

## The University of California

It Must Take Additional Steps to Address Long-Standing Issues With Its Response to Sexual Harassment Complaints

Report 2017-125

COMMITMENT  
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621 Capitol Mall, Suite 1200 | Sacramento | CA | 95814



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June 21, 2018

2017-125

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report concerning the University of California (university) and its responses to sexual harassment complaints involving faculty and staff harassers and student victims. Title IX of the federal Education Amendments of 1972 (Title IX) requires the university to prohibit discrimination on the basis of sex, including sexual harassment. This report concludes that although the university has been aware of issues with its responses to sexual harassment complaints and has taken steps to address them, it must do more to stop, prevent, and remedy sexual harassment at its campuses.

Notably, we found that the three campuses we visited—Berkeley, Davis, and Los Angeles—took much longer to discipline faculty in the Academic Senate than they did to discipline staff. On average, the three campuses disciplined staff within 43 days after the conclusion of an investigation compared to 220 days for faculty in the Academic Senate. In addition, the three campuses disciplined faculty inconsistently, especially those faculty who were the subjects of multiple sexual harassment complaints. Campus Title IX coordinators, if they had a role in deciding discipline—which they currently do not have—could help the university gain consistency in the discipline it imposes. We also found that the three campuses inconsistently followed Title IX guidance in their informal and formal processes to address sexual harassment complaints. The three campuses frequently exceeded investigation time frames without obtaining approved time extensions and they often did not send all required information to the complainants and respondents.

Finally, the university's Office of the President established a systemwide Title IX office (systemwide office) in February 2017 with a goal to implement a consistent and coordinated response systemwide to complaints of sexual harassment. However, to make the systemwide office more effective, the Office of the President needs to define how much consistency it desires and provide the systemwide office the necessary authority to achieve it. We identified three areas in which the systemwide office should play a central role in the university's efforts to prevent and respond to sexual harassment: setting policy, analyzing applicable data, and overseeing the campuses. Based on feedback from external entities and internal groups, the university has taken steps to improve its response to complaints of sexual harassment, but our audit found that the university needs to take additional steps to fully resolve the concerns that reviewers have raised.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

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## SUMMARY

University students who experience sexual harassment or sexual violence suffer harm to their emotional and physical well-being, which can also impact their academic performance. Title IX of the federal Education Amendments of 1972 (Title IX) requires the University of California (university) to address these problems by prohibiting discrimination on the basis of sex, including sexual harassment. The university has established a sexual harassment and sexual violence policy (university policy) that specifies that it will take appropriate action to stop, prevent, and remedy instances of sexual harassment.<sup>1</sup> However, the media has recently questioned the leniency with which certain university campuses disciplined faculty members for sexual harassment. Such cases raise concerns about the appropriateness and consistency of discipline campuses have applied, as well as about the university's investigations of and responses to student complaints involving faculty and staff.

Over the course of the past four years—2014 into 2018—federal and state oversight entities and internal groups have reviewed and made recommendations to the university for improving its practices and responses to sexual harassment. As Table 1 on the following page shows, the messages from these reviews, which includes this audit, have been consistent. The university is generally aware of the problems with its response to sexual harassment complaints and has taken steps to address them; however, it must take additional steps to fully resolve the concerns that reviewers have raised.

The three campuses we reviewed—Berkeley, Davis, and Los Angeles—often imposed inconsistent discipline on faculty who were the subject of multiple sexual harassment complaints. Comparable cases within a campus and among the campuses sometimes resulted in stricter or more lenient discipline, leaving the university community uncertain of the response to repeated faculty misconduct. The three campuses also took much longer to discipline faculty in the Academic Senate—which includes all tenured faculty—than they did staff. On average, staff received discipline in 43 days compared to 220 days for faculty in the Academic Senate. Because those faculty play a role in governing the university, they have a right to a hearing process that can prove lengthy. In addition, although campus Title IX coordinators (campus coordinators) are responsible for the university's overall effort to address sexual harassment, they did not have sufficient involvement in determining discipline in substantiated cases.

<sup>1</sup> The university's policy defines both sexual harassment and sexual violence as prohibited conduct. Because the majority of the cases we reviewed involved *sexual harassment*, we use the term sexual harassment when referring to prohibited conduct throughout the report.

### Audit Highlights . . .

*Our audit concerning the university and its responses to sexual harassment complaints involving faculty and staff harassers and student victims revealed the following:*

- » *The three campuses we reviewed—Berkeley, Davis, and Los Angeles—took much longer to discipline Academic Senate faculty than staff.*
  - *On average, staff received discipline in 43 days compared to 220 days for faculty in the Academic Senate.*
- » *The three campuses often imposed inconsistent discipline on faculty who were the subject of multiple sexual harassment complaints.*
- » *Although campus coordinators are responsible for the university's overall effort to address sexual harassment, they do not have sufficient involvement in determining discipline in substantiated cases.*
- » *When using the informal and formal processes to address sexual harassment complaints, the three campuses did not consistently follow federal guidance intended to protect complainants.*
  - *Two campuses frequently exceeded investigation time frames without obtaining approved time extensions.*
  - *The campuses often did not send all required information to the complainants and respondents.*
- » *The Office of the President needs to clarify the authority of the systemwide Title IX office to change campus procedures and to implement consistent practices.*
- » *University policy does not fully align with federal regulations and best practices, an issue that the systemwide office should address.*
- » *Most campuses do not effectively analyze complaints data to identify and address trends.*

We observed cases in which campuses imposed discipline that was neither appropriate nor effective, and the *respondents*—the term the campuses use for the people accused of sexual harassment—went on to repeat sexual harassment behavior. The campus coordinators' expertise and knowledge of all sexual harassment complaints on the campuses make them uniquely qualified to consult on whether imposed discipline is appropriate, particularly in cases involving faculty and staff who are the subjects of repeated complaints. However, they do not have sufficient involvement in determining discipline in substantiated cases.

**Table 1**

**The University Has Received Similar Feedback From Different Entities' Reviews of Its Response to Sexual Harassment Complaints**

REVIEW DATE AND ENTITY	ISSUE IDENTIFIED			
	DISCIPLINE PROCESS: LENGTHY OR NEEDS CLARIFICATION	COMPLAINT PROCESS: DOES NOT MEET REQUIREMENTS	DATA: UNDERUTILIZED OR INCONSISTENT	TRAINING: INADEQUATE REQUIREMENTS
2014: California State Auditor		●	●	●
2014: University internal task force			●	●
2016: University internal committees	●		●	●
2016 and 2017: University campus reviews	●	●		
2018: U.S. Department of Education, Office for Civil Rights	●	●		●
2018: California State Auditor	●	●	●	●

Sources: California State Auditor's analysis of internal and external reviews of the university's response to sexual harassment complaints.

● = Issue identified.

The campus Title IX offices can improve their adherence to university policy. Most often, the campus Title IX offices use an informal process to address sexual harassment complaints. This process typically does not result in discipline; instead, the faculty or staff member's behavior is addressed through counseling or training, among other options. However, the campuses have not consistently ensured that individuals who file complaints involving sexual harassment—whom the university refers to as *complainants*—and respondents have agreed to follow the informal process as Title IX guidance requires. They also have not informed complainants of their right to end the informal process and request the formal process, which involves an investigation and may lead to discipline. Conversely, when the three campuses identified that preventive actions were necessary, they generally ensured that the counseling, training, or other action occurred. We also found that two of the three campuses did not consistently follow university policy or



Title IX requirements when using the formal process. Although Davis generally met the requirements, Berkeley and Los Angeles did not, most notably with regard to the duration of the formal process. These two campuses must ensure that they either complete investigations within the university's time frame of 60 business days or obtain extensions.

When establishing a systemwide Title IX office (systemwide office) in February 2017, the Office of the President's stated goal was to implement a consistent and coordinated response systemwide. However, to make the systemwide office more effective, the Office of the President needs to define how much consistency it desires and provide the systemwide Title IX coordinator the necessary authority. Based on the university's stated goal for the systemwide office, we identified three areas in which the systemwide office should play a central role in the university's efforts to prevent and respond to sexual harassment: setting policy, analyzing applicable data, and overseeing the campuses. Currently, the systemwide office has responsibility for establishing the university's policy; however, it must ensure that the campuses have all necessary guidance for consistently implementing that policy and address weaknesses in certain aspects of university policy. It must also build on its current data collection efforts by analyzing data for complaint patterns and targeting those patterns for further review. Finally, to achieve consistent campus responses to sexual harassment, the systemwide office must have the authority to hold the campuses accountable for operating in accordance with university policy.

### **Summary of Recommendations**

To ensure prompt resolution of sexual harassment complaints against faculty, the Board of Regents of the University of California (Regents) should ensure the Academic Senate further defines its bylaws with written requirements to take effect June 2019 to establish time frames for faculty disciplinary decisions.

To make discipline more appropriate and effective, the Office of the President should modify university policy to take effect July 2019 to require that campus coordinators will consult with campus officials on the appropriateness of the discipline for respondents found to have violated the university's policy by perpetrating sexual harassment.

To ensure that campuses administer the informal process correctly, the Office of the President should identify the required elements for capturing agreement to use the informal process from both complainants and respondents and for notifying complainants of

their right to request the formal process to resolve their complaints. The Office of the President should share these elements with the campuses to use effective July 2019.

To ensure timely completion of investigations, the Office of the President should modify university policy to take effect July 2019 to make clear what good cause for a time extension would be, set a standard extension period, and require that a campus request and receive a time extension before the initial 60 business-day period expires.

The Office of the President should ensure that the systemwide office develops a strategic plan by December 31, 2018, that delineates how the systemwide office will approach achieving consistency systemwide. This plan should ensure that the systemwide office addresses policy weaknesses, explain how it will oversee campus Title IX activities, and include steps to improve its use of campus data on sexual harassment complaints. The Office of the President should grant the systemwide office the additional authority needed to enforce this plan.

### **Agency Comments**

In its response to our audit, the Regents expressed agreement with our recommendation to ensuring the Academic Senate further defines its bylaws with written requirements for promptly completing the Senate faculty disciplinary process. The Office of the President stated that it shares our commitment to combatting and preventing sexual violence and sexual harassment and that it accepts all of our recommendations and intends to implement them. The Office of the President believes that our recommendations will further reinforce and improve its Title IX policies and procedures.

# INTRODUCTION

## Background

University students who experience sexual harassment or sexual violence generally suffer harm to their emotional and physical well-being, regardless of who perpetrates the harassment. This harm often impacts their academic performance. A 2015 campus climate report prepared for the Association of American Universities surveyed 27 universities and found that 21 percent of senior undergraduates had been the victims of nonconsensual sexual contact while attending college. The psychological and physical effects of sexual harassment and sexual violence cannot be separated from students' educational experiences. A 2006 study conducted by researchers at the universities of Michigan and Connecticut showed that female university students who were sexually harassed experienced psychological distress that often resulted in a decline in their grades. Sexual violence has the same effect—a 2016 survey conducted by the Bureau of Justice Statistics at nine universities reported that in cases of rape, 31 percent of victims suffered an impact on their grades.

Congress enacted Title IX of the federal Education Amendments of 1972 (Title IX) to ensure that discrimination on the basis of sex, including sexual harassment, does not deprive any students of their educational opportunities. The U.S. Department of Education's Office for Civil Rights (OCR) requires universities to comply with Title IX by establishing procedures to promptly and equitably resolve complaints of sexual misconduct on their campuses. State law also requires universities to undertake specific actions to prevent and address sexual harassment and sexual violence.

