

## CHAPTER 6: SUMMARY OF CHANGES AND RATIONALE

### Overall goals

Chapter 6. The chapter has been extensively revised. *This and all the ten major divisions of the Faculty Handbook are now called Chapters instead of Sections.* “Providing a Safe Educational and Work Environment” is a more descriptive title than “Integrity of the Academic Community.”

The revision has the following goals:

(a) to be consistent with current *Government requirements, including the Campus Sexual Violence Elimination (SaVE) Act and Violence Against Women Reauthorization Act (VAWA) of 2013, the Dear Colleague letter sent in 2013 to colleges and universities by the Office of Civil Rights of the U.S. Department of Education, the proposed language of SB 967 (concerning campus sexual violence) reported out in 2014 by the State Senate Education Committee, the Child Abuse and Neglect Reporting Act (CANRA) amendments effective 2013; the resolution agreement between the US Departments of Justice and Education and the University of Montana; and the current requirements under the Americans with Disability Act and the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA). For example, 6-A now mentions additional protected categories, and 6-B has new sections on sexual assault, child abuse, and stalking.*

(b) to bring together language now spread among overlapping university policies, *including the 2011 policy on Equal Opportunity, Affirmative Action and Non-Discrimination.*

(c) to state the expectations of behavior that apply equally to both faculty and staff, while noting, *in Section 6-F(2) & (3), the different procedures for the two groups, with enhanced rights for faculty.*

(d) to define new rights applicable both to those accused and complainants, *including Sections 6-A(3), 6-B(2), 6-B(3) & 6-B(4), academic freedom; 6-A(4) reaffirming right to counsel at hearings; 6-A(4) counseling services; 6-B(2) & 6-B(4), behavior is a violation only if objectively offensive to a reasonable person; 6-E(1) right to note investigator conflict of interest; 6-E(2) reaffirming confidentiality; 6-E(3) both parties have equal rights; 6-F(1) right to appeal factual findings of Office of Equity and Diversity to the supervisor over the director; 6-F(3) both parties will be notified of the decision on the same day; 6-F(3) both parties have right to file a grievance; 6-F (3) an accused faculty member and the complainant get a written statement of evidence, and 18 days to reply in writing, before the Provost can consider initiating formal charges leading to dismissal proceedings.*

(e) to have a clearer and more logical structure: *for example, 6-A, foundations, now covers statements of principle on equal opportunity and non-discrimination/affirmative action, academic freedom, advice and counseling, protected characteristics, relations to other policies, definitions, and sources of information, and fundamental fairness.*

(f) to reaffirm, in Section 6-D(1)(b) the existing responsibility to pass on complaints that are received rather than trying to adjudicate or investigate them, to eliminate the category of Designated Recipients so complaints go straight to OED, and to clarify that someone who believes there is discrimination, harassment or retaliation should not be a freelance adjudicator or investigator, but is able to pass the information to OED.

(g) Most portions of section 6-D(1)(b) do not create a University duty to report on the part of someone who has not received a complaint, however one sentence does so in certain circumstances. Paragraph (ii) says, "Moreover, any faculty or staff member who is aware of sex -based harassment must report it to the Title IX Coordinator regardless of whether a complaint is made." That sentence is included because it is highly desirable to promote victim access to the counseling, resources and information available through the Title IX Coordinator, and because of the resolution agreement between the US Departments of Justice and Education and the University of Montana, that the Government calls "a blueprint for colleges and universities throughout the country to protect students from sexual harassment and assault" that explains the Departments' interpretation of applicable legal standards. It required (part II, #7) that the university policy include "a requirement that all employees who are aware of sex -based harassment, except for health-care professionals and any other individuals who are statutorily prohibited from reporting, report it to the Title IX coordinator regardless of whether a formal complaint was filed." (<http://www.justice.gov/crt/about/edu/documents/montanaagree.pdf>)

(h) to remind certain categories of faculty and staff, in Section 6-D(1)(c), of special legal reporting responsibilities defined by statute: supervisors ( under Title VII of the Civil Rights Act of 1964 and California's Fair Employment and Housing Act ), "responsible USC employees" such as Deans and Vice Deans ( Title VII of the Civil Rights Act of 1964 and California's Fair Employment and Housing Act ), "campus security authorities" such as residential college masters (under The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990 ) , and "mandated reporters" such as physicians and those who work regularly with children under age 18 (under the Child Abuse and Neglect Reporting Act )

(This section does not create University duties, and a violation of law does not itself amount to a breach of University policy.)

(i) to give more examples in Sections 6-B(2) and 6-B(4), from the experience here and at other universities. The examples do not expand the scope of the substantive rule. As a protection, ,a standard has been added that the behavior has to be objectively offensive (i.e., offensive to a reasonable person) as well as offensive to the individual complainant, and that academic freedom must be respected.

### Section-by-section summary and rationale

6-A *Foundations* corresponds to current 6-A, but uses language consistent with the policy on Equal Opportunity, Affirmative Action and Non-Discrimination (Dec. 1, 2011) and current law, as indicated below. Subsections have been marked for ease of reference.

6-A (1) *Equal Opportunity*. Based on current 6-A ¶1 and ¶5.

6-A (2) *Non-Discrimination and Affirmative Action*. Based on current 6-A ¶2 and ¶3. Last sentence of new ¶2 and the new language added to the familiar wording in ¶3 are to comply with Americans for Disabilities Act and Section 504 of the Rehabilitation Act.

6-A (3) *Academic Freedom* This statement of protections is new, to reiterate commitment to core values of the University. Cross-references to this principle have been added to the substantive sections, 6-B( (2),(3), & (4).

