discussed the proposal to “carve out” the live hearing from the Department of Education Grievance Process when allegations of DOE-Covered Conduct arise from programs that are not “postsecondary institutions,” as defined in the new regulations, even if they are part of the University. The Committee agrees that such “carve-outs” are an acceptable course of action under the shifting regulatory circumstances and finds the related edits in the two documents to be reasonable.

We appreciate the opportunity to weigh in on these matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sam Otter', with a long horizontal flourish extending to the right.

Samuel Otter, Chair  
Committee on Privilege and Tenure

SO/st



April 20, 2021

PROFESSOR JENNIFER JOHNSON-HANKS  
Chair, 2020-2021 Berkeley Division of the Academic Senate

*Re: DECC's Comments on the Revisions to SVSH Frameworks for Faculty and Staff*

The Committee on Diversity, Equity, and Campus Climate (DECC) reviewed the revisions to SVSH Frameworks for Faculty and Staff. DECC unanimously endorsed the proposal without comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lok Siu'.

Lok Siu  
Chair, Committee on Diversity, Equity, and Campus Climate

LS/lc



DAVIS DIVISION OF THE ACADEMIC SENATE  
ONE SHIELDS AVENUE  
DAVIS, CALIFORNIA 95616-8502  
(530) 752-2220  
academicsenate.ucdavis.edu

April 26, 2021

**Mary Gauvain**  
Chair, Academic Council

**RE:** Proposed Revisions to SVSH Frameworks for Faculty and Staff

Dear Mary,

Given the condensed timeline, the proposed revisions to the SVSH frameworks were forwarded for review only to the Committee on Privilege and Tenure (P&T), Investigative Subcommittee. Enclosed, P&T provides a list of sections and language needing clarity.

The Davis Division appreciates the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Tucker", is written over a light gray rectangular background.

Richard P. Tucker, Ph.D.  
Chair, Davis Division of the Academic Senate  
University of California, Davis

Enclosed: Committee on Privilege and Tenure, Investigative Subcommittee Response

c: Hilary Baxter, Executive Director, Systemwide Academic Senate  
Michael LaBriola, Assistant Director, Systemwide Academic Senate  
Edwin M. Arevalo, Executive Director, Davis Division of the Academic Senate

April 16, 2021

**Richard Tucker**

Chair, Davis Division of Academic Senate

**RE:** RFC: Systemwide Request to review revisions to SVSH Faculty and Staff Framework

Dear Richard:

The Committee on Privilege & Tenure -- Investigative Subcommittee reviewed the Request for Consultation (RFC) of the Systemwide Request to review revisions to SVSH Faculty and Staff Framework. The committee provides its suggested revisions, questions, and concerns on the revised framework:

- INTRODUCTION Second paragraph (page 1), "The University advocated strongly for DOE to change some components of the DOE Grievance Process before issuing the regulations; DOE did not. Because compliance with the regulations is a condition of federal funding, the University has revised its policies to fully implement them." The committee finds these sentences to be unnecessary and irrelevant.
- III. INVESTIGATING AND RESOLVING REPORTS OF PROHIBITED CONDUCT (Stage 1) III.B.3.d: Evidence Review (page 8). Is the added language on the opportunity to submit questions and follow up questions actually related to Evidence Review?
- IV. ASSESSMENT AND CONSULTATION (Stage 2) First paragraph (page 11), word "to" missing: "Matters investigated under the DOE Grievance Process that alleged No-Title IX Hearing DOE-Covered Conduct will go to Stage 2.C...."
- IV. ASSESSMENT AND CONSULTATION (Stage 2) First paragraph (page 11), "The steps outlined below for assessment and consultation apply to investigations of DOE-Covered Conduct and other Prohibited Conduct. An additional notice requirement that applies specifically to investigations of DOE-Covered Conduct is in the DOE Addendum." It would seem that the notice requirement for DOE-Covered Conduct is part of the steps for assessment and consultation for DOE-Covered Conduct. Why is it necessary to refer to the Addendum rather than just include the notice requirement there?
- VI. DECISION ON SANCTIONS FOR NON-SENATE FACULTY (Stage 3) First paragraph (page 15), DOE should be capitalized in parentheses: "following an investigation and any appeal (per Section IV.C of the Doe Addendum)"
- IV.B. PREHEARING AND HEARING (Stage 2.B) IVB.E.3 (page 23): appears to indicate that hearings have to be remote ("The hearing will be conducted remotely"), despite other provisions in the section and at other places suggesting that it is not necessarily the case (notice of the location of the hearing, separation of parties for well-being, etc.).
- IV.D. ADDITIONAL ASSESSMENT AND CONSULTATION (Stage 2.D) Ambiguous referent, repeat what? (page 29): "If the Chancellor or Chancellor's designee already took these steps (because the investigator determined or preliminarily determined the respondent violated the SVSH Policy), then they may choose to repeat them before proposing a resolution (for example, when the finding from following any hearing or appeal is different from the investigator's determination or preliminary determination). The Chancellor or Chancellor's designee will decide what action to take to resolve the matter."
  - Are the steps to be repeated limited to notification? The antecedent of "them" is unclear.