Ensuring that the Title IX process is fair and equitable to all parties grants legitimacy to the process and encourages the reporting of sexual misconduct. The media published accounts of cases involving University of California (university) faculty and staff accused of sexual harassment. In some of these cases, the harassment targeted students. For example, in 2016 students, faculty, and alumni protested the Los Angeles campus's handling of a sexual harassment case involving a faculty member and student victims, alleging that the campus responded too leniently. Such cases raise concerns about the appropriateness and consistency of the discipline the university applies, as well as the university's investigations of and responses to complaints involving faculty and staff.

## The University's Sexual Harassment and Sexual Violence Policy and Discipline

The university has a policy in place that includes procedures for preventing and addressing sexual harassment and sexual violence (university policy).<sup>2</sup> The university's procedures begin when a campus Title IX office (campus office) receives a report of an incident of sexual harassment. The university refers to a victim of alleged sexual harassment as a *complainant* and to the perpetrator as a *respondent*. In most cases, the campus office resolves the incident through an informal process. Although there may be some informal inquiry, because there is no formal investigation as part of this process to determine whether a

<sup>2</sup> University policy defines both sexual harassment and sexual violence as prohibited conduct. Because the majority of the cases we reviewed involved *sexual harassment*, we use the term sexual harassment when referring to prohibited conduct throughout the report.

policy violation occurred, it typically does not lead the campus to discipline the respondent. Rather, as Figure 1 shows, the informal process is more likely to include measures such as counseling or preventive education. As Figure 1 also shows, a campus office may administratively close a complaint or refer it to another office if the complaint does not involve prohibited conduct under university policy. Further, the campus office closes a complaint when it has insufficient information to proceed or when the complainant does not respond to communications.

In other cases, the campus office completes a formal process with an investigation to determine whether the respondent violated university policy. Figure 2 on page 8 depicts the formal process. If the campus office determines that a faculty or staff respondent engaged in prohibited conduct and thus violated university policy, it submits the investigation report to the appropriate academic or human resources department to determine discipline. If the campus office determines that a student who is also a university employee engaged in misconduct in the university workplace, the campus can discipline that individual as a staff member and as a student. The procedures governing staff and faculty discipline depend on a respondent's specific classification. The text box lists common positions within staff and faculty personnel classifications.

#### Examples of Titles in the Four Classification Groups in the University's Disciplinary Procedures for Staff and Faculty

##### STAFF

Non-Academic Personnel	Financial Aid Officer
	Athletic Coach
	Custodian
	Residential Assistant
Non-Faculty Academic Personnel	Teaching Assistant
	Graduate Student Instructor
	Assistant Researcher
	Librarian

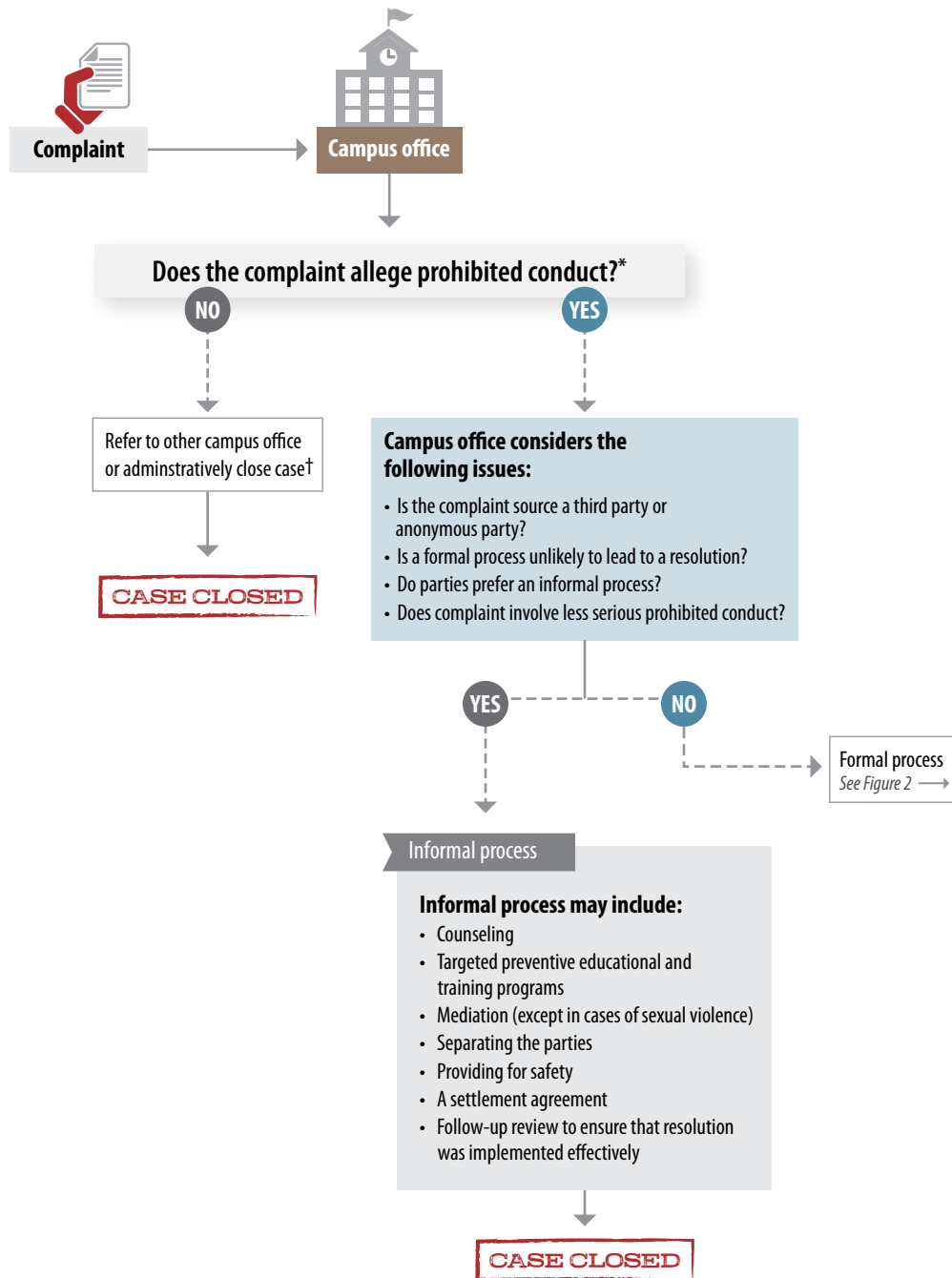
##### FACULTY

Senate Faculty	Professor
	Associate Professor
	Assistant Professor
Non-Senate Faculty	Lecturer
	Adjunct Professor
	Clinical Professor

Sources: University of California Academic Personnel Manual APM-110 and the University of California Title Code System.

The university has two procedural frameworks in place for adjudicating cases involving faculty and staff. Figure 2 depicts these processes and identifies the steps the university added in 2017. One procedure governs staff and non-faculty academic personnel. In this report, we use the term *staff* to refer to employees in both the non-academic personnel and non-faculty academic personnel classifications (see the text box). For these employees, the disciplinary decision rests with an individual's supervisor, subject to approval by the campus chancellor's designee; the chancellor does not get involved in these discipline matters. A second procedure governs faculty. The university refers to those faculty who belong to the Academic Senate, including all tenured faculty, as *Senate faculty*, and it classifies other faculty titles, such as adjunct professors, as *non-Senate faculty*. For non-Senate faculty, as of a July 2017 change in policy, the chancellor or designee consults with a peer review committee or the academic personnel office and then decides on discipline. For Senate faculty, as of July 2017, the chancellor or designee consults with a peer review committee before making an initial disciplinary recommendation.

**Figure 1**  
The University's Informal Process for Sexual Harassment Complaints From Receipt Through Resolution

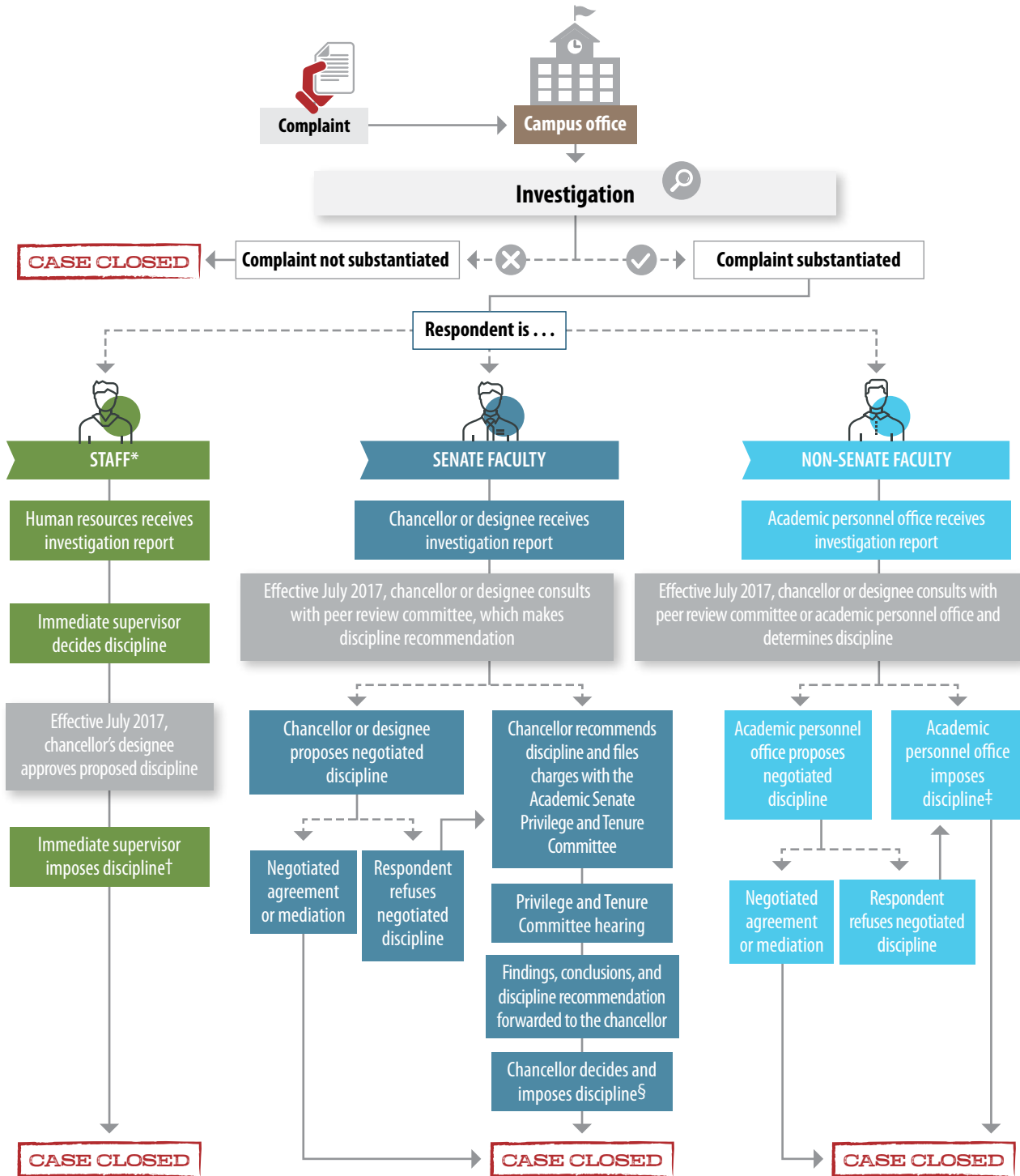


Sources: California State Auditor's analysis of university policy in 2006, 2014, 2015, and 2016. The university made no substantive changes to the process during this time.