6-A (4) *Advice and Counseling*. The “advise” part is based on current 6-F (5), last sentence. Sentences on right to attorney at end of ¶1 and on right to counseling at the end of ¶2 are new. Last paragraph is language required by clauses (vi) and (vii) of subparagraph 8(B), and subparagraph 8(C), in section 304(a)(4) of the Violence Against Women Reauthorization Act of 2013: policy shall include ‘(vi) Written notification of students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims both on-campus and in the community. (vii) Written notification of victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement. \*\*\* (C) \*\*\*a written explanation of the student or employee’s rights and options \*\*\* “

6-A (5) *Protected Characteristics* has been revised to reflect current law. See, for example, the EEOC and DFEH web pages: “race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.” <http://www.eeoc.gov/eeoc/index.cfm> “your race or ethnicity, because you have a mental or physical disability or medical condition, because of your sexual orientation, because of your religion, because you’re pregnant, because of your marital status....” <http://www.dfeh.ca.gov/equalrights101.htm>

6-A (6) *Relation to Other Policies* is added for convenience.

6-A (7) *Definitions* is added for convenience.

6-A (8) *Sources of Information* is added for convenience. Jody Shipper is referred to by name, rather than just by title, in reference to certain statutes because of Government requirements to designate a person by name.

6-A (9) *Fundamental Fairness* This statement of basic rights is new, to reiterate commitment to the core value of fairness.

6-B *Policy Against Discrimination, Harassment, and Retaliation* corresponds to current 6-B. New sentence 2 is based on current 6-A ¶2 sentence 1. New sentences 3-4 are based on current 6-B sentences 3-4

6-B (1) *Discrimination* comes from current 6-B sentence 1.

6-B (2) *Harassment Based on a Protected Characteristics* is based on current 6-C. The last clause of the opening paragraph is added to reflect current law. See, for example, University

of Montana Resolution Agreement with Dept. of Education and Dept. of Justice, on this web page: <http://www.justice.gov/crt/about/edu/documents/montanaagree.pdf> .) The 6-B (2) examples expand current 6-C. The examples come from experience here and at other universities; the examples do not expand the scope of the substantive rule.

A new protection is declared: acts can be considered a violation only “if a reasonable person would have perceived them as objectively offensive, and with due respect for the protection of academic freedom.”

6-B (3) *Other Harassment* is the existing policy in the Faculty Handbook, current 6-B ¶2 sentences 2-3. Clarifies that “other” harassment can be handled like other poor behavior. A new protection is declared: acts can be considered a violation only “if a reasonable person would have perceived them as objectively offensive, and with due respect for the protection of academic freedom.”

6-B (4) *Sexual Harassment* is based on current 6-D and legal definition of sexual harassment, updating and applying to a university the traditional definition of workplace harassment. See, e.g., 1998 US Attorney General memo, “Unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment based on gender by managers, supervisors, or coworkers violate the law when (1) An individual is told (or it is implied) that he or she must submit to the unwelcome conduct as a condition of the job; (2) An employment decision affecting the individual is made because the individual submitted to or rejected the unwelcome conduct; or (3) The unwelcome conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile or abusive working environment.” <http://www.justice.gov/jmd/eeos/agmemo.html> . A new protection is declared: acts can be considered a violation only “if a reasonable person would have perceived them as objectively offensive, and with due respect for the protection of academic freedom.” Language is added to cover admissions evaluations to reflect the law. US Dept. of Justice, Legal Manual, says, “Title IX applies to all aspects of the education program, including admissions” (<http://www.justice.gov/crt/about/cor/coord/ixlegal.php>). New language is added as Section 6-A (3) to protect class discussions and other activity protected by academic freedom.

6-B (5) *Sexual Assault* is new. It is included here for consistency with student policies, and to make clear that typical sexual harassment is different from the kind of aggravated harassment that amounts to sexual assault.

6-B (6) *Child Abuse* is new, reflecting a separate university policy, based on state law, the *Child Abuse Neglect and Reporting Act*.

6-B (7) *Stalking* is new, as required by subparagraph 8B, clause (i)(I)(I)(aa), of section 304 of the Violence Against Women Reauthorization Act of 2013 and section 40002(a) of the Violence Against Women Act of 1994: “The term ‘stalking’ means engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.”

6-B (8) *Retaliation* Based on current 6-F (3). New examples.

6-C *Harassment Awareness Training* based on current 6-E. Sentences 3-5 added to motivate compliance.

6-D *Procedures for Complaints* based on current 6-F.

6-D (1)(a) *Complaint by Person Subject to Discrimination, Harassment, or Retaliation* is based on current 6-F (1) ¶1 and ¶3. The former role of “Designated Recipient” is eliminated because it is no longer requested by current Government guidance.

6-D (1)(b) *Reports of Violations* is based on current 6-F(4). See discussion of changes above under Overall Goals.

6-D (1)(c) *Legal Responsibilities* is new to inform faculty of current laws.

6-D (1)(d) *Other Information on Violations* is based on current 6-F (1), ¶4.

6-D (1)(e) *Complaints to Government Agencies* is based on current 6-F (1), ¶5. Last two sentences are new. Contact info is given more conveniently.

6-D (2) *Confidentiality and Privacy* is based on current 6-F (2). Last sentence required by clause (v) of subparagraph 8(B) in section 304(a)(4) of the Violence Against Women Reauthorization Act of 2013: “(v) Information about how the institution will protect the confidentiality of victims, including how publicly-available recordkeeping will be accomplished without the inclusion of identifying information about the victim, to the extent permissible by law.”

6-D (3) *Warning Against Retaliation* is based on current 6-F (3).

6-D (4) *Notification* is based on current 6-F (4), ¶3.

6-E *Investigation* is based on current 6-F (4), ¶4, and 6-F (5) sentence 1, modified to reflect current Government instructions under the April 4, 2013, Dear Colleague letter

6-E (1) *Designated Investigator*: The right to report conflicts of interest is new.

6-E (2) *Informing the Alleged Offender* is based on current 6-F(5), sentence 2, clarifying that in addition to interviews the alleged offender may also respond in writing.

6-E (3) *Investigative Procedure* expands on current 6-F (5) and states that staff and students as well as faculty are required to cooperate in the investigation.