- There are a number of formatting/language inconsistencies (Senate vs senate, the complainant or the respondent vs complainant or respondent, commas where there should not be one, etc.).
- There are several places where there is a reference to a “DOE Addendum” and several places where the reference is to a “Doe Addendum.” This should be corrected and consistent throughout.
- The phrase "No-Title IX Hearing DOE-Covered Conduct" is one particular example of what makes this policy unclear. If the substance of the policy cannot be changed, perhaps at least the terminology can; the committee suggests replacing this term with something shorter and less convoluted.
- In reference to the convoluted wording, there is concern about the phrase "a program or activity provided for the benefit of minors, including elementary and secondary schools, and the Complainant is a beneficiary." One thing to notice is that it appears that elementary and secondary schools are minors, rather than the intended meaning of minors attending elementary and secondary schools. Another issue is the way the carve-out is worded to focus on minors. This is a carve-out to exclude non-tertiary education related activities of the university, but there are university students who are still minors (under the age of 18 upon admission); isn't there some better way to word this carve-out?

Thank you.



Julia Simon  
Chair, Committee on Privilege and Tenure – Investigative Subcommittee

cc: Edwin Arevalo, Executive Director, Davis Division of the Academic Senate

April 26, 2021

Mary Gauvain, Chair  
Academic Council

**Re: Systemwide Review of SVSH Investigation and Adjudication Frameworks for Faculty and Staff**

Dear Chair Gauvain,

The Irvine Division Senate Cabinet discussed the proposed revisions to the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty ("Faculty Framework") and the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel ("Staff and NFAP Framework") at its April 20, 2020 meeting. The proposed revisions were also reviewed by the Council on Faculty Welfare, Diversity, and Academic Freedom and Committee on Privilege and Tenure. The Councils' memos are attached for Academic Council consideration.

Thank you for the opportunity to comment.

Sincerely,



Jeffrey Barrett, Chair  
Academic Senate, Irvine Division

Cc: Joanna Ho, Chair Elect-Secretary  
Terry Dalton, CFW Chair  
Irene Tucker, CPT Chair  
Kate Brigman, Executive Director  
Gina Anzivino, Associate Director  
Julie Kennedy, CFW and CPT Analyst  
Brandon Haskey-Valerius, Cabinet Analyst



April 14, 2021

**JEFF BARRETT, CHAIR  
ACADEMIC SENATE, IRVINE DIVISION**

**RE: Systemwide Review of SVSH Frameworks for Faculty and Staff**

At its meeting on April 9, 2021, the Committee on Privilege and Tenure (CPT) discussed proposed revisions to sexual violence and sexual harassment (SVSH) frameworks for faculty and staff.

The Committee understands that these revisions were proposed by the systemwide Title IX office in an effort to comply with federal regulatory changes that went into effect August 14, 2020. While members expressed concerns about the U.S. Department of Education (DOE) Title IX regulations, they agreed that the changes represent an acceptable compromise between federal regulations and university procedures and support the revisions as proposed. The Committee is hopeful that the DOE review of the regulations ordered by President Biden will result in significant improvements.

The Committee on Privilege and Tenure appreciates the opportunity to comment.