\* University policy defines sexual harassment as prohibited conduct.

† A campus office can administratively close a complaint when it has insufficient information to proceed or when the complainant does not respond to communications.

**Figure 2**  
The University's Formal Process for Sexual Harassment Complaints From Receipt Through Discipline



Sources: California State Auditor's analysis of university policy in 2006, 2014, 2015, and 2016; University of California Staff and Non-Faculty Academic Personnel Investigation and Adjudication Framework, 2017; University of California Senate and Non-Senate Faculty Investigation and Adjudication Framework, 2017.

\* Staff includes non-faculty academic personnel for purposes of this report. A respondent who is both a student and a staff member may be subject to procedures applicable to both staff and students.

† Staff represented by a union can file a grievance.

‡ In cases of dismissal, the non-Senate faculty member is entitled to a hearing before an Academic Senate advisory committee.

§ Authority to dismiss a tenured faculty member rests with the Regents.

## The Number of Sexual Harassment Complaints From Students Against Faculty and Staff Has Increased Over the Last 10 Years

Over the past 10 years, and in 2015 and 2016 in particular, the number of recorded complaints from students claiming sexual harassment by faculty and staff has increased. As Figure 3 on the following page shows, campus data indicate that from 2014 through 2016, the number of these complaints increased from 100 to 205.<sup>3</sup> We interviewed several campus Title IX professionals, and they attributed this increase in complaints to three key reasons:

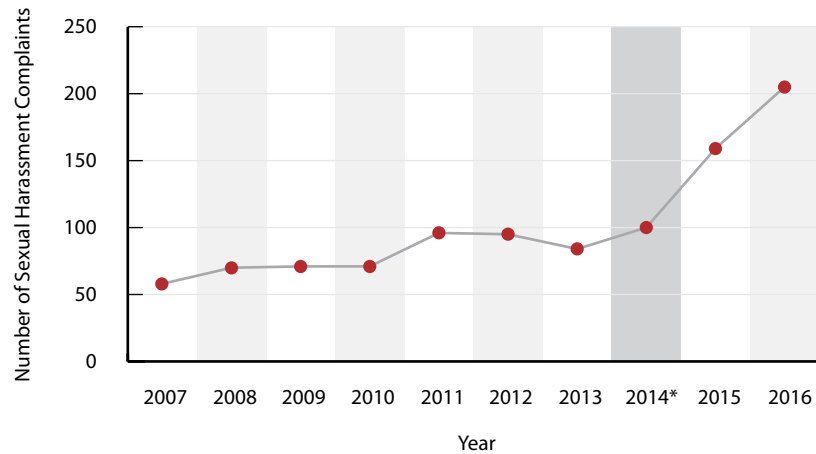
- The campuses have increased staff and faculty training related to recognizing and reporting sexual harassment and sexual violence.
- The campuses have increased student outreach and training.
- Campus Title IX coordinators (campus coordinators) have improved reporting processes, including how they record complaints and subsequent campus responses.

In particular, this increase appears to be linked to university efforts to raise students' and employees' awareness of sexual harassment and train them in how to report it. In January 2014, a United States presidential memorandum established a White House Task Force responsible for making recommendations to better prevent and respond to sexual assault on college campuses. Referencing this national effort, the university Office of the President formed its own task force in July 2014 to improve the university's processes to prevent, respond to, and report incidents of sexual violence and sexual harassment. Over that same time period, the university also worked to implement recommendations from our June 2014 audit report, including conducting reviews to ensure that its campuses were complying with Title IX requirements.<sup>4</sup> These efforts resulted in systemwide policy changes, including mandatory student and employee sexual harassment training implemented in 2015 and 2016.

<sup>3</sup> As we discuss in the Other Areas We Reviewed section, we found errors in the campuses' sexual harassment complaint data, and we concluded that the data were not sufficiently reliable for our purposes. Although this condition lessens assurance in the precision of complaint totals, we believe the upward trend in the number of complaints is valid.

<sup>4</sup> In June 2014, we issued a report titled *Sexual Harassment and Sexual Violence: California Universities Must Better Protect Students by Doing More to Prevent, Respond to, and Resolve Incidents*, Report 2013-124.

**Figure 3**  
Sexual Harassment Complaints by University Students Against Faculty and Staff  
January 2007 Through December 2016



Source: California State Auditor's analysis of data obtained from the 10 campuses for substantiated and unsubstantiated complaints made from January 2007 through December 2016.

\* The increase in recorded complaints appears to be linked to a January 2014 White House Task Force and a July 2014 university task force, both focused on improving responses to sexual harassment.

### Reviews of the University's Sexual Harassment Responses and Resulting Changes

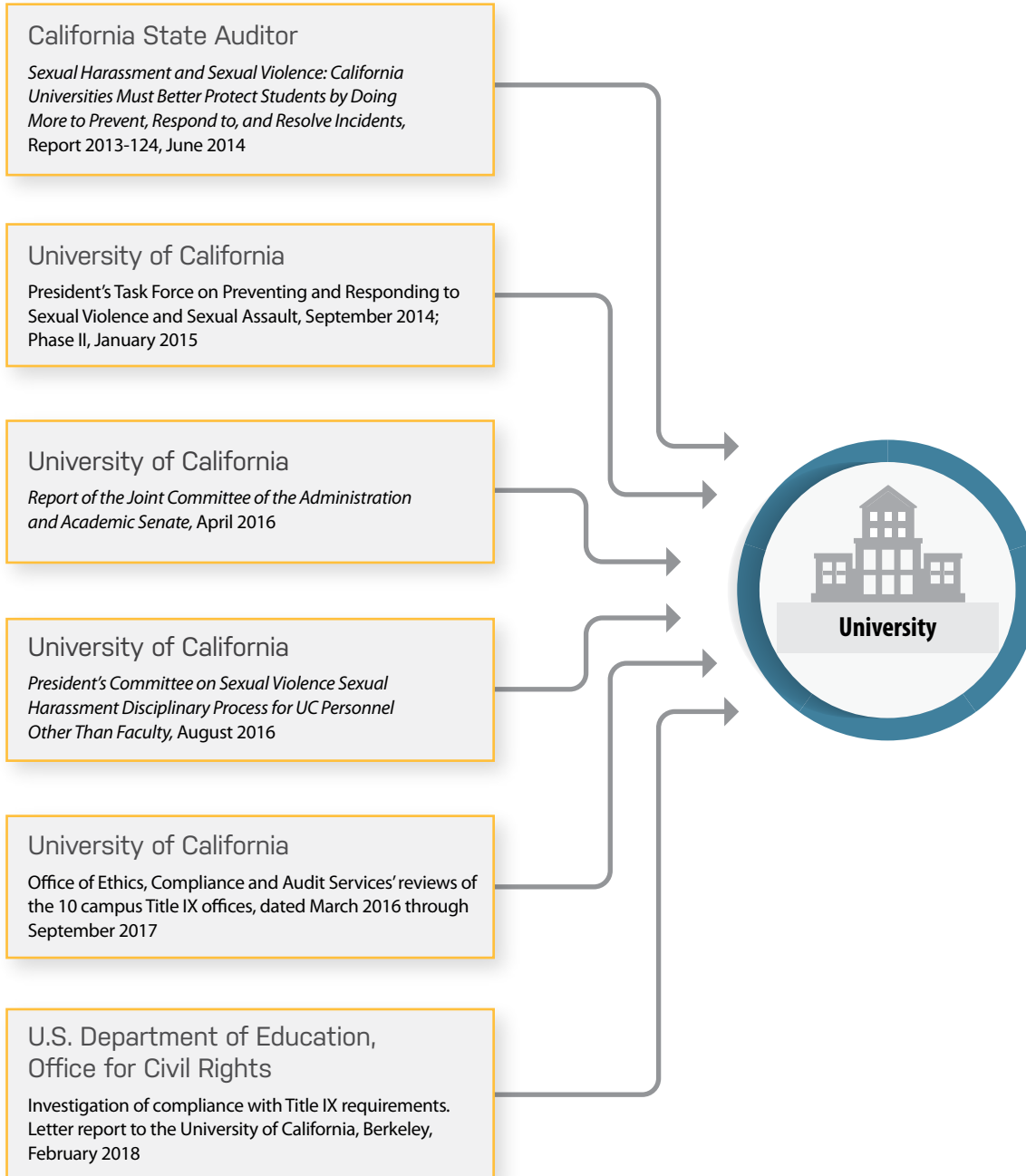
Since 2014 the Office of the President has received feedback from numerous internal and external reviews that all pointed to improvements the university must make to its responses to allegations of sexual harassment. The first report dates to 2014, which we released; most recently, OCR published a report in early 2018. Figure 4 on page 12 lists each group that performed a study and the study the group produced.

What is noteworthy about these reviews is that the results are consistent. They have identified the need for the university to address the length of investigations, to improve documentation for the informal process, to use data to monitor trends in sexual harassment, and to improve training in identifying and responding to sexual harassment, among other needed improvements. We raise these issues again, along with others, in this report. Thus, for several years, the Office of the President has been aware of weaknesses in the university's response to sexual harassment allegations. Although the Office of the President has taken actions in response to these reviews, it needs to do further work, as this report details.



The Office of the President has taken steps to improve its response to sexual harassment. The university modified its policy, which took effect in 2016, to better comply with federal and state requirements. In 2017 the university implemented faculty and staff investigation and adjudication procedures to strengthen the university's response to sexual harassment and ensure that the university treats faculty and staff involved in substantiated cases firmly and fairly. In addition, the Office of the President has taken action to address the recommendations we made in our 2014 report, which focused, in part, on the Berkeley and Los Angeles campuses and included four recommendations for the Office of the President. The university has fully implemented our recommendation to perform routine Title IX reviews of campuses and partially implemented our recommendation to clarify the right of complainants to request formal investigations. In its interim 2015 sexual harassment policy, the university implemented our recommendation to document ongoing communication with complainants during the informal process; however, in the policy effective January 2016, the university no longer included this very specific language; rather, the university policy contains a general provision to maintain records of reports of prohibited conduct and actions taken in response. In addition, it has not implemented our recommendation regarding restricting extensions of investigations; therefore, we address this issue again in this report.

**Figure 4**  
Reviews of the University's Responses to Sexual Harassment Complaints



Sources: California State Auditor's review of internal and external reviews of the university's response to sexual harassment complaints.