6-E (4) *Investigator’s Report* is based on current 6-F (6), ¶1. There is a new, shorter, 60-day time frame for sexual harassment and sex/gender discrimination investigations.

6-F *Response to Investigation* is based on current 6-F (6) ¶1 last sentence. The notification to the complainant as well as the alleged offender is new.

6-F (1) *Appeal of Findings*: The right to appeal the factual finding (in addition to grieving the sanction) is new.

6-F (2) *Staff* is based on current 6-F (6) ¶2. The Senior Vice President, Administration, or an official he or she designates, is named instead of the Senior Vice President, Finance.

6-F (3) *Faculty* is based on current 6-F (6) ¶3. The last two sentences are new, giving additional rights to a faculty member facing dismissal proceedings, like those in other dismissal cases, to receive a statement of evidence and to provide written comments, before the Provost decides whether to bring charges.

6-G *Right to a Hearing* is based on current 6-G. New clauses give the complainant a right to file a grievance, and adds sexual assault to the list of types of cases that must be heard by a mixed-gender panel.

6-H *Sanctions and Corrective Actions* Referral for counseling by the Center for Work and Family Life is noted as a possible corrective action.

6-I *Consensual Relationships* is based on current 6-I. The last sentence of ¶1 is new, to give an explanation.

Current Section 6-K has been moved to Chapter 7 as Section 7-F. More logical location.

**Chapter 6**

# Providing a Safe Educational and Work Environment

Chapter 6. **Providing a Safe Educational and Work Environment**

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## **6-A FOUNDATIONS**

### **6-A (1) Equal Opportunity**

The University of Southern California is an equal-opportunity educator and employer, proudly pluralistic and firmly committed to providing equal opportunity for outstanding persons of every race, creed, and background. The university strives to maintain a community in which each person respects the rights of other people to live, work and learn in peace and dignity, be proud of who and what they are, and to have equal opportunity to realize their full potential as individuals and members of society. To this end, the University places great emphasis on those values and virtues that bind us together as human beings and members of the Trojan Family. The University enthusiastically supports this principle in its entirety, and expects that every person associated with the university will give continuing support to its implementation.

### **6-A (2) Non-Discrimination And Affirmative Action**

The university is firmly committed to complying with all applicable laws and governmental regulations at every level of government that prohibit discrimination against, or which mandate that special consideration be given to, students and applicants for admission, and faculty, staff and applicants for employment, on the basis of any protected characteristic, as defined in Section 6-A (5).

This commitment applies to all of the university's educational programs and activities, including admissions, and all personnel actions including but not limited to recruiting, hiring, promotion, demotion, compensation, benefits, transfers, layoffs, return from layoff, provision of leaves, training, education, tuition assistance and other University programs. In addition, an otherwise qualified individual must not be discriminated against in, or excluded from, admissions, participation in educational programs and activities, or employment due to his or her disability. The university seeks compliance with all statutes prohibiting discrimination in education, including Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990 which respectively prohibit discrimination. This good-faith effort to comply is made even when such laws and regulations conflict with each other. The University will make reasonable accommodations for qualified individuals with known disabilities unless doing so would result in an undue hardship;

All employment ads for faculty or staff positions shall include the following notice: *USC is an equal-opportunity educator and employer, proudly pluralistic and firmly committed to providing equal opportunity for outstanding persons of every race, gender, creed and background. The University particularly encourages women, members of underrepresented groups, veterans and individuals with disabilities to apply. USC will make reasonable accommodations for qualified individuals with known disabilities unless doing so would result in an undue hardship. Further information is available by contacting uschr@usc.edu.*

### **6-A (3) Academic Freedom**

Just as the University is committed to securing for its students, faculty and staff a safe educational and work environment free of sexual harassment, it is equally committed to

maintaining academic freedom as declared in Section 3-B (1)(a) of Chapter 3. Our academic community also recognizes that when harassment is committed against students or faculty it threatens their academic freedom.

The university recognizes that students are exposed to thought-provoking ideas as part of their educational experience, and some of these ideas may challenge their beliefs and may lead a student to claim that an educational experience is offensive. Therefore allegations of harassment that arise in the educational context will be considered in keeping with university's commitment to academic freedom. The educational experience may include, for example, lectures, dialogues, assigned materials, and student assignments, and visual or written material as well as speech. The faculty member should carefully consider the class climate and ground rules around academic discourse, so that student learning is promoted but students are not unreasonably exposed to conditions in which harassment could easily arise.

#### **6-A (4) Advice and Counseling**

A faculty member who is either an alleged offender or a complainant under these policies may seek advice from the Academic Senate President and the Senate Committee on Faculty Rights and Responsibilities, recognizing that such communications are not confidential or legally privileged. Mediation and grievances are not available as substitutes for the process explained in this policy. Parties to hearings on grievances or dismissals before the Committee on Tenure and Privileges Appeals may have legal counsel participate as provided in Chapters 7 and 8.

Any person found to have been subjected to discrimination or harassment may access free counseling services through the University. Such services are also available to others who have been affected by harassment or discrimination, as well as to the person who engaged in the discrimination or harassment. Counseling for faculty and staff is provided through the Center for Work and Family Life, and for students through the Engemann Student Health Center and the Center for Women and Men.

A student, faculty or staff member who reports that that he or she has been a victim of sexual assault or sexual harassment, or any form of gender-based misconduct, will receive written notification of (a) rights and options; (b) existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims both on-campus and in the community; (c) options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to the Department of Public Safety or local law enforcement.

#### **6-A (5) Protected Characteristics**

The protected characteristics under this policy include race, color, national origin, citizenship, ancestry, religion, gender, gender identity, gender expression, sex, sexual orientation, age (40 or older), physical disability, medical condition, mental disability, marital status, pregnancy, veteran status, genetic information, and any other characteristic which may be specified in applicable laws and governmental regulations.