Sincerely,



Irene Tucker, Chair  
Committee on Privilege and Tenure

C: Kate Brigman, Executive Director  
Gina Anzivino, Associate Director  
Julie Kennedy, CPT Analyst



April 19, 2021

**JEFFREY BARRETT, CHAIR  
ACADEMIC SENATE – IRVINE DIVISION**

**Re: Systemwide Review of SVSH Frameworks for Faculty and Staff**

Systemwide Senate Chair Gauvain has forwarded for review proposed revisions to sexual violence and sexual harassment (SVSH) frameworks for faculty and staff. These revisions were proposed by the systemwide Title IX office in efforts to comply with federal regulatory changes that went into effect August 14, 2020. The proposed revisions consist of additional changes to interim policies issued last summer. There has been accompanying Senate work to address regulatory impacts on procedures for Senate faculty. This includes both the recent change in the evidentiary standard to be used in Committee on Privilege and Tenure hearings for alleged violations of the SVSH policy as well as a forthcoming proposal to preclude unnecessary duplication when hearings are conducted at both the Title IX and P&T phases.

The Council on Faculty Welfare, Diversity, and Academic Freedom (CFW) discussed this issue at its meeting on April 13, 2021 and members had the following comments:

Members agreed that providing these additional safeguards (live hearings and appeals for cases) for an individual accused of sexual violence or sexual harassment seems reasonable. However, members were disappointed that the standard for P&T decisions was lowered to preponderance of the evidence from clear and convincing.

Sincerely,



Terry Dalton, Chair  
Council on Faculty Welfare, Diversity, and Academic Freedom



# UCLA Academic Senate

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April 27, 2021

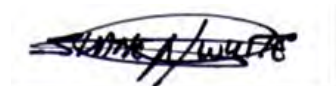
Mary Gauvain  
Chair, UC Academic Senate

Re: **Proposed Revisions to SVSH Frameworks for Faculty and Staff**

Dear Chair Gauvain,

The UCLA Division was unable to opine due to the unusually short review period. Although the item was distributed to the relevant committees, their meeting schedules did not permit review within the assigned period. The item was presented to Executive Board as an informational item, but this was in the absence of committee opinions, as explained above. Whereas, the Executive Board appreciates the necessity of compliance with DOE regulation, concern was expressed about the nature of the 2020 regulations. Concern was expressed that complainants not be unduly burdened by regulation and process. As division chair, I request that any changes made to UC policy remain as interim until the new administration have reviewed the 2020 regulations, and that a Senate member's right to a hearing by a Senate body remain.

Sincerely,

A handwritten signature in black ink, appearing to read "Shane White", is enclosed in a rectangular box.

Shane White  
Chair  
UCLA Academic Senate

Cc: April de Stefano, Executive Director, UCLA Academic Senate  
Jody Kreiman, Vice Chair/Chair Elect, UCLA Academic Senate  
Michael Meranze, Immediate Past Chair, UCLA Academic Senate



OFFICE OF THE ACADEMIC SENATE  
ROBIN DELUGAN, CHAIR, ACADEMIC SENATE  
[senatechair@ucmerced.edu](mailto:senatechair@ucmerced.edu)

UNIVERSITY OF CALIFORNIA, MERCED  
5200 NORTH LAKE ROAD  
MERCED, CA 95343

**April 26, 2021**

**To: Mary Gauvain, Chair, Academic Council**

**RE: Proposed Revisions to the SVSH Frameworks for Faculty and Staff**

The Merced Divisional Council has reviewed the proposed revisions to the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty ("Faculty Framework") and the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel ("Staff and NFAP Framework"). The Council is cognizant of the regulatory requirements which stem from the new federal Title IX regulations issued in 2020, that UC follow a specific grievance process in response to complaints of conduct covered by the regulations ("DOE-Covered Conduct"). Among the requirements of this process are live hearings and appeals for cases with faculty and staff respondents.

Concerns have been raised that, because faculty and many staff already had the right to a hearing at the disciplinary stage under other policies, these additional requirements will deter complainants from participating in the grievance process, exacerbated by other components of the live hearing such as a requirement that parties be allowed to cross-examine each other through their advisors.