## Campuses Have Disciplined Staff and Faculty Inequitably and Have Been Slow to Impose Discipline on Faculty

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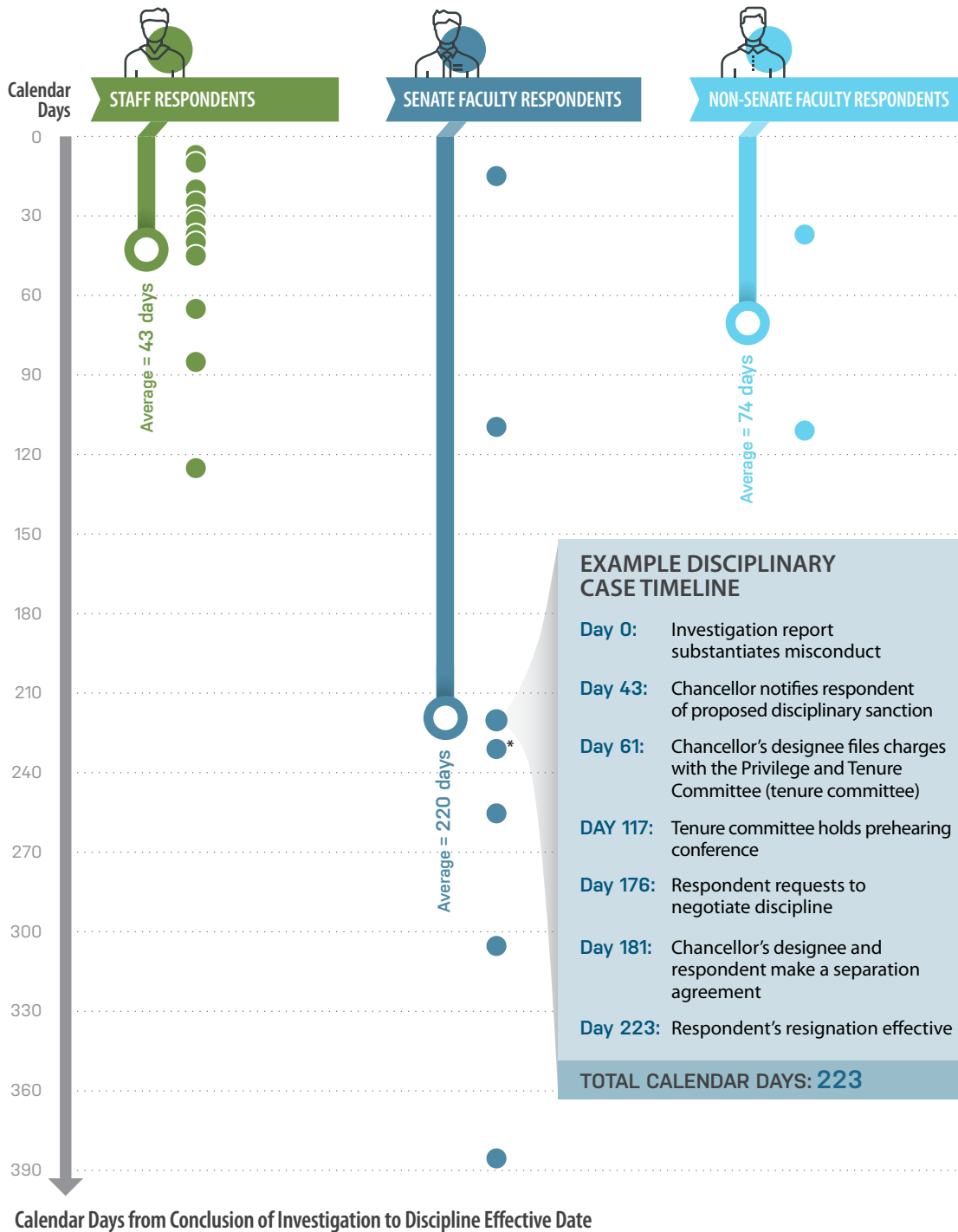
### Key Points:

- The three campuses we reviewed—Berkeley, Davis, and Los Angeles—took much longer to discipline Senate faculty than staff and non-Senate faculty. When we reviewed 23 cases, we found that on average staff received discipline in 43 days, non-Senate faculty in 74 days, and Senate faculty in 220 days. Because Senate faculty play a role in governing the university, they have a right to a hearing process that takes longer to determine discipline as it involves many steps and does not always specify time frames for completion.
- The three campuses applied inconsistent discipline on faculty who were the subject of multiple complaints. At times, comparable cases resulted in either stricter or more lenient discipline, leaving the university community uncertain of the campuses' responses to faculty members' repeated misconduct. However, for the cases we reviewed, faculty members' prestige did not generally influence the discipline that the campuses imposed.
- Although campus coordinators are responsible for the university's overall effort to stop, prevent, and remedy sexual harassment, they do not have sufficient involvement in determining discipline in cases of substantiated sexual harassment. However, the campus coordinators' expertise and knowledge of all sexual harassment complaints on campus make them uniquely qualified to consult on whether discipline is appropriate and consistent, particularly in cases involving repeat respondents.

### The Campuses Did Not Promptly Impose Discipline for Senate Faculty Respondents

In the cases we reviewed involving Senate faculty, the average number of calendar days between the campus office issuing its investigation report and a faculty respondent receiving discipline was 220, as Figure 5 on the following page shows. Several faculty cases lasted much longer—310 days and 385 days, for example. In one extreme case, the campus took 600 days from the date the campus office issued the report to the date it terminated the respondent, although this delay was due in part to the receipt of additional complaints about the respondent that resulted in more investigations. In this specific case, we used the time between completion of the last investigation and when the campus imposed discipline—232 days—in Figure 5. In contrast, campuses resolved the discipline process in the staff cases we reviewed in an average of 43 days and in 74 days in the two non-Senate faculty cases. The lengthy time the campuses take to resolve Senate faculty cases stands in clear contrast to the Title IX requirement that the university adopt procedures for the prompt and equitable resolution of complaints. In its February 2018 review of Berkeley, OCR also determined that Berkeley did not always provide complainants with prompt responses to their complaints. In highlighting its concerns, OCR cited one case involving a faculty member that lasted 355 days between the initial complaint and the final discipline.

**Figure 5**  
Three Campuses Often Did Not Discipline Senate Faculty Promptly



Sources: California State Auditor's analysis of investigation reports and disciplinary documents for 23 sexual harassment complaints from campus offices located at Berkeley, Davis, and Los Angeles.

\* This case involved multiple complainants. The time shown reflects the days between completion of the last investigation and the discipline date.

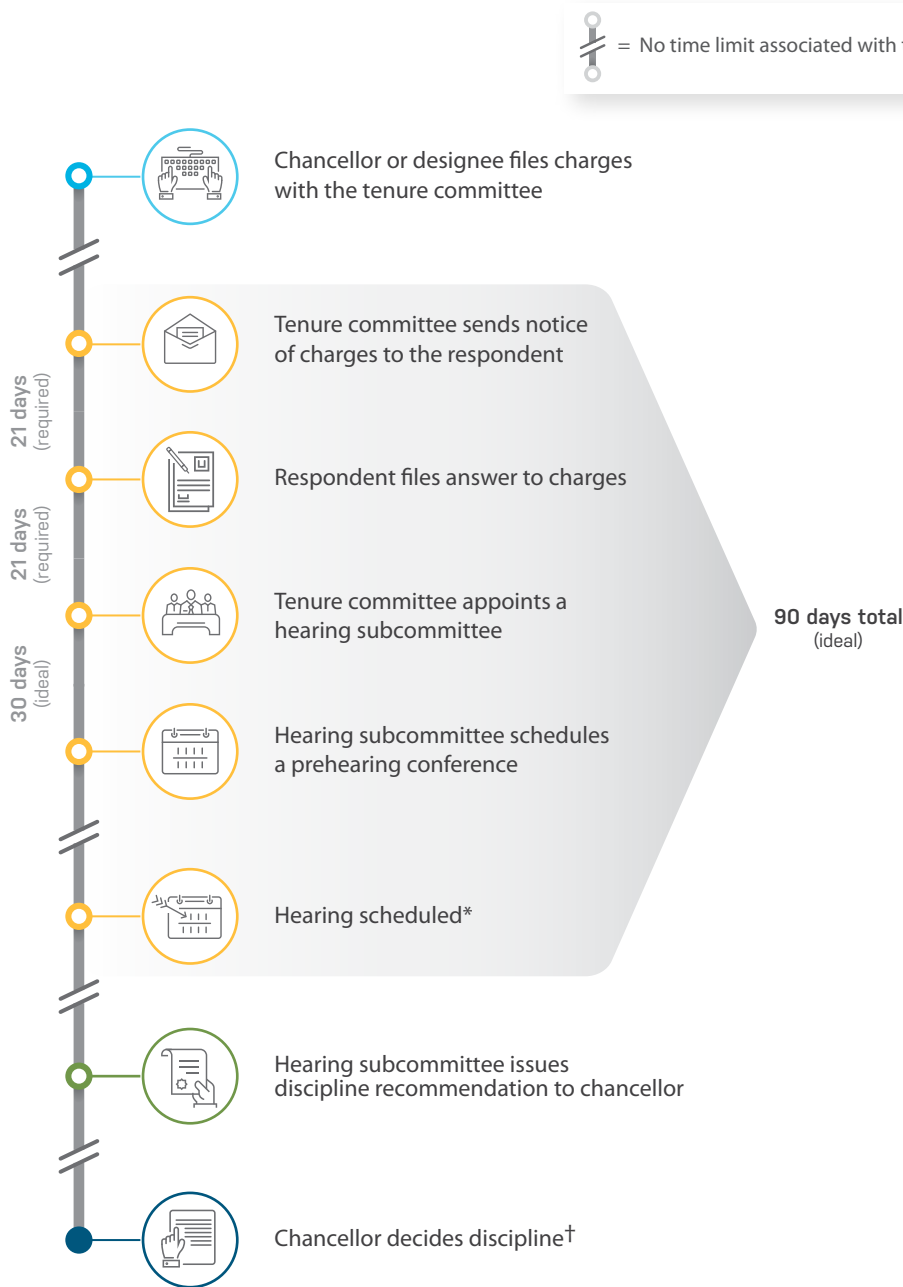
The different disciplinary processes the university follows for Senate faculty, non-Senate faculty, and staff respondents caused the stark difference in time frames in these cases. Figure 2 on page 8 shows that for staff and non-Senate faculty, the disciplinary process is simpler than for Senate faculty. During our review period, campuses resolved the staff and non-Senate faculty processes in three major steps at most, but for Senate faculty, the process involved more steps, with each step adding more time. Senate faculty, through the Academic Senate, play a role in governing the university, along with the university president and the Regents. The Academic Senate derives its duties, powers, and privileges from the Regents. Senate faculty have the right to a hearing with the Privilege and Tenure Committee (tenure committee) in any case of disciplinary action, a time-consuming process.

Key steps in the Senate faculty disciplinary process do not include time limits. The Academic Senate's bylaws suggest time frames, but these are not requirements. Figure 6 on the following page details the steps and shows that the process is essentially open-ended. For example, although the hearing subcommittee should ideally hold the prehearing conference 30 days after its appointment, this time frame is not required; similarly, the hearing subcommittee should ideally hold the hearing 90 days after its appointment but is not required to do so. Further, the bylaws do not provide a time limit within which the hearing subcommittee must issue its disciplinary recommendation, and the disciplinary policy for Senate faculty also does not provide a time limit within which the chancellor must make a final decision.

In most of the Senate faculty cases we reviewed, the faculty member negotiated discipline or a separation agreement with the campus before the hearing subcommittee held a hearing, but because the administrative process moved slowly, the campus and respondent did not reach an agreement promptly. In two cases shown in Figure 5, which lasted 254 days and 310 days, respectively, the campus spent this time negotiating discipline with the respondents. The campus did not need to resolve negotiations promptly because the only time limit under Senate bylaws is that the chancellor needs to initiate disciplinary action within three years after knowing of an alleged violation. Even when a campus did file charges with the tenure committee, the process did not conclude promptly. For example, the insert in Figure 5 details the unfolding of one case in which 181 days elapsed from completion of the investigation report to when the chancellor negotiated a separation agreement with the faculty member in lieu of a hearing. In the one case we reviewed in which a hearing took place—the 600-day case previously mentioned—three separate allegations had been made against the faculty respondent, resulting in three investigation reports. As a result, 431 days elapsed between completion of the first investigation report and the hearing. The hearing subcommittee then did not issue its recommendation until 111 days following the hearing.

***For staff and non-Senate faculty, the disciplinary process is simpler than for Senate faculty.***

**Figure 6**  
The Academic Senate Has Not Established a Required Time Frame for the Senate Faculty Disciplinary Process



Sources: California State Auditor’s analysis of the University of California Bylaws of the Academic Senate, as of April 2018; and the University of California Investigation and Adjudication Framework for Senate and Non-Senate Faculty, 2017.