#### **6-A (6) Relation to Other Policies**

Both faculty and staff members are mentioned in this policy because the same substantive responsibilities are imposed on both. This policy also states the basic procedure for complaints against faculty and staff members, with somewhat different processes for each. Additional information is at <http://equity.usc.edu>. The substantive policy on behavior by students is similar to this policy, with a separate process for considering complaints against students; both are set out in SCampus, <http://scampus.usc.edu>. For behavior by anyone else who interacts with the university community, see <http://equity.usc.edu/sexual-harassment>. Some but not all of the provisions in this policy are required by law.

## **6-A (7) Definitions**

Mentions of “this policy” refer to all of Chapter 6. “Protected characteristics” are defined in **Section 6-A (5)**. References to “discrimination, harassment, or retaliation” encompass any violation of this policy and mentions of any prohibited behavior include threats or attempts to perform that behavior. “Action” and similar terms include failure to act when there is a duty to do so. “Designated Investigator” is defined in **Section 6-E (1)**. References to the “Vice Provost” mean the Vice Provost or Vice President designated by the Provost to take actions under this policy.

## **6-A (8) Sources Of Information**

Questions regarding the application of the various rules and regulations concerning equal employment opportunity, affirmative action, and non-discrimination should be addressed to the Office of Equity and Diversity. The Disabled/Veterans Affirmative Action Plan may be reviewed by employees and applicants upon request; for further information or to make an appointment during regular business hours, contact the Office of Equity and Diversity. The university's Title IX Coordinator, **Age Discrimination Act Coordinator, and Americans with Disabilities Act/Section 504 of the Rehabilitation Act of 1973 Coordinator**, is Jody Shipper, Executive Director of the Office of Equity and Diversity, University Park Campus, Los Angeles, California 90089-0704. Further information on accommodations for disabilities is available from Human Resources Administration by contacting [uschr@usc.edu](mailto:uschr@usc.edu) or (213) 821-8111.

## **6-A (9) Fundamental Fairness**

**Procedures for disciplinary action shall provide a prompt, fair, and impartial investigation and resolution.**

## **6-B POLICY AGAINST DISCRIMINATION, HARASSMENT, AND RETALIATION**

The University of Southern California is committed to maintaining an environment that is free from discrimination and harassment, including sexual harassment. To carry out this University commitment, the University will not tolerate statements or actions that create a discriminatory or harassing work or educational environment.

Attempts or threats to commit acts prohibited by this policy, or to omit acts required by this policy, are prohibited. Complaints and witness statements that are not in good faith are also prohibited.

Any faculty or staff member who violates this policy will be subject to appropriate disciplinary action for misconduct, which may include termination or dismissal for cause in accordance with applicable University policies.

This policy applies to all behavior by a faculty or staff member while performing a University role; or on campus or at a facility of the University; or at an activity under the auspices of the University; or where the victim is a faculty or staff member, student, post-doctoral fellow, resident, applicant, patient, vendor, contractor, or visitor, or employee of an affiliate of the University; or which is adequate cause for discipline under Chapter 8, Sections 8-B or 8-C. For behavior by students, see <http://scampus.usc.edu>; for behavior by anyone else who interacts with the university community, see <http://equity.usc.edu/sexual-harassment>

### **6-B (1) Discrimination**

No faculty or staff member may discriminate against anyone based on any protected characteristic, as defined in Section 6-A (5).

### **6-B (2) Harassment Based On A Protected Characteristic**

No faculty or staff member may take actions that are harassing, abusive, or intimidating against anyone based on any protected characteristic, as defined in Section 6-A(5), or commit actions that adversely affect another because of a protected characteristic.

Such conduct may include, but is not limited to, the following examples, if a reasonable person would have perceived them as objectively offensive, and with due respect for the protection of academic freedom as discussed in Section 6-A(3):

- Ridicule, abuse, insults or derogatory comments that are directly or indirectly based on a protected characteristic;
- Offensive remarks about an individual's looks, clothing, or body parts, that relate to a protected characteristic;
- Offensive comments about an individual's racial, ethnic, or religious characteristics;
- Disparaging or offensive remarks about an individual's sex or gender whether or not sexual in nature;
- Offensive comments about an individual's religious beliefs or lack of religious beliefs;
- Expressing negative stereotypes regarding an individual's country of birth, ancestry, citizenship, or race;
- Negative comments regarding an individual's age when referring to employees 40 and over;
- Disparaging, intimidating, or offensive references to an individual's mental or physical impairment or disability;
- Disparaging and unwelcome racial or ethnic remarks, or disparaging and unwelcome racial or ethnic slurs, jokes, or epithets;
- Disparaging and unwelcome comments based on other protected characteristics;

- Offensive and unwelcome language directed at someone because of her or his gender, or based on gender stereotypes;
- Any unwelcome verbal or physical behavior based on any protected characteristic when the behavior can reasonably be considered to adversely affect the work or academic environment, or when an academic, admissions, or employment decision or recommendation affecting the individual is based on his or her acceptance or rejection of such behavior.

### **6-B (3) Other Harassment**

No faculty or staff member may take actions that are harassing, abusive, or intimidating against another member of the university community, even if not based on a protected characteristic, **if a reasonable person would have perceived them as objectively offensive, and with due respect for the protection of academic freedom as discussed in Section 6-A(3)**. Such actions may be investigated and corrective action or discipline imposed under this policy; or such actions may instead be responded to as are other instances of misconduct or poor performance.

### **6-B (4) Sexual Harassment**

No faculty or staff member may commit sexual harassment, defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- submission to such conduct is either explicitly or implicitly made a term or condition of an individual's employment, appointment, admission, or academic evaluation; or
- submission to such conduct is used as a basis for evaluation in personnel decisions, academic evaluations, or admissions evaluations affecting an individual; or
- such conduct has the effect of unreasonably interfering with an individual's work or academic performance, or creating an intimidating, hostile, or offensive working or learning environment.