The UCM Divisional Council appreciates that UCOP has identified limited categories of allegations against employees that can be resolved without a Title IX hearing per the regulations, which arise from programs that are not "post-secondary educational institutions," as defined in the Regulations, even if they are part of the University.

The Council also appreciates the recognition, in the cover letter from the Systemwide Title IX Director, the efforts Academic Senate has made to address potentially adverse impacts on faculty process.

The Merced Divisional Council appreciates the opportunity to opine.

Sincerely,

A handwritten signature in cursive script, reading "Robin M. DeLugan".

Robin DeLugan  
Chair, Divisional Council  
UC Merced

CC: Divisional Council  
Hilary Baxter, Executive Director, Systemwide Academic Senate  
Michael LaBriola, Assistant Director, Systemwide Academic Senate  
Senate Office

Encl (3)



UC SANTA BARBARA

Academic Senate  
Susannah Scott, Chair  
Shasta Delp, Executive Director

1233 Girvetz Hall  
Santa Barbara, CA 93106-3050  
<http://www.senate.ucsb.edu>

April 26, 2020

To: Mary Gauvain, Chair  
Academic Senate

From: Susannah Scott, Chair  
Santa Barbara Division 

Re: Systemwide Review of SVSH Frameworks for Faculty and Staff

The Santa Barbara Division distributed the proposed changes to the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty and the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel to the Council on Faculty Welfare, Academic Freedom, and Awards, the Charges Advisory Committee, and the Committee on Privilege and Tenure. The Council on Faculty Welfare, Academic Freedom, and Awards was invited to comment but did not have enough time to do so due to other heavy responsibilities. Each response is attached for your consideration.

The Charges Advisory Committee and the majority of Privilege and Tenure members who provided feedback support the proposed changes and their rationale, i.e., to minimize the potentially negative impact of the current Federal Title IX regulations (specifically the live hearing requirement) on UC's handling of SVSH cases involving faculty and staff respondents. Some concern was expressed that the Letter from Systemwide Title IX did not clearly convey the background to and rationale for the proposed revisions.

The Santa Barbara Division has no objection to the proposed changes.

One member of Privilege and Tenure suggested that the last word in Section IV.C.A.1.b of the proposed SVSH Framework for Faculty (page 27) should be "or" rather than "and." For clarification, please see the highlighted word in the text quoted below:

[IV.C] A. Grounds for Appeal

A party may only appeal on the grounds described in this section.

1. In cases of No-Title IX Hearing DOE-Covered Conduct:

a. There was procedural error in the investigation process that materially affected the outcome; procedural error refers to alleged deviations from University policy, and not challenges to policies or procedures themselves;



- b. There is new evidence that was not reasonably available at the time of the investigation that could have materially affected the outcome; and
- c. The investigator or Title IX Officer had a conflict of interest or bias that affected the outcome.

See also the principles in Section IV.B.(B)(2).

We thank you for the opportunity to opine.

**Academic Senate  
Santa Barbara Division**

April 26, 2021

To: Susannah Scott, Chair  
Academic Senate

From: Andrew Norris, Charges Officer  
Academic Senate

Re: Charges Advisory Committee Response to Proposed Revisions to UC's SVSH Frameworks for  
Faculty and Staff

The Charges Advisory Committee and the Charges Officer (hereafter together referred to as "the Committee") met recently to discuss the proposed revisions to UC's Sexual Violence and Sexual Harassment (SVSH) Frameworks for Faculty and Staff.

The Committee very much appreciated the opportunity to review and provide feedback on the proposed revisions. The Committee supports the proposed changes and their rationale, i.e., to minimize the potentially negative impact of a concerning feature of the current Federal Title IX regulations -- the requirement for a live hearing during the Title IX investigation phase -- on UC's handling of SVSH cases involving faculty and staff respondents.

Yours Sincerely,

A handwritten signature in blue ink, appearing to be 'AN', is located below the 'Yours Sincerely,' text.