\* A hearing can also be scheduled, but not necessarily held, within 90 days of the hearing subcommittee’s appointment. We show the shortest time frame on the figure, which is the period from when the accused received notice of charges to the hearing being scheduled.

† The Regents have final authority to dismiss a tenured faculty member.

The campuses can put interim measures in place during the long adjudication process for Senate faculty, and they did so in most of the cases we reviewed. Interim measures, such as issuing a directive prohibiting a respondent from interacting with a complainant, are intended to remedy situations in the short term. At Los Angeles, the complainants in three cases were no longer in contact with the respondents, and so the campus determined interim measures were unnecessary. In a fourth case at Los Angeles in which the adjudication lasted 310 days, the campus could not provide documentation that the complainant had requested interim measures or that the campus had considered providing them. Berkeley used no-contact directives prohibiting a respondent from contacting the complainants in the 600-day case previously mentioned. In contrast, Berkeley did not put interim measures in place for a case that it resolved within 21 days. According to the campus coordinator, interim measures were unnecessary because the complainants were no longer on campus. At Davis, in a 223-day case, the campus placed the respondent on involuntary leave with pay shortly after the campus office received the complaint. This involuntary leave lasted until the respondent's separation from the campus.

The Office of the President has recognized that the lengthy discipline procedure in faculty cases is a problem. Its 2016 Joint Committee of the Administration and Academic Senate (joint committee) report stated that "critics describe the length of time required for [tenure committee] hearings as discouraging complainants from reporting." In May 2016, the Office of the President issued a directive to develop clear time frames so that discipline in faculty cases did not take longer than two months unless exceptional circumstances prevailed. Yet despite the Office of the President identifying two months as the desired time frame, none of the changes made by the university since 2016 included amending the Academic Senate's bylaws to specify exact time frames for completing the formal process. In 2017 the Office of the President issued a new faculty investigation and adjudication framework that eliminated a second faculty investigation that sometimes occurred—and when it did, it lengthened the formal process—by stipulating that the chancellor or designee will not reinvestigate the allegations considered in the campus office's report. The framework also specified that the chancellor or designee must file a charge with the tenure committee within 40 business days of receiving notification of the investigation outcome if the campus has not otherwise resolved the matter. This timeline is meant to address the problem of campuses spending months negotiating discipline with faculty before filing charges. However, the tenure committee's bylaws do not provide a specific

***The Office of the President has recognized that the lengthy discipline procedure in faculty cases is a problem.***

*The Office of the President agreed to amend its policies and procedures by February 2019 to provide an assurance that the university will resolve complaints against faculty or staff in a reasonably prompt manner.*

time frame for issuing disciplinary recommendations, and the new framework does not specify a time by which the chancellor must make decisions on recommendations.

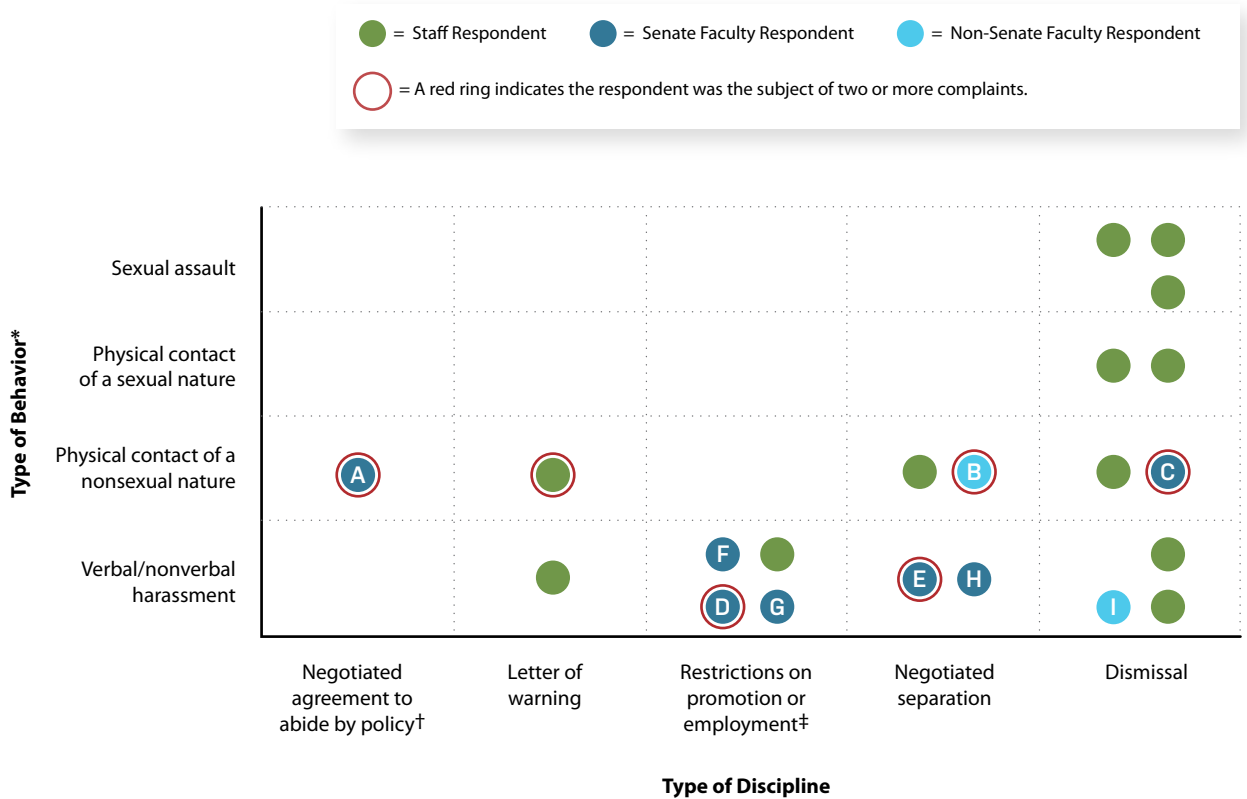
In a recent case the hearing subcommittee held its hearing from November 2 to 4, 2017, but it did not issue a disciplinary recommendation until February 23, 2018—longer than the two-month goal specified by the Office of the President. Delays of this nature contribute to a perception that the university is not responding promptly to complaints, and they also force complainants and respondents to endure a lengthy and stressful process. As a result of a resolution agreement between Berkeley and OCR, the Office of the President agreed to amend its policies and procedures by February 2019 to provide an assurance that the university will resolve complaints against faculty or staff in a reasonably prompt manner, including issuing decisions regarding discipline. Nevertheless, it is not clear whether the Office of the President's policy changes will result in the university establishing specific time frames for cases involving faculty.

### **The Campuses Have Imposed Discipline Inconsistently in Comparable Cases of Faculty Misconduct**

When campus office investigations substantiated misconduct, campuses imposed discipline depending on the type of misconduct, but we found that the discipline was often inconsistent in comparable cases of faculty accused multiple times of harassment. To assess the disciplinary decisions in cases in which the campus investigations substantiated the allegations, we randomly selected 30 cases—10 each from Berkeley, Davis, and Los Angeles—that were decided from 2007 through 2016. Seven of these 30 cases either did not result in discipline or diverged in ways that made them not comparable to the other staff and faculty cases we reviewed. For example, during the complaint investigations, the respondents either resigned their employment or the campuses chose not to renew their employment contracts. Figure 7 shows the discipline the three campuses imposed in the remaining 23 cases. Because multiple complaints resulted in combined disciplinary outcomes, only 21 respondents appear in the figure. The campuses substantiated behavior ranging from verbal or nonverbal harassment to sexual assault, and they imposed discipline ranging from negotiated agreements to abide by policy to dismissal. As Figure 7 shows, staff were respondents in the five cases that we selected involving either sexual assault or physical contact of a sexual nature, and the campuses dismissed all of them from employment.



**Figure 7**  
**Three Campuses Had Varied Disciplinary Responses to Sexual Harassment**



Sources: California State Auditor’s analysis of investigation reports and disciplinary documentation for 23 substantiated sexual harassment complaints from campus offices located at Berkeley, Davis, and Los Angeles from 2007 through 2016. Multiple complaints resulted in combined disciplinary outcomes, therefore, the graphic shows only 21 respondents.

Note: The letters correspond to tables 2 and 3 on pages 20 and 22. Respondents are categorized based on the most severe type of behavior the campus offices substantiated. For example, a respondent categorized as engaging in physical contact of a nonsexual nature may also have committed verbal harassment. We noted that the faculty and many staff were in positions of control or authority over the students who alleged harassment.

\* Verbal/nonverbal harassment involves behavior such as inappropriate comments or emails. Physical contact of a nonsexual nature involves behavior such as touching a person’s knee or an inappropriate hug. Physical contact of a sexual nature involves touching intimate body parts. Sexual assault involves nonconsensual intercourse.

† The respondent agreed to abide by university policy. If he violated the policy within the subsequent five years, he would retroactively receive discipline no more severe than a one-semester leave without pay.

‡ For the staff respondent, this was a three-day suspension without pay. For the faculty respondents, the campuses negotiated the discipline with them. Provisions of the agreements included restrictions on promotions, employment, and contact with students.

Of the seven Senate faculty respondents that we show in Figure 7, four—denoted by red circles—were the subjects of repeated complaints. Table 2 on the following page details the complaints against five faculty repeat respondents and shows that they were the subject of complaints spanning several years. The last complaint listed in Table 2 for each respondent resulted in the pertinent campus office investigating and substantiating the complaint and the campus imposing the discipline in Figure 7. For each of these final complaints, the faculty member was in a position of control or authority over the student who alleged harassment.

The campuses often handled the earlier complaints using the informal process, which typically does not result in discipline. Many factors influenced the campuses' decisions to use the informal process. For example, in some instances, the complainants did not want to initiate investigations under the formal process or the campus offices did not have sufficient information to pursue investigations. In these cases, the campuses could not impose discipline as no investigations occurred to substantiate that the alleged instances of misconduct violated policy. In its February 2018 review of Berkeley's implementation of Title IX, OCR raised several concerns about Berkeley's use of the informal process to handle repeated complaints against a faculty member. OCR noted that when the campus pursued an informal process in response to several of the complaints, it did not "include reasonably effective steps to prevent further harassment."

**Table 2**  
Campuses' Responses to Complaints Against Faculty Sometimes Failed to Prevent Repeat Harassment

RESPONDENT'S TITLE		YEAR COMPLAINT FILED AND ACTION TAKEN*				
		COMPLAINT ONE	COMPLAINT TWO	COMPLAINT THREE	COMPLAINT FOUR	COMPLAINT FIVE
Physical contact of a nonsexual nature	Professor A	2011	2013	2014		
	Lecturer B	2013	2014	2015		
	Assistant Professor C	2014	2015	2016	2016	
Verbal/nonverbal harassment	Professor-in-Residence D	2003	2006	2012	2014	
	Professor E	2007	2011	2012	2015	2016

Sources: California State Auditor's analysis of campus office data and case files for five faculty repeat respondents from Berkeley, Davis, and Los Angeles.

■ = informal process

■ = formal process

\* At least one of the complaints involved a student complainant.