Sexual harassment includes, but is not limited to, the following examples, **if a reasonable person would have perceived them as offensively offensive, and with due respect for the protection of academic freedom as discussed in Section 6-A(3)**:

- written instances: suggestive or obscene communication via letters, notes, text messages, e-mails, any material distributed via social media, **or** any type of digital communication.
- verbal instances: derogatory comments, slurs, jokes, or epithets of a sexual nature or sexist remarks, discussions about sex or sexual activities, requests for sexual favors, repeated and unwelcome propositions for dates, or offensive sexual remarks about an individual's looks, clothing, **or** body parts when related to sex or gender.
- physical instances: leering, stalking, assaults, impeding or blocking movement, touching, or body contact.
- visual instances: inappropriate display of sexually explicit objects, pictures, cartoons, posters, computer screensavers, websites, movies, drawings, or sexual gestures.

### **6-B (5) Sexual Assault**

No faculty or staff member may commit sexual assault, defined as any physical sexual act (including, but not limited to, actual or attempted intercourse, sexual touching, fondling, or groping), perpetrated upon a person

- without consent, or where consent is not freely given;
- where the assailant uses physical force, threat, coercion, or intimidation to overpower or control another; or where the victim fears that he or she, or another person, will be injured or otherwise harmed if he or she does not submit; or
- where the victim's ability to give or withhold consent is impaired due to the influence of alcohol or other drugs, or due to age or mental incapacity, or because of unconsciousness or blackout.

Valid consent must be informed and knowing. When people consent to sexual activity, they will have indicated, verbally or otherwise, that they are participating willingly, freely, and voluntarily; silence, in and of itself, cannot demonstrate consent. Consent is an ongoing process in any sexual interaction and may be withdrawn at any time during a sexual interaction. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, does not by itself demonstrate consent. When there is a difference in power or authority (either due to differences in physical strength, or differences in real or perceived authority), the question of consent is more carefully scrutinized to ensure meaningful consent.

### **6-B (6) Child Abuse**

No faculty or staff member may commit an act of child abuse, including sexual abuse of an individual under 18 years of age. All faculty and staff members are required to report any instances of known or suspected abuse, molestation or neglect relating to children. Please see **Section 6-D (1)(b) and** the University policy on Protecting Minors, <http://www.usc.edu/policies>.

### **6-B (7) Stalking**

No faculty or staff member may engage in stalking. Stalking is defined as a course of conduct directed at a specific person that would cause a reasonable person to feel fear or apprehension **or suffer substantial emotional distress**, or to fear a threat to her or his safety, mental health, or physical health, **or the safety of others**. Stalking is also a crime. Tormenting behavior is prohibited equally with stalking. Tormenting behavior is defined as willful conduct directed at a specific person that seriously alarms, torments, or terrorizes the person, that would have that effect on a reasonable person, and that serves no legitimate purpose.

### **6-B (8) Retaliation**

No faculty or staff member may threaten, attempt, or commit retaliation against anyone who, in good faith, brings a complaint under this policy or applicable law; or participates in investigation of such a complaint; or protests in good faith alleged discrimination, harassment, or retaliation against another; **or exercises their rights or responsibilities under this policy.**

Such retaliation may include, but is not limited to, the following types:

- Coercion, intimidation, interference, harassment, **discrimination**, or vexatious behavior;
- Adverse employment or academic action **(or recommending that such action be taken)**, such as lowering a grade or a performance evaluation, giving a poor academic or employment recommendation, or causing the individual to be demoted or terminated or not promoted, hired, or admitted;
- Exclusion from employment or educational opportunities or limiting scholarly activities such as teaching, research, or publication;
- Limiting employment opportunities, such as providing a poor reference, or refusing to allow appropriate travel;
- Spreading negative information about the individual;
- Shunning or ostracizing an individual.

## **6-C HARASSMENT-AWARENESS TRAINING**

All faculty and staff members must periodically complete required harassment-awareness training programs provided by the University. Additional examples of harassment are provided in this training. It is important for faculty and supervisors to take this training even if they do not believe they need it. This is especially so for senior faculty, who are leaders of the academic community and role models for others. Taking the training as periodically required is not discretionary; it is part of the duties of each faculty and staff member.

## **6-D PROCEDURES FOR COMPLAINTS**

### **6-D (1) Complaints and Reports**

#### **6-D (1)(a) Complaint by Person Subject to Discrimination, Harassment, or Retaliation**

Anyone who believes he or she has been discriminated against, harassed, or retaliated against in violation of this policy, or is otherwise directly affected by behavior prohibited by this policy, should report the fact to the Office of Equity and Diversity at 213-740-5086. If **another faculty or staff member receives or is informed of a formal or informal complaint**, that person must report the matter to OED, as stated in Section **6-D (1)(b)**.

OED also oversees affirmative-action compliance. Complaints of gender-based sexual misconduct, including sexual harassment or Title IX, should be addressed to the University's Title IX Coordinator, Jody Shipper, CUB Building, University Park Campus, Los Angeles, California 90089-0704, 213-740-5806. Jody Shipper is also the University's Americans with Disabilities Act/Section 504 of the Rehabilitation Act of 1973 Coordinator. **She is also the University's Age Discrimination Act Coordinator.** If a complaint is against a student, contact either the Title IX Coordinator or Student Judicial Affairs and Community Standards (SJACS).

Complainants are expected to make their complaints as soon as possible. While there is no time limit to making a complaint to the University, delay in taking formal action with



respect to an incident may foreclose other remedies under federal or state law, and can otherwise impede the investigation, due to changes in memory, or the reduced likelihood of finding witnesses.

### **6-D (1)(b) Reports of Violations**

This Section 6-D(1)(b) deals only with responsibilities under University policy; for responsibilities under the law see Section 6-D(1)(c).

(i) Any faculty or staff member who receives or is informed of a formal or informal complaint involving our policy prohibiting discrimination, harassment, or retaliation, is required to immediately bring the matter to the attention of the Office of Equity and Diversity at (213) 740-5086. The same responsibility exists for a violation of Title IX.