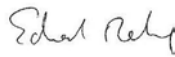
Andrew Norris  
Professor of Political Science and Affiliated Professor of Philosophy and of Religious Studies  
(805) 893-5154; anorris@polsci.ucsb.edu

**Academic Senate  
Santa Barbara Division**

April 26, 2021

To: Susannah Scott, Chair  
Academic Senate

From: Eckart Meiburg, Chair  
Committee on Privilege and Tenure



Re: Response to Proposed Changes to UC's SVSH Frameworks for Faculty and Staff

There was insufficient time for the Committee on Privilege and Tenure (P&T) to schedule a meeting to discuss the proposed revisions to UC's Sexual Violence and Sexual Harassment (SVSH) Frameworks for Faculty and Staff. Feedback on the proposed changes was thereby solicited via email.

The majority of P&T members who provided feedback supported the proposed changes and their rationale, i.e., to minimize the impact of a concerning feature of the current Federal Title IX regulations – the requirement for a live hearing during the Title IX investigation phase – on UC's processing of SVSH cases involving faculty and staff respondents.

No P&T member objected to the proposals although concern was expressed that the Letter from Systemwide Title IX did not clearly convey the background to and rationale for the proposed revisions.

One member suggested that the last word in Section IV.C.A.1.b of the proposed SVSH Framework for Faculty (page 27) should be "or" rather than "and." For clarification, please see the highlighted word in the text quoted below:

[IV.C] A. Grounds for Appeal

A party may only appeal on the grounds described in this section.

1. In cases of No-Title IX Hearing DOE-Covered Conduct:

a. There was procedural error in the investigation process that materially affected the outcome; procedural error refers to alleged deviations from University policy, and not challenges to policies or procedures themselves;

b. There is new evidence that was not reasonably available at the time of the investigation that could have materially affected the outcome; **and**

c. The investigator or Title IX Officer had a conflict of interest or bias that affected the outcome.

See also the principles in Section IV.B.(B)(2).



1156 HIGH STREET  
SANTA CRUZ, CALIFORNIA 95064

Office of the Academic Senate  
SANTA CRUZ DIVISION  
125 CLARK KERR HALL  
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April 26, 2021

MARY GAUVAIN, Chair  
Academic Council

**Re: Systemwide Revisions to SVSH Frameworks for Faculty and Staff**

Dear Mary,

The Santa Cruz Division of the Academic Senate has completed its review of the proposed revisions to the Sexual Violence and Sexual Harassment Investigation and Adjudication Frameworks for faculty and staff. The Committees on Faculty Welfare (CFW), Privilege and Tenure (P&T), Rules, Jurisdiction, and Elections (RJ&E), and the Graduate Council (GC) provided comments. The Division recognizes the need for these changes in order to comply with current Department of Education (DOE) regulations promulgated by the DeVos administration. As such we also see these as potentially interim measures with the new Secretary of Education, Miguel Cardona, likely to make changes during the current Biden administration. The Division found the listing of specific situations to be too limited and some of the language of the policy to be unnecessarily opaque but appreciated the need for a “carve out.”

It is our understanding that the DOE’s new regulations pertain to conduct that arises from programs that are “postsecondary educational institutions.” Systemwide Title IX responded by identifying specific areas of exemption. These areas of exemption were presented as a list which members found to be unnecessarily limited and noted other situations in which prohibited conduct might occur, such as professional conferences. The Division suggests rather than enumerating all possible situations in which prohibited behavior might occur other than “postsecondary educational institutions” that these be inclusive of a category. Alternatively, the list could follow the preamble “This policy applies to activities not limited to . . . .”

As well, the Division was generally in favor of a “carve out,” given the interim nature of these changes, so that the policy may more easily be reverted to its former version as soon as possible.

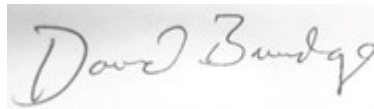
Finally, the Division found that the language of the policy was in places unnecessarily opaque which made the policy functionally inaccessible. Here are a few examples:

- The phrase “No-Title IX Hearing DOE-Covered Conduct,” used throughout the Frameworks, could be shortened.