The campuses imposed inconsistent discipline in some cases that we reviewed that involved repeat faculty respondents. For example, Professor A at Berkeley and Lecturer B at Los Angeles both engaged in physical contact of a nonsexual nature, as well as making inappropriate comments toward students. Both had been the subjects of past complaints. Los Angeles intended to dismiss Lecturer B for violating university policy but then entered into a separation agreement with him, which allowed him to leave employment without admitting fault. However, Berkeley negotiated a much lighter discipline with Professor A. Specifically, it required him to commit to abide by university policy and to not engage in further misconduct; if he did, Berkeley would retroactively apply discipline of a one-semester suspension of leave without pay. Considering Professor A's repeated misconduct, we question why requiring him to commit to follow university policy, which

he should have been doing all along, was an adequate response. Moreover, it stands in contrast to Lecturer B, whom the Los Angeles campus separated from employment.

Other cases involving faculty who were repeated respondents also demonstrated disciplinary inconsistencies. Professor-in-Residence D at Los Angeles and Professor E at Davis were each accused of verbal and nonverbal harassment multiple times. Davis reached a separation agreement with Professor E, in which he retired and admitted no fault; this agreement included restrictions on his emeritus privileges. In contrast, Los Angeles reached an agreement with Professor-in-Residence D that allowed him to remain in his position without admitting that he had violated university policy. However, he did have to abide by the following provisions, among others: any future policy violations would carry a minimum sanction of suspension without pay, he would be ineligible for a merit promotion for approximately five months, he would take sexual harassment training, and he would meet regularly with the department dean to discuss his behavior. Further, he agreed to irrevocably resign from campus employment 30 months later. Despite the similarity in conduct, Davis immediately ended Professor E's relationship with the campus while Los Angeles did not do so with Professor-in-Residence D. Such inconsistent responses create uncertainty about what response to misconduct should be expected.

Although the three campuses were at times ineffective and inconsistent in addressing faculty misconduct, we did not find a pattern to suggest that they allowed more prestigious faculty greater leeway than less prestigious faculty. Table 3 on the following page shows the professional profiles for the nine faculty from Figure 7 on page 19. We considered each faculty member's tenure status; publications produced; major awards received; and for the three years before the campus office concluded the formal process, amount of external research funding received. However, it was ultimately difficult to reach clear conclusions on the relative prestige of the faculty members because we could not make reliable comparisons across disciplines. For example, faculty in the sciences generally produce more publications than faculty in the liberal arts. Therefore, a higher number of publications does not necessarily indicate greater prestige. External research funding also is not a reliable indicator as average funding amounts vary widely by field; faculty in the life sciences and engineering are more likely to receive higher amounts than faculty in other fields. Table 3 shows that the campuses generally applied similar discipline to faculty with varying professional profiles. For example, Davis negotiated a separation with Professor E, who had tenure and external funding, but Lecturer B, who did not have tenure or external funding, also reached a negotiated separation with Los Angeles. In another case, Los Angeles negotiated a restriction on promotion or employment

***Although the three campuses were at times ineffective and inconsistent in addressing faculty misconduct, we did not find a pattern to suggest that they allowed more prestigious faculty greater leeway than less prestigious faculty.***

with Professor-in-Residence D, who had considerable external funding, and also negotiated a restriction on promotion or employment with Professor E, who had no external funding and a lower number of publications.

**Table 3**  
**Faculty Status Did Not Generally Influence the Discipline Campuses Imposed**

NATURE OF MISCONDUCT	RESPONDENT'S TITLE	STATUS OF TENURE	PUBLICATIONS*	THE RESPONDENT RECEIVED MAJOR AWARDS†	EXTERNAL RESEARCH FUNDING‡ (IN THOUSANDS)	DISCIPLINE
Physical contact of a nonsexual nature	Professor A	Tenured	101–500	Yes	more than \$1,000	Negotiated agreement to abide by university policy
	Lecturer B	Nontenured	0–100	No	–	Negotiated separation
	Assistant Professor C	Nontenured	0–100	No	–	Dismissal
Verbal/nonverbal harassment	Professor-in-Residence D	Nontenured	501–1,000	Yes	\$501–1,000	Promotion or employment restrictions
	Professor E	Tenured	101–500	No	\$1–500	Negotiated separation
	Professor F	Tenured	0–100	No	–	Promotion or employment restrictions
	Professor G	Tenured	0–100	Yes	–	Promotion or employment restrictions
	Professor H	Tenured	101–500	Yes	–	Negotiated separation
	Lecturer I	Nontenured	0–100	No	–	Dismissal

Sources: California State Auditor's analysis of personnel records for nine faculty respondents from Berkeley, Davis, and Los Angeles. In some cases, we noted that these personnel records did not appear to be up to date.

\* Publications include books; chapters or introductions of books; articles; reviews; conference proceedings; and other items such as musical recordings. Campus records and the respondent's curriculum vitae did not always include a complete list of publications or the respondent's most current publications.

† We measured major awards by reviewing a respondent's curriculum vitae for any awards that signified state, national, or international recognition of his or her contribution to the field of study.

‡ We calculated the amount of external funding a respondent received in the three years before the campus office concluded its investigation.

However, one obviously prestigious faculty member received discipline that was more lenient than the discipline imposed on others. Specifically, Professor A had received more than \$1 million in external funding, had a significant number of publications, and was the recipient of major awards. The discipline the campus pursued—an agreement that he would abide by university policy—was the most lenient of that received by the nine faculty in Figure 7 on page 19. Arguably, this discipline only required him to follow the policy that the campus determined he had violated and that he

should have been following all along. However, we did not find any evidence that Berkeley considered his reputation in determining the discipline.

### **Campus Title IX Coordinators Have Too Little Involvement in the Discipline Process**

Although campus coordinators are responsible for the university's overall effort to stop, prevent, and remedy sexual harassment, the Office of the President has not made the most of their role in disciplining respondents. Federal regulations require each campus to designate a campus coordinator to coordinate the campus's compliance with Title IX. Because effective discipline is part of a campus's Title IX obligations, those campus coordinators must play a role in determining the appropriate discipline for respondents. However, several of the Office of the President's 2016 and 2017 campus office reviews state that campus officials responsible for discipline did not inform campus coordinators about the discipline they were imposing. Further, the joint committee's report dated April 2016 also raised questions about the campus coordinators' involvement when the campuses determine discipline for respondents. Increasing the campus coordinators' involvement in the discipline process could help to ensure the effectiveness of the discipline that campuses impose and thus reduce the number of respondents who repeat sexual harassment behavior.

The Office of the President recently took action to address the problem of ineffective discipline in cases of faculty respondents; however, it is too soon to see the benefits of the action and assess its effectiveness in responding to and preventing harassment. In May 2016, the Office of the President directed each campus to form a peer review committee (peer committee) to provide advice on appropriate discipline to the chancellor or the chancellor's designee in cases involving Senate faculty. In part, the peer committee decision stemmed from the April 2016 report of the joint committee, which found that the university's disciplinary policies allowed for "broad discretion," which resulted "in variation of administrative judgement as to the resolution being proportionate to the violation." The campuses began forming their peer committees in 2017.

Although it is too early to tell if the peer committees will help the campuses provide effective discipline in faculty cases, we are still concerned that the campus coordinators do not have a role beyond training the peer committee members. At the three campuses we visited, the peer committees consist of six to eight Senate faculty, and the campus coordinators neither serve on the committees nor advise them as the committees develop recommendations about

*Increasing the campus coordinators' involvement in the discipline process could help to ensure the effectiveness of the discipline that campuses impose and thus reduce the number of respondents who repeat sexual harassment behavior.*

***Like its updated faculty process, the university's new adjudication process for staff respondents does not provide campus coordinators with sufficient involvement in determining discipline.***

faculty discipline. In a March 2017 letter to the campuses, the former systemwide Title IX coordinator (systemwide coordinator), who held the position until May 2018, explained that the peer committees are meant to assist in ensuring that discipline or other measures imposed are “consistent, proportional, and designed to stop” misconduct and prevent its recurrence. However, the university has yet to establish a role for the campus coordinators, the individuals on campus who should be most familiar with both specific cases and all other campus cases and are thus best positioned to help the campuses ensure that the discipline they impose is appropriate and consistent.

Like its updated faculty process, the university’s new adjudication process for staff respondents does not provide campus coordinators with sufficient involvement in determining discipline. The 2017 staff adjudication process gives a respondent’s supervisor the primary decision-making authority. Although the 2017 process does provide for regular communication between the campus coordinator and the supervisor during an investigation, the process does not give the coordinator a role once the investigation concludes. The former systemwide coordinator emphasized that although the campus coordinators are knowledgeable about sexual harassment, the designated employees responsible for determining discipline also have relevant expertise and information. For example, an employee’s supervisor has access to personnel files and work history not related to sexual harassment that could be relevant to determining discipline. Although this point is valid, a campus coordinator should still have an established role in the discipline process, especially considering the university’s goal of imposing effective and consistent discipline.

Giving the campus coordinators more involvement in the discipline process could reduce the risk of inconsistencies between the discipline imposed on faculty and staff respondents, and it could also help ensure that the campuses impose discipline that is effective at preventing repeat harassment. In addition to the cases we reviewed for disciplinary outcomes, we identified the three campuses’ total number of staff and faculty against whom multiple complaints had been made and at least one of the complaints involved a student complainant. We determined that 27 faculty and staff met this criteria. In response to these complaints, the campuses pursued the allegations using either informal or formal processes. As Table 4 shows, more faculty members were repeat respondents than staff, and faculty generally had the higher total number of complaints against them. Eight faculty had three or more complaints compared to four staff.

**Table 4**  
**In Total, the Three Campuses Had Higher Numbers of Faculty Repeat Respondents Than Staff Repeat Respondents**

	NUMBER OF COMPLAINTS IDENTIFIED*				TOTAL
	FIVE	FOUR	THREE	TWO	
Faculty	2	2	4	9	17
Staff	0	2	2	6	10
<b>Total repeat respondents (faculty or staff) identified</b>					<b>27</b>

Sources: California State Auditor's analysis of sexual harassment complaints from campus offices located at Berkeley, Davis, and Los Angeles.

\* Each repeat respondent included in the table had at least one complaint involving a student complainant from 2007 through 2016. However, where records were available, we included complaints filed before 2007; the oldest identified dated to 1996. We did not include complaints that campuses closed with no action. Given the campuses' inconsistencies in the data and the incompleteness of older records, this table may not represent a comprehensive list of repeat respondents or numbers of complaints against respondents.

University policy already requires campuses to notify their campus coordinators of disciplinary outcomes for all respondents—both faculty and staff. With these data, campus coordinators can act as consultants in the discipline process: they can use it to inform participants in the decision-making process whether proposed disciplines are commensurate with respondents' substantiated behavior. The campus coordinators' expertise and knowledge of all sexual harassment complaints on their campuses are particularly valuable in cases involving repeat respondents and those involving faculty members in positions of control or authority over students alleging harassment. Because campus coordinators are required to maintain records of all past complaints and the actions taken in response, they are less likely to recommend the same discipline when respondents repeat past behaviors and the previous disciplines were clearly ineffective.

The university can increase the campus coordinators' role in the discipline process without infringing upon respondents' due process rights. The former systemwide coordinator cautioned that involving the campus coordinators in discipline decisions could create the perception that the campus coordinators are determining both the violations of policy and the disciplines in response to those violations, and clearly such a process would not be conducive to respondents' due process rights. However, we believe the university can overcome this perception. First, it is important to note that campus coordinators act as managers rather than as investigators and that they oversee dedicated investigators who determine whether the respondents have violated university policy. Second, the campus coordinators do not need to decide what disciplines to impose in order to have sufficient involvement in the decision process. For example, under the California State University's



sexual harassment policy, the role of the campus coordinators is to coordinate with decision makers to ensure that the university imposes appropriate discipline on all respondents found to have violated its policy, regardless of whether the respondents are faculty or staff members. Similarly, the university campus coordinators could act as a safeguard, ensuring that campuses have valid reasons for imposing discipline that deviates from the systemwide practice.