(ii) Moreover, any faculty or staff member who is aware of sex-based harassment must report it to the Title IX Coordinator regardless of whether a complaint is made.

(iii) Health-care professionals and any other individuals who are statutorily exempt from reporting should respect confidentiality.

(iv) The Office of Equity and Diversity will decide whether an investigation is appropriate in the circumstances; the person initially learning of the complaint must not make that decision or try to investigate or resolve the matter except under the guidance of OED.

(v) A notification to the Office of Equity and Diversity shall preferably be in writing or by email and should include (1) all known information about the alleged or suspected discrimination, harassment, or retaliation; (2) the names of the complainant and of the alleged offender(s), if known; and (3) any additional information which would enable the investigator to investigate the allegation.

(vi) Any faculty or staff member is required to report any known or suspected abuse, molestation or neglect related to children. See Section 6-B (6) and the University policy on Protecting Minors at <http://www.usc.edu/policies>. For other responsibilities, see the University policy on Reporting Wrongdoing at <http://www.usc.edu/policies>.

(vii) No employee or unit of the University other than the Office of Equity and Diversity should attempt to investigate or resolve an apparent violation of any of these policies on discrimination, harassment or retaliation except under the guidance of the Office of Equity and Diversity (and except as permitted by Section 6-B (3)) so it can decide whether an investigation is appropriate in the circumstances.

### **6-D (1)(c) Legal Responsibilities**

This Section 6-D (1)(c) is to remind certain faculty and staff members of responsibilities under the law; for responsibilities under University policy see Section 6-D (1)(b).



(i) Supervisors must promptly inform the Office of Equity and Diversity of any report to them of sexual assault or sexual harassment, under Title VII of the Civil Rights Act of 1964 and California's Fair Employment and Housing Act.

(ii) Responsible USC officials must promptly inform the Title IX Coordinator of any report of gender-based sexual misconduct, or other violation of Title IX, under Title VII of the Civil Rights Act of 1964 and California's Fair Employment and Housing Act, see 6-D (1)(a). Responsible USC officials include the Provost and all Vice Provosts; Deans of schools, as well as Vice Deans for Faculty and for Students; and any administrator of the rank of Assistant Vice President or above.

(iii) Campus Security Authorities must promptly inform the Department of Public Safety about any report of sexual assault or other crime within USC's geographic area, under the Clery Act (The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990). Campus Security Authorities include any USC official who has significant responsibility for student and campus activities, including student discipline. The definition of CSA is found in the university's Annual Security Report., <http://capsnet.usc.edu/departments/public-safety/annual-security-report>.

(iv) Those designated by law as a "mandated reporter" have an individual duty to report known or suspected abuse or neglect related to children, elders or dependent adults, under the Child Abuse and Neglect Reporting Act and the Welfare and Institutions Code. This requirement and the definition of "mandated reporter" are explained in the policies on Mandated Reporters, Protecting Minors, and Reporting Wrongdoing at <http://www.usc.edu/policies>.

#### **6-D (1)(d) Other Information on Violations**

In the absence of a complaint or report, the University may initiate an investigation if it has reason to believe that this policy has been violated.

#### **6-D (1)(e) Complaints to Government Agencies**

In addition to notifying the University about unlawful discrimination, harassment, or retaliation, affected employees or other complainants also may direct their complaints to the California Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC), which have the authority to conduct investigations of the facts. The deadline for filing complaints with the DFEH is one year from the date of the alleged unlawful conduct. If the DFEH believes that a complaint is valid and settlement efforts fail, the DFEH may seek an administrative hearing before the California Fair Employment and Housing Commission (FEHC) or file a lawsuit in court. Both the FEHC and the courts have the authority to award monetary and non-monetary relief in meritorious cases. The Office for Civil Rights (OCR) is responsible for enforcing laws prohibiting discrimination on the basis of race, color, national origin, disability, age, or sex. Any person who believes that the University has violated nondiscrimination or affirmative-action obligations as a Federal contractor may contact the Office of Federal Contract Compliance Programs (OFCCP.) Contact information: DFEH: email [contact.center@dfeg.ca.gov](mailto:contact.center@dfeg.ca.gov) or <http://www.dfeh.ca.gov>. EEOC: 1-800-669-4000 (TTY 1-800-669-6820) or <http://www.eeoc.gov>. OCR: [https://ocrportal.hhs.gov/ocr/cp/-wizard\\_cp.jsf](https://ocrportal.hhs.gov/ocr/cp/-wizard_cp.jsf). OFCCC: 1-800-397-6251 (TTY: 1-202-693-1337).

The crime of rape, or attempted rape, is a serious criminal act. It is the victim's right to choose whether to file a criminal report. The University encourages victims to consider reporting these crimes. To report a crime, victims may contact the Department of Public Safety (DPS), (213) 740-4321, 24 hours a day. Whenever a crime of a sexual nature is reported to DPS, they immediately notify the Los Angeles Police Department. The LAPD (or the appropriate law enforcement agency if outside of Los Angeles) has the responsibility for the investigation of these crimes; DPS is not permitted to do so. Any report filed with DPS will be shared with the Title IX Coordinator.

#### **6-D (2) Confidentiality and Privacy**

Although the University cannot commit to keeping a complaint under this policy confidential because of its obligation to investigate, the University will protect the confidentiality of the person bringing the allegation as well as the accused to the extent possible by using its best efforts not to disseminate information concerning the allegation beyond those who have a legitimate need to know. Any publicly-available recordkeeping will exclude information about the victim to the extent permissible by law.

#### **6-D (3) Warning Against Retaliation**

The Designated Investigator shall inform the complainant that the law and the University's rules prohibit threatened, attempted, or actual retaliation against him or her for bringing a good-faith complaint, or against any participant in good faith in the investigation, or against any person who in good faith protests the alleged discrimination, harassment, or retaliation; and shall inform the complainant that any incident of retaliation must be reported immediately to the Office of Equity and Diversity

In addition, when the Designated Investigator investigates the complaint, he or she shall warn the alleged offender(s) that retaliation or threats or attempts to retaliate are strictly prohibited. See Section 6-B (8).