- The contrasts between “Formal Investigation” and “DOE Grievance Process,” and between “Determination” and “Preliminary determination,” could be explained earlier and more explicitly.
- Sentences such as the following could be simplified: “The process for Prohibited Conduct that is not DOE-Covered Conduct does not include a hearing or appeal, the process for No-Title IX Hearing DOE-Covered Conduct does not include a hearing but may include an appeal, and the process for all other DOE-Covered Conduct may include both a hearing and an appeal” (p. 3)

The inaccessibility of the language may make it difficult for parties to understand what their rights are under the policy. This could be remedied by adopting clearer terminology, simplifying some of the syntax, and providing a list of definitions at the beginning of the policy.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Brundage", is shown within a rectangular border.

David Brundage, Chair  
Santa Cruz Division of the Academic Senate

cc: Nico Orlandi, Chair, Committee on Faculty Welfare  
Julie Guthman, Chair, Committee on Privilege and Tenure  
Donald Smith, Chair, Graduate Council  
Kenneth Pedrotti, Chair, Committee on Rules, Jurisdiction and Elections



OFFICE OF THE ACADEMIC SENATE

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April 23, 2021

Professor Mary Gauvain  
Chair, Academic Senate  
University of California  
VIA EMAIL

Re: SVSH Investigation and Adjudication Framework

Dear Professor Gauvain,

The proposed revisions to the SVSH Investigation and Adjudication Framework were distributed to San Diego Divisional Senate standing committees and discussed at the April 19, 2021 Divisional Senate Council meeting. Senate Council had no objections to the proposal.

The response from the Divisional Committee on Privilege and Tenure is attached.

Sincerely,

A handwritten signature in black ink, reading "Steven Constable".

Steven Constable  
Chair  
San Diego Divisional Academic Senate

Attachments

cc: Tara Javidi, Vice Chair, San Diego Divisional Academic Senate  
Ray Rodriguez, Director, San Diego Divisional Academic Senate  
Hilary Baxter, Executive Director, UC Systemwide Academic Senate

April 7, 2021

**STEVEN CONSTABLE**

**Chair, San Diego Divisional Academic Senate**

**SUBJECT:** Review of Proposed Revisions to SVSH Investigation and Adjudication Framework & Proposed Revision to UC Senate Bylaw 336, Privilege and Tenure – Divisional Committees – Disciplinary Cases

Dear Chair Constable,

The UC San Diego Divisional Committee on Privilege and Tenure has reviewed the proposed revisions to the UC Sexual Violence and Sexual Harassment (SVSH) Investigation and Adjudication Framework and the proposed revision to UC Senate Bylaw 336 that were transmitted in your revised letter of March 18. The Committee's responses are provided below, preceded by a description of the context of these proposals for the benefit of Senate Council.

Background for Senate Council

Current process: The current process, codified in UC Senate Bylaw 336, requires a disciplinary hearing, conducted by the Privilege and Tenure Committee, before discipline can be imposed upon a Senate faculty member. For sexual violence/harassment cases at UCSD, the hearing would follow an investigation by the Office for the Prevention of Harassment and Discrimination (OPHD), our Title IX Office. The EVC initiates the disciplinary process by filing charges with CPT upon completion of the OPHD investigation.

What changed: New Title IX Regulations, published in May 2020 and effective in August 2020, contain a "grievance process for formal complaints of sexual harassment" which includes a hearing as part of the grievance process, before a determination of responsibility is made and disciplinary sanctions may be imposed. This new Title IX Department of Education (DOE) hearing occurs after an investigation has been completed and an investigative report has been issued.

**Title IX DOE Hearing versus Bylaw 336 P&T Disciplinary Hearing:**

At both hearings, witnesses testify under oath, and a neutral third party makes a determination as to whether the standard of proof has been met and produces a report. At a P&T hearing, a Hearing Panel composed of and chaired by Senate faculty (usually Privilege and Tenure Committee members) serve as the neutral third party. At the DOE hearing, a Hearing Officer, who cannot be the same person/s as the Title IX investigator/s, serves as the neutral third party.

The parties to a DOE hearing are the complainant and respondent. The parties at a P&T hearing are the Administration (e.g. EVC/Academic Personnel) and the respondent. Advisors/Attorneys for the complainant and the respondent may ask the other party questions at a DOE hearing. At a P&T hearing the Administration's Attorney and the respondent's Advisor/Attorney ask witnesses questions. Hearing Panel members may also ask questions at a P&T hearing. The rules for the DOE hearing are more detailed and technical (e.g., what type of questions may be asked during cross-examination).