### Recommendations

To achieve prompt resolution of sexual harassment complaints against faculty respondents, the Regents should ensure that the Academic Senate further defines its bylaws with written requirements for the tenure committee that specify exact time frames for completing the phases of the disciplinary process. The following changes should take effect by July 2019:

- Require that a hearing be scheduled to begin within 60 calendar days from the date the chancellor files charges with the tenure committee unless the committee chair extends this time frame for good cause, which the written requirements should define.
- Require that the tenure committee issue a recommendation within 30 calendar days of concluding the hearing. The written requirements should define when a hearing is considered concluded.

To ensure prompt resolution of sexual harassment complaints against faculty respondents, the Office of the President should do the following:

- Amend the appropriate policies to require that the chancellor or designee issue a final decision about discipline within 14 calendar days following receipt of the tenure committee's recommendation. This change should take effect by July 2019.
- After the Academic Senate develops written requirements to specify exact time frames, complete an annual review of all cases involving Senate faculty to determine the length of time the adjudication process lasted. If an adjudication process takes longer than the time frames specified, the Office of the President should work with the Regents and the Academic Senate to develop further measures to enforce a more prompt adjudication process. The Office of the President should complete its first review by October 2020.



To ensure that the campuses impose appropriate disciplinary sanctions and to determine whether any additional remedies need to be provided, the Office of the President should modify university policy to ensure that campus coordinators consult on the appropriateness of the discipline for respondents found to have violated university policy. This policy change should take effect by July 2019.

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## The Campuses' Responses to Sexual Harassment Complaints Could Be Much Clearer, and Their Investigations Often Exceed the Established Time Frame

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### Key Points:

- Over the past decade, campuses used the informal process twice as often as they used the formal process. When using the informal process, the three campuses we reviewed did not consistently follow federal guidance intended to protect complainants. Although required to obtain agreement from both parties to use the informal process, the campus offices were rarely able to demonstrate that they did so. Further, the campus offices often did not inform complainants of their right to end the informal process at any time and to request the formal process.
- When the campuses identified that preventive actions were necessary as part of the informal process, they generally ensured that the counseling, targeted training, or mediation needed to resolve complaints occurred.
- Berkeley and Los Angeles frequently exceeded the time frame of 60 business days for investigations as stated in university policy without obtaining the approvals necessary for such extensions. The three campuses also did not provide complainants and respondents with all required information about the investigations. Los Angeles inappropriately closed some cases.

### Campuses Resolved Complaints Involving Students and Faculty or Staff Through the Informal Process Twice as Often as Through the Formal Process

University data related to campus responses to sexual harassment complaints reveal wide variation in the campuses' decisions to use the formal process or the informal process. At our request, the 10 campuses reported to us that from 2007 through 2016 they received and processed more than 1,000 sexual harassment complaints, including substantiated and unsubstantiated complaints, that had student complainants and staff or faculty respondents. As Table 5 on the following page shows, the campuses used their informal processes 50 percent of the time, more than twice as often as they used their formal processes. We note later that the campuses' data contained errors; nonetheless, we used it for our audit purposes because it was the only source of information available.

**Table 5**  
**The 10 Campuses' Use of Formal and Informal Processes to Resolve Complaints Varied**

CAMPUS	FORMAL PROCESS		INFORMAL PROCESS		ADMINISTRATIVELY CLOSED*		TOTAL COMPLAINTS PROCESSED
Berkeley	32	20%	95	58%	37	23%	164
Davis	17	11	128	82	12	8	157
Irvine	18	18	64	65	16	16	98
Los Angeles	50	35	47	33	46	32	143
Merced	16	64	6	24	3	12	25
Riverside	16	50	11	34	5	16	32
San Diego	13	13	59	58	29	29	101
San Francisco	7	23	15	50	8	27	30
Santa Barbara	19	23	5	6	60	71	84
Santa Cruz	36	21	79	45	59	34	174
<b>Totals</b>	<b>224</b>	<b>22%</b>	<b>509</b>	<b>50%</b>	<b>275</b>	<b>27%</b>	<b>1,008</b>

Sources: California State Auditor's analysis of complaint data obtained from the 10 campuses from 2007 through 2016. Percentages in Totals line do not add to 100 because of rounding.

\* Counts in the *Administratively Closed* column include cases that the campus offices closed for the following reasons: the facts of the case did not suggest sexual harassment there was a lack of information or complainant/witness cooperation, or the campus did not have jurisdiction.

Merced reported using the formal process the most compared to all campuses: it used this process for an average of 64 percent of its complaints. The Merced campus coordinator attributed this high percentage to the office's philosophy that prompt and proper investigations should be most widely used and to the fact that Merced had a lower caseload than the larger campuses. In contrast, Davis used the informal process more frequently than the other campuses—82 percent of the time—while the other nine reported that they used it 6 percent to 65 percent of the time. According to the Davis campus coordinator, the campus office's database could only record complaints under the following options: formal process, informal process, and referrals, which we included in the *Administratively Closed* column of Table 5. Over the past 10 years, the campus office received a large number of complaints in which it could not identify the complainants or respondents because of a lack of critical information. However, the campus coordinator indicated that Davis recorded all of these cases under the informal process because it lacked another option in the database to categorize such complaints.

The number of cases other campuses administratively closed also affected how often they used the formal and informal processes. The complaint data indicate that the campuses administratively closed a total of 275 complaints, meaning that they did not handle

these complaints by either a formal or informal process. Such complaints may include allegations that did not suggest sexual harassment, that lacked critical information or cooperation from complainants or other individuals affected by the alleged behaviors, or that the campuses did not have jurisdiction over. Santa Barbara reported the lowest percentage of complaints under the informal process, and the campus coordinator attributed this in part to the fact that it received a high number of complaints from the campus police department that lacked critical information. The campus coordinator stated that because the campus office received limited information and it cannot engage in any type of complaint response without the victims' participation, the campus closes these cases. In addition, the campus coordinator stated that through the course of reporting data to the Office of the President, which we describe later, she learned that the campus office had been defining the informal process more narrowly than other campuses.

As Table 5 indicates, disparities exist in the percentage of reported complaints processed both formally and informally among university campuses. Beginning July 2017, the systemwide office began to request campus-level sexual harassment data, instructing each campus to categorize the complaint process with the following three options: investigated, alternative resolution, or no investigation or alternative resolution accompanied by an explanation. To support its goal of standardizing the university's response to sexual harassment, the systemwide office can now identify and review any campus offices that appear to be outliers in the way they process complaints.

### **The Three Campuses We Reviewed Have Not Adequately Informed Complainants About the Informal Process**

Campus offices used the informal process to address most sexual harassment complaints, but they did not consistently follow federal guidelines intended to protect complainants when doing so. The informal process does not result in a violation-of-policy finding. Therefore, the process typically does not result in discipline; rather, the campus addresses the allegation of conduct through counseling, targeted training, separating the parties, mediation, providing for the complainant's safety, or entering into a settlement agreement. Table 5 shows that Berkeley followed the informal process for 58 percent of its complaints, Davis for 82 percent, and Los Angeles for 33 percent. The campuses' reliance on the informal process puts more emphasis on the campus offices to handle these cases properly. We analyzed 30 complaints—10 from each of the three campuses—from 2014 through 2016 in which the complainants were students and the respondents staff or faculty members to determine whether the campuses fulfilled the OCR guidelines when

*Campus offices used the informal process to address most sexual harassment complaints, but they did not consistently follow federal guidelines intended to protect complainants when doing so.*

using the informal process. Campus offices identified all of the complaints we reviewed as handled through the informal process, and we verified that the complaints included allegations of prohibited conduct as outlined in university policy. Overall, we found exceptions at each campus throughout the three-year period.

Given that OCR's guidance allows campus offices to use an informal process only when a complainant and respondent involved agree to do so, we expected to find that the three campuses had retained correspondence or notes showing they provided each complainant the opportunity to agree to participate in the informal process. University policy provides campus coordinators several reasons for using the informal process—Figure 1 in the Introduction summarizes these conditions—and agreement from the complainant and respondent was just one. However, as Table 6 indicates, the campus offices were able to demonstrate that the complainants agreed in only eight cases of the 20 cases in which the complainants could be contacted. In its 2018 letter report to Berkeley, OCR confirmed our analysis by also voicing concern over the university's policy that allowed the informal process to proceed without concurrence from both parties. The Office of the President plans to address OCR's concern and amend university policy to adopt this necessary language.

**Table 6**  
**Three Campus Offices Need to Improve Their Handling of Sexual Harassment Complaints Through the Informal Process**

EXPECTATIONS FROM FEDERAL GUIDANCE OR BEST PRACTICE	CASES IN WHICH THE CAMPUS OFFICE MET THE EXPECTATION			
	BERKELEY	DAVIS	LOS ANGELES	OVERALL
<b>Federal Guidance:</b> Complainant given the opportunity to agree to informal process*	4 of 9	1 of 4	3 of 7	8 of 20
<b>Federal Guidance:</b> Complainant informed of option to end informal process†	2 of 7	0 of 3	1 of 7	3 of 17
<b>Best Practice:</b> Assurance that preventive action took place‡	6 of 7	8 of 9	7 of 8	21 of 24
<b>Best Practice:</b> Retention of adequate case documentation	7 of 10	2 of 10	3 of 10	12 of 30

Sources: California State Auditor's analysis of 10 randomly selected cases handled through the informal process from each campus office located at Berkeley, Davis, and Los Angeles from 2014 through 2016; and OCR, 2001 Revised Sexual Harassment Guidance.

■ = 50–89 percent compliance  
■ = 0–49 percent compliance

\* Total number of cases excludes cases where the complainants were not identified.

† Total number of cases excludes cases where the complainants were not identified or the complainants were unwilling to participate.

‡ Total number of cases excludes cases where the campus offices determined no resolution was required.

In a similar, but additional requirement, OCR guidance explains that a campus office must notify the complainant of the right to end the informal process at any time and request a formal investigation; however, we found that the three campuses often did not inform complainants of this option. In the cases where complainants could be identified and did participate, the campus offices informed them in just three of the 17 cases we reviewed. The three campus coordinators separately stated that they use the informal process to address behavior that, even if true, would not rise to a policy violation if investigated. These campus coordinators indicated they assess the allegations and take steps to address behavior before it violates the policy. The complaint files did not all clearly delineate which complaints the campus coordinators determined met the definition of sexual harassment and which complaints did not. To the extent that the campuses use the informal process to address complaints that meet the definition, the evidence indicates they are not meeting federal guidelines because the campus coordinators believe they, rather than the complainants, can determine when the informal or formal processes should be used. OCR disagrees with this approach, and in the recent agreement between OCR and Berkeley, it expressed its concern that the university's informal process was not being presented as voluntary. By not advising complainants of their option to stop the informal process at any time and begin the formal process, campus offices are not fully informing complainants of their rights under Title IX.

We also found that when the three campuses identified during the informal process that preventive actions were necessary, they generally ensured that counseling, targeted training, or mediation occurred. As Table 6 shows, the three campuses were able to demonstrate that preventive action took place in 21 of the 24 cases we reviewed. Typically, the campuses retained correspondence or other documentation that their campus offices or another campus office had counseled respondents about the behavior that had resulted in the complaints.