#### **6-D (4) Notification**

Upon receipt of an allegation by or against a faculty member, the Office of Equity and Diversity shall notify the appropriate Dean and the Vice Provost for Faculty Affairs and the Vice Provost designated by the Provost for such matters.

### **6-E INVESTIGATION**

#### **6-E (1) Designated Investigator**

The Office of Equity and Diversity is Designated Investigator under this policy. If the person accused or the complainant believes there is a conflict of interest involving an investigator in the Office of Equity and Diversity, he or she may call that to the attention of the Executive Director of that office, or to the Associate Senior Vice President, Human Resources, who supervises that office.

The University may designate a different investigator if it determines it is appropriate.

The Designated Investigator will conduct a prompt, thorough, and impartial investigation of the complaint to determine whether a preponderance of the evidence shows that a violation of this policy has occurred.

#### **6-E (2) Informing the Alleged Offender**

In the conduct of the investigation, the Designated Investigator shall present the alleged offender with sufficient information so that he or she can meaningfully respond. In communications with the alleged offender, the Designated Investigator will attempt to employ means of communication that preserve confidentiality. The alleged offender shall participate in interviews as requested and may also respond in writing.

#### **6-E (3) Investigative Procedure**

The investigation will be conducted in accordance with the University's policies and procedures generally applicable to investigations by the Office of Equity and Diversity. The investigation includes interviewing the complainant, alleged offender(s) and relevant witnesses, and viewing other evidence as may be available. All faculty and staff members and all students are required to cooperate in the investigative process. In investigations of an allegation of sexual assault or sexual harassment, or any form of gender-based misconduct, both the faculty member accused as well as the complainant (whether faculty or staff member, or student) shall have equal procedural rights. For the availability of advice and counseling, see Section 6-A (4). More detailed information about the investigative procedure is available at the Equity and Diversity website, [http://www.usc.edu/dept/hr/equity\\_diversity/](http://www.usc.edu/dept/hr/equity_diversity/).

#### **6-E (4) Investigator's Report**

The Designated Investigator shall attempt to complete the investigation and make a written report as efficiently and promptly as possible. Absent extenuating circumstances, the University endeavors to complete investigations of complaints of sexual harassment or sex/gender discrimination within 60 days from the date of an intake interview, and for other complaints within 90 days. If the report is not complete within the stated 60- or 90-day time frame, the alleged offender, the complainant, the Academic Senate President, or the designated Vice Provost may ask the Associate Senior Vice President, Human Resources (who has authority over the Office of Equity and Diversity) to explain why it is not yet complete.

### **6-F RESPONSE TO INVESTIGATION/ APPEAL OF FINDINGS**

The Designated Investigator will notify the complainant and the alleged offender of the findings of the investigation, as well as the procedures for appeal, in writing and on the same day.

The University will take immediate and appropriate corrective action when it is determined that harassment or other violation of this policy has occurred. If the finding of violation is modified or reversed on appeal, any discipline will be reviewed and modified or rescinded as appropriate.

#### **6-F (1) Appeal of Findings**

For cases against faculty or staff, within 10 calendar days of being notified of the findings, either the person accused or the complainant (whether faculty or staff member,

or student) may appeal the findings to the Executive Director of the Office of Equity and Diversity. If the Executive Director has personally conducted the investigation, the appeal will instead be to the Associate Senior Vice President, Human Resources. If the Associate Senior Vice President, Human Resources is not available, an official designated by the Senior Vice President, Administration, will act instead.

### **6-F (2) Staff**

For complaints against staff, the Associate Senior Vice President for Human Resources, will receive and review the investigative report and, when warranted, take appropriate corrective action, including any disciplinary action deemed appropriate. If the Associate Senior Vice President, Human Resources is not available, an official designated by the Senior Vice President, Administration, will act instead. The possible sanctions range from counseling or a written reprimand to suspension or termination, depending upon the severity of the conduct. For more information, please consult the Equity and Diversity website, <http://equity.usc.edu>, and also the policy on Staff Disciplinary Practices, <http://www.usc.edu/policies>. For cases alleging a violation of the university policy against sexual harassment, or any form of gender-based misconduct, both the complainant and the respondent shall be notified, in writing and on the same day, of the disciplinary decision, as well as any change in that decision.

A staff corrective action may be appealed in writing within ten calendar days to the Senior Vice President, Administration. For cases alleging a violation of the university policy against sexual harassment, or any form of gender-based misconduct, both parties will have the same rights of appeal and, should either party appeal, the appeals document will be forwarded to the other party.

### **6-F (3) Faculty**

For complaints against faculty, the Vice Provost will receive and review the investigative report and consult with the President of the Academic Senate and the relevant Dean. When warranted and considering the seriousness of the offense and all the circumstances, the Vice Provost will proceed to take action as set forth in Section 6-I. For cases alleging a violation of the university policy against sexual harassment, or any form of gender-based misconduct, both the complainant and the respondent shall be notified, in writing and on the same day, of the disciplinary decision as well as any change in that decision.

The faculty member may file a grievance as provided in Section 6-H. For cases alleging a violation of the university policy against sexual harassment, or any form of gender-based misconduct, both parties will have the same rights to file a grievance. Should either party do so, the document will be forwarded to the other party.

However, dismissal for cause and demotion as defined in Chapter 8, Section 8-D (5), shall occur only pursuant to the formal proceedings set forth in Chapter 8, Section 8-D (2), commencing with Step 4, if the Provost decides to bring formal charges on the recommendation of the Vice Provost. In making such a recommendation to the Provost, the Vice Provost shall confirm that the alleged offender received a statement of evidence and was allowed 18 calendar days to provide comments in writing. The Vice Provost will consider any comments provided and will share them, and the statement of evidence, with the Provost. Moreover, for cases alleging a violation of the university policy against sexual harassment, or any form of gender-based misconduct, the Vice Provost shall

confirm that the complainant also received the statement of evidence and was allowed 18 calendar days to provide comments in writing, and that the comments of each were forwarded to the other party.