Note: The Biden Administration will likely change the Regulations and we don't know what impact those changes may have on the new DOE hearing, and so there may be changes, but for the moment, we need to come into compliance with the current law.

What's Proposed, Part I – Revisions to the SVSH Investigation and Adjudication Framework: The UC Systemwide Title IX Office has determined that when SVSH allegations arise from programs that are not “postsecondary educational institutions,” as defined in the DOE regulations, no Title IX live hearing is required, even if the programs are part of the University. The proposed revisions to the Framework explicitly distinguish the procedures to be followed in these specific categories of SVSH allegations.

What's Proposed, Part II – Bylaw 336 Revision: In order to avoid requiring witnesses to testify at two separate hearings, the DOE Hearing Report will be shared with the Committee on Privilege and Tenure and only new evidence not discoverable at the time of the DOE Hearing may be presented at a P&T Hearing. Requiring witnesses to testify twice is problematic, because witnesses may be reluctant to do so. The incident at issue may have been traumatic. Also, students graduate or transfer, and are then no longer part of the campus community. They may have moved away and they may want to leave the incident behind.

#### CPT Review of Proposed Revisions to SVSH Investigation and Adjudication Framework

The Committee agreed that the proposed revisions to the Framework (both the Senate and Non-Senate Faculty and the Staff and Non-Faculty Academic Personnel versions) are logical and well-motivated, and has no objections to them.

#### CPT Review of Proposed Revision to UC Senate Bylaw 336

The Committee endorses the proposed revision, with the proviso that the following change be made to the language to be added to section 336.F.3:



*For cases in which there was a hearing at the Title IX stage regarding violation of the University's policy on Sexual Violence and Sexual Harassment ("SVSH Policy"), the Hearing Committee shall accept into evidence the record and ~~decision~~ **report** from the Title IX process.*

It was firmly felt that the decision resulting from the Title IX process (which will be included in the associated report) does not qualify as evidence and should not be considered as such by the P&T Hearing Committee.

Sincerely,

James Posakony, Chair  
Committee on Privilege and Tenure

cc: Tara Javidi, Vice Chair  
Ray Rodriguez, Director

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Sharmila Majumdar, PhD, Chair  
Steven Cheung, MD, Vice Chair  
Pamela Ling, MD, Secretary  
Jae Woo Lee, MD, Parliamentarian

April 26, 2021

Mary Gauvain, PhD  
Chair, Academic Council  
Systemwide Academic Senate  
University of California Office of the President  
1111 Franklin St., 12<sup>th</sup> Floor  
Oakland, CA 94607-5200

Re: Systemwide Review of Revisions to SVSH Frameworks for Faculty and Staff

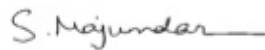
Dear Mary:

The San Francisco Division of the Academic Senate has reviewed the proposed Revisions to SVSH Frameworks for Faculty and Staff.

Understanding that these revisions are limited to those changes which were mandated by the U.S. Department of Education when it issued new regulations under the Trump administration, we support these necessary amendments. However, in light of the fact that the Biden administration will review these regulations for consistency with White House policies, we look forward to future changes as needed.

The UCSF Privilege and Tenure Committee (P&T) noted that the revisions are highly technical and procedural in nature. However, to promote UC's commitment to protect individuals against SVSH violations, SVSH frameworks should be accessible to members of the public. UCSF P&T recommends making the frameworks more succinct language including with respect to taxonomy and procedures.