Finally, the three campuses did not consistently retain adequate case files to demonstrate how they resolved cases through the informal process, with Davis and Los Angeles performing especially poorly. We expected each case file to include a template explaining the facts of a complaint, interview notes, decisions that the campus coordinator made, the preventive action taken, and the reasons for closing the complaint. Essentially, we anticipated finding a complete record of a case that would allow any user—such as an employee of a campus office that is reviewing case files for a future complaint—to understand what transpired and why. Nevertheless, as Table 6 shows, only 12 of the 30 case files we reviewed had sufficiently complete information. Davis acknowledged that it does not retain all communications with individuals or notes from discussions

*By not retaining sufficiently complete case files, campus offices may hamper their own effectiveness in responding to future complaints, and they may also be unable to demonstrate they handled complaints properly in the event of litigation.*

because its campus coordinator believes that university policy does not require the office to do so. Los Angeles also acknowledged that it did not keep supporting records on complaints that it handled through the informal process from late 2014 through late 2015.

By not retaining sufficiently complete case files, campus offices may hamper their own effectiveness in responding to future complaints or external reviews, and they may also be unable to demonstrate they handled complaints properly in the event of litigation. Because sexual harassment is determined case by case, the information within the case files is pertinent for campus offices to determine what happened in previous complaints, how the campus office responded, and why. Moreover, university policy requires campuses to maintain records of actions they take in response to reports of sexual harassment. Information in case files also can be used to determine if a pattern or practice of harassment exists or whether previous preventive measures were effective, ultimately helping to determine if a campus is resolving recurring problems.

In its February 2018 letter report, OCR reported concerns about Berkeley's informal process that mirror many of our own. OCR repeatedly mentioned that Berkeley could not show that it had obtained both parties' agreement to proceed with the informal process. OCR focused, in part, on complaints from students about faculty or staff sexual harassment. It reviewed related case files for the academic years 2011–12 through 2014–15 and included for review all complaints or reports about sexual harassment by students against faculty for the 2014–15 academic year. Thus, its review period and scope are included in our own review of calendar years 2007 through 2016. Because we raise the same issues about the other two campuses we reviewed—Davis and Los Angeles—OCR's concerns with Berkeley are potentially more far-reaching than a single campus.

### **Two of the Three Campuses Struggled to Meet University Policy's Requirements for Investigation Time Frames and Notices**

The three campuses we reviewed did not consistently follow university policy or Title IX requirements when using the formal process to investigate complaints. We reviewed 29 formal-process cases from 2014 through 2016 in which the complainants were students and the respondents staff or faculty: 10 from Berkeley, 10 from Los Angeles, and nine from Davis—the number of formal-process cases Davis conducted during those three years. As the Introduction discusses, the formal process includes an investigation that leads to a referral for discipline if the investigation substantiates that the respondent's behavior



violated university policy. Table 7 summarizes our review; overall, we found exceptions at each campus throughout the three-year period reviewed. However, these exceptions were more prevalent at Berkeley and Los Angeles.

**Table 7**  
**Two Campuses Struggled to Meet Certain Investigation Requirements Under University Policy**

POLICY REQUIREMENTS—DID THE CAMPUS DO THE FOLLOWING:	CASES IN WHICH THE CAMPUS OFFICE MET THE EXPECTATION			
	BERKELEY	DAVIS	LOS ANGELES	OVERALL
Complete its investigations in the 60-day time frame or receive approval for a time extension?*	6 of 10	9 of 9	4 of 10	19 of 29
Notify complainants in writing of timeline extensions?†	2 of 4	1 of 1	1 of 2	4 of 7
Notify respondents in writing of timeline extensions?†	1 of 4	1 of 1	1 of 2	3 of 7
Notify complainants completely and in writing at the beginning of the investigations?‡§	1 of 5	3 of 4	2 of 2	6 of 11
Notify respondents completely and in writing at the beginning of the investigations?	9 of 10	7 of 9	4 of 10	20 of 29
Notify complainants in writing of the investigations' conclusions?§	9 of 10	7 of 7	7 of 8	23 of 25
Notify respondents in writing of the investigations' conclusions?	9 of 10	9 of 9	8 of 10	26 of 29
Include a determination of whether the respondent violated university policy in each investigation report?	10 of 10	9 of 9	9 of 10	28 of 29

Sources: California State Auditor's analysis of 10 cases handled through the formal process from each campus office located at Berkeley and Los Angeles, and of nine cases from Davis, which represented all of the formal sexual harassment investigations for that campus from 2014 through 2016; and university policy in 2014, 2015, and 2016.

- = 90–100 percent compliance
- = 50–89 percent compliance
- = 0–49 percent compliance

- \* University policy requires that campuses complete investigations within 60 business days, but it allows for approved time extensions. We considered investigations timely if the campuses completed them within 60 business days or had written, approved time extensions.
- † University policy requires campuses to provide complainants and respondents a written notification of timeline extensions for investigations that started after June 17, 2015.
- ‡ Starting in 2016, university policy required a campus to notify a complainant at the beginning of an investigation. The notice must include a statement of allegations, a copy of university policy, a description of the procedures that the campus will follow, and the resources available to the complainant and respondent.
- § Because a campus may initiate a complaint for which no complainant comes forward, cases without a complainant do not require the notification to be sent. In total, four complaints fit this criteria.
- || University policy requires that a campus include in its notification a statement of allegations and a copy of university policy. Starting in 2016, policy required two new elements: a description of the procedures that the campus will follow and the resources available to the complainant and respondent.

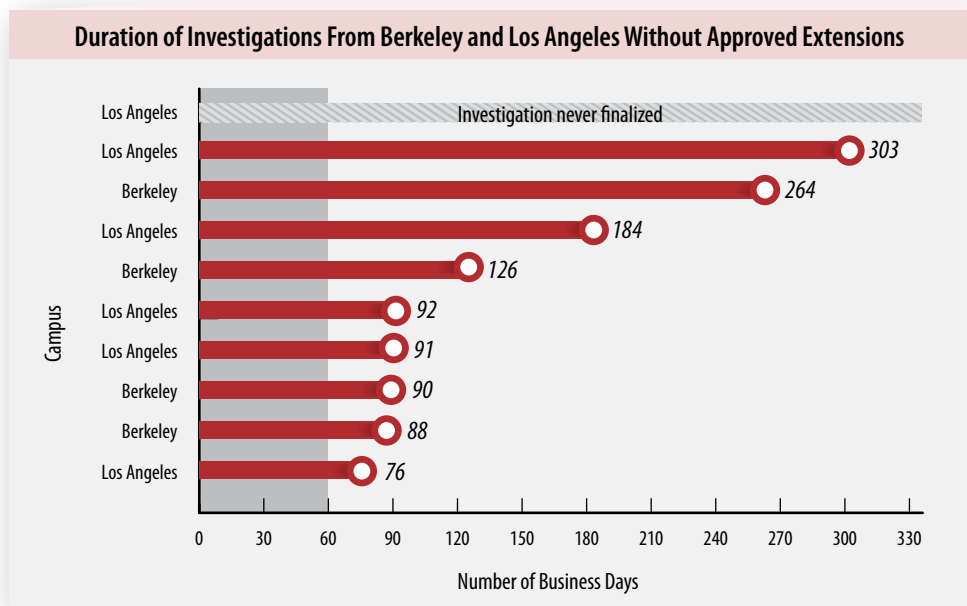
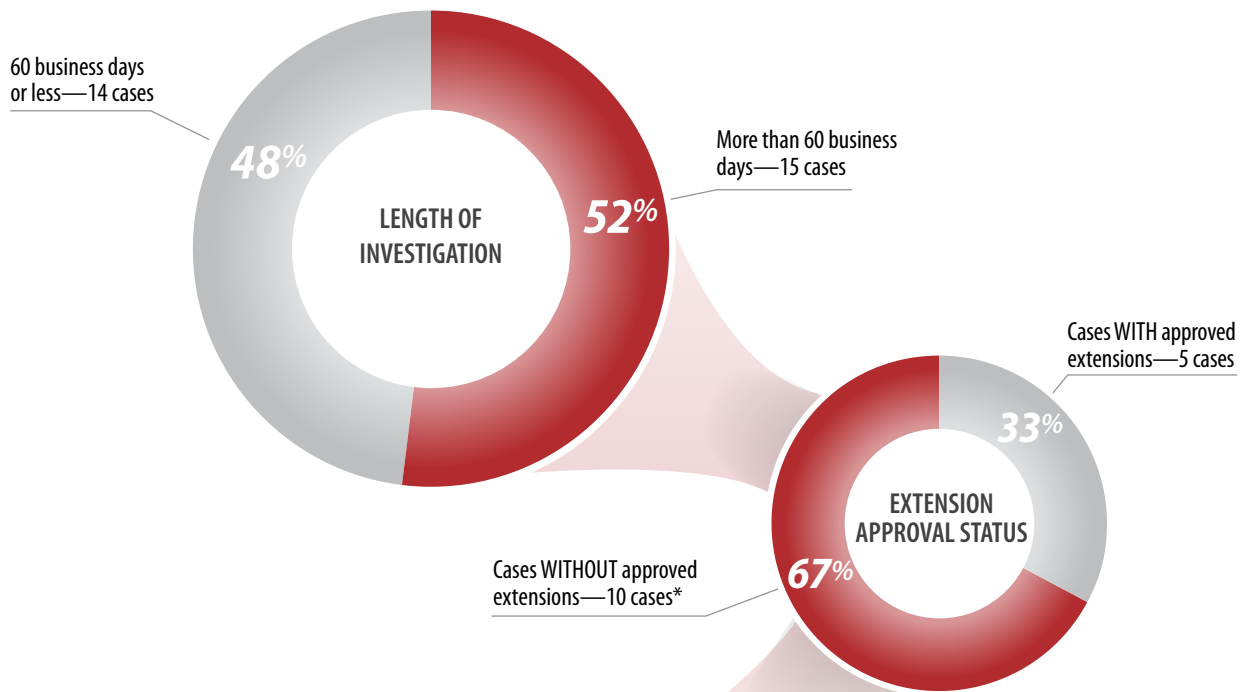
***To meet the OCR guidelines of resolving complaints promptly, university policy states that campuses shall complete investigations promptly, typically within a time frame of 60 business days or less, unless an extension is granted.***

To meet the OCR guidelines of resolving complaints promptly, university policy states that campuses shall complete investigations promptly, typically within a time frame of 60 business days or less, unless an extension is granted. Of the 20 total cases we reviewed from Berkeley and Los Angeles, the campuses completed their investigations within 60 business days or had extensions approved for the entire period for only six and four complaints, respectively, as Table 7 shows. In some cases, the two campuses obtained approved time extensions after already exceeding the 60 business-day time frame, and these time extensions did not cover the entire period. In contrast, Davis completed seven of nine investigations we reviewed within 60 business days and appropriately obtained approval for extensions for the remaining two cases.

Berkeley and Los Angeles performed lengthy investigations that often lacked approved extensions. As Figure 8 shows, of the 29 cases we reviewed from the three campuses, 15 took longer than 60 days, and the campuses lacked extension approvals for 10, or 67 percent. Berkeley and Los Angeles took from 76 to 303 days to complete their investigations, and for one investigation, Los Angeles failed to finalize the report at all. Berkeley's campus coordinator asserted that the campus has followed the process established in 2014 university policy requiring written approval and communication of timeline extensions. Nonetheless, the campus initiated the investigations we reviewed from 2014 through 2016, and four cases lacked approved time extensions. The current Los Angeles campus coordinator stated that he was not working at the campus during that period, but that he presumed that time extensions were approved but not documented.

Although the university policy allows for extensions, it does not specify the number or duration of them. Figure 9 on page 38 illustrates an investigation that Berkeley took 264 business days to complete, during which its campus office did not obtain approvals for exceeding the 60 business-day time frame, although it did obtain approval for a six business-day extension midway through the investigation. However, the investigator did not complete the report within six business days of this approval, which she