## **6-G RIGHT TO A HEARING**

With respect to any sanction or corrective action taken by the Vice Provost, the faculty member will be entitled, within ten calendar days of being notified of the Vice Provost's decision, to file a grievance as provided in Chapter 7 of this Faculty Handbook. In the case of an allegation of sexual assault or sexual harassment, or any form of gender-based misconduct, both the faculty member accused as well as the complainant (whether faculty or staff member, or student) shall have the same right to file a grievance regarding the sanction or corrective action as provided in this section.

In cases of alleged sexual harassment, sexual assault, discrimination, or retaliation in which the complainant and the respondent are of different genders, the grievance hearing panel, or the Step 5 hearing panel for a dismissal or demotion, shall include members of different genders.

If certain sanctions are grieved, and the Provost also brings forward charges seeking dismissal or demotion of the faculty member, the same panel will function as the grievance hearing panel and the dismissal hearing board (as provided in Step 5 of the formal proceedings set forth in Chapter 8, Section 8-D (2)).

## **6-H SANCTIONS AND CORRECTIVE ACTIONS**

When a faculty member has been found to have violated this policy, sanctions and corrective action may include but are not limited to, any of the following:

- approving an informal resolution;
- ensuring that the person against whom the complaint is made is not called upon to write letters of recommendation or make academic judgments about the person making the complaint or any other decision that affects the academic or professional career of the complainant or witnesses (and making alternative arrangements if necessary);
- changing advisers, graders, the line of supervision, or physical locations of work;
- conducting training, holding discussions, distributing leaflets, showing videos or films, or sending letters in the relevant unit explaining the University's policy on discrimination, harassment, or retaliation;
- action to remedy harm to the complainant or witnesses, e.g., reinstatement of teaching or research assistantships from which complainant or witness was removed by the accused or re-evaluation of course work graded unfairly by the accused;
- reviewing materials in the complainant's or witness's file and, if there is evidence of materials placed in the file by the individual as an act of discrimination, harassment or retaliation, removing such materials when appropriate;
- counseling of the individual by his or her supervisor(s), such as the Dean, Vice Provost, or Provost, about the individual's behavior;
- counseling by the Center for Work and Family Life or its designee;
- oral warning of the individual by his or her supervisor(s), such as the Dean, Vice Provost, or Provost, with a record in the individual's personnel file, that the

- individual's behavior constitutes a violation of the University's policy on discrimination, harassment, or retaliation;
- written warning of the individual by his or her supervisor(s), such as the Dean, Vice Provost, or Provost, with a copy to the individual's personnel file, that the individual's behavior violates the University's policy on discrimination, harassment, or retaliation;
  - elimination or reduction of merit increases for the next year;
  - removing the individual from a University administrative position;
  - denial of promotion or postponement of consideration for promotion;
  - suspension without pay, for a period not to exceed one semester;
  - reduction in salary;
  - for faculty who do not hold tenure, non-reappointment or termination effective at the end of the current academic or fiscal year; or effective on 90 days notice or pay in lieu of notice.
  - demotion as defined in Chapter 8, Section 8-D(5);
  - dismissal for cause.

## 6-I CONSENSUAL RELATIONSHIPS

The University strongly discourages sexual relationships between faculty and students, or persons in a supervisor/supervisee relationship. There is an inherent power differential between faculty and students, and supervisors and supervisees. Sexual relationships between these parties may lack meaningful consent. These relationships may put either party at risk. They can create a perceived lack of freedom to give meaningful consent about the relationships. The university does not tolerate non-consensual sexual relationships within its work and academic environment. Faculty and supervisors should seriously consider the risks to their own professional and private lives, as well as those created for the student or supervisee before entering into such a relationship. The University strongly recommends that such relationships generally be avoided. If the relationship is nevertheless not avoided, the University strongly recommends that the faculty member disclose it to the department chair or Dean or Vice Provost designated for such purposes by the Provost. Confidentiality shall be protected to the fullest extent possible.

A relationship may be voluntary in the sense that an individual is not forced to participate against his or her will, yet it may be unwelcome and therefore result in a claim of sexual harassment or sexual assault. Even a fully consensual relationship may create an exposure to legal risk, as others may feel they have been treated less favorably than was the person in the sexual relationship; this may be considered a form of sexual favoritism and, as such, is a violation of university policy.

If a sexual relationship ends, and a participant finds that future such contact by the former partner is unwelcome, it is highly desirable that he or she give explicit notice to the former partner in clear, unambiguous terms of the fact that the relationship is over and future contact or comments of a sexual nature are unwelcome.

The University does not permit the fact of a relationship between any employee and another to create favored or disadvantageous treatment. In other words, the person with whom one is having a sexual relationship may not receive more favored treatment because of that relationship, nor may those who are not in such a relationship be subjected to disadvantageous treatment on that basis.

Therefore, if there is a consensual sexual relationship between a faculty member and a person who is a student or another faculty or staff member, and the faculty member would otherwise evaluate or supervise that person, the faculty member must not evaluate or supervise that individual. To protect privacy, faculty members who recuse themselves from such decisions or supervisory responsibilities are not required to state reasons.

If a faculty member is in doubt concerning the possibility of a violation of Section 6-1 it is recommended that the faculty member consult the department chair or Dean. A department chair or Dean who has similar doubts should initiate discussion with the faculty member; and any other faculty member with such concerns should raise them with the chair or Dean, who should take appropriate steps. Advice in these situations should be sought from the Vice Provost designated for such purposes by the Provost and from the President of the Faculty. Confidentiality shall be protected to the fullest extent possible.

**MOVED FORMER 6-J TO BE 7-F**