Sincerely,



Sharmila Majumdar, PhD, 2019-21 Chair  
UCSF Academic Senate

Enclosures (1)

Cc: Susan Chapman, RN, PhD, Chair, UCSF Committee on Privilege and Tenure

April 26, 2021

Professor Sharmila Majumdar, PhD  
Chair, UCSF Academic Senate

RE: Revisions to SVSH Frameworks for Faculty and Staff

Dear Chair Majumdar,

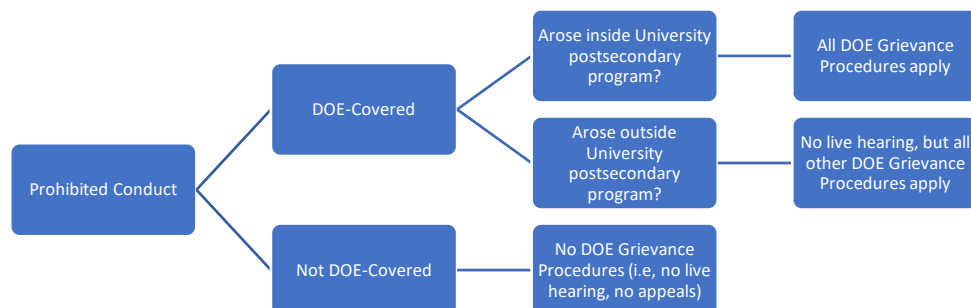
P&T discussed the [Revisions to SVSH Frameworks for Faculty and Staff](#). We acknowledge that these revisions are required by new Title IX regulations from the Department of Education (DOE) under the previous presidential administration and that the current President has signed an Executive Order directing the DOE to review the regulations for consistency with the new administration's policy.

#### **DOE Grievance Procedures & Hearing Carve-Out**

UC must follow a new grievance process for DOE-Covered Conduct that includes live hearings (i.e., Title IX hearing) and appeals separate from and in addition to the P&T hearing. Some SVSH cases may be resolved without a live Title IX hearing if the conduct arose outside the University's postsecondary program. For example, a "hearing carve-out" is applicable if the allegations arise from the provision of patient care to the complainant or a person in the complainant's charge. As UCSF is an Academic Medical Center, we might expect to see such SVSH cases in the future. It is important to note that the "hearing carve-out" does not eliminate the other DOE Grievance Procedures.

#### **Role of Title IX Officer**

The Title IX Officer determines if the alleged conduct is DOE-Covered Conduct and whether it arose outside the University's postsecondary program. This is a key determination with procedural implications.



### **Revised Framework**

Most of the revisions to the framework documents add language that incorporates the DOE-Covered Conduct procedures. We accept the revisions as they are necessary to comply with federal regulation.

However, in reading the document, much of the framework felt repetitive and contradictory. For example, text such as “A summary statement of the factual findings and determinations or preliminary determination (whichever applies)” lends confusion to the procedural framework. We are deeply concerned that it would be very difficult for an interested party to understand the framework without the assistance of a subject matter expert. Our own understanding of the process benefited from the “tree diagram” above.

Moreover, some of the terms were used without definitions. Interested parties including but not limited to victims of SVSH violations may have questions such as:

- What qualifications must an investigator have?
- How is the preponderance of the evidence standard defined?

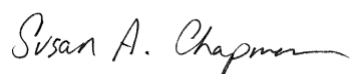
The text of the revisions could be more succinct. For example. The language about the evidence review, specifically pertaining to the investigators discretion to “ask a question” from one party to the other, could be improved for clarity and precision. In addition, we would recommend new taxonomy that is less confusing and drafted so that any member of the public could understand the document.

### **Impact on P&T**

The proposed revisions to SVSH frameworks will have a minor impact on P&T. In SVSH cases in which the respondent is a member of the Senate faculty, if the investigation finds a violation of policy occurred then the case goes to a Peer Review Committee which recommends to the Chancellor or their designee what disciplinary sanctions are appropriate. The Chancellor presents to the respondent a Notice of Intent to Impose Discipline which the respondent may accept or reject. If the respondent rejects, then the case goes to P&T where the administration has the burden of proving the violation occurred. The University Committee on Privilege and Tenure (UCPT) has proposed amendments to Senate bylaw 336 that will change the evidentiary hearing requirements for SVSH P&T cases. Under the proposed amendment to Senate bylaw 336, the P&T Hearing Committee “shall accept into evidence the record and decision from the Title IX process” with limited exception as determined by the Hearing Committee.

Thank you for this opportunity to review these proposed revisions.

Sincerely,



Susan Chapman, RN, PhD  
Chair, Privilege and Tenure  
UCSF Academic Senate, 2020-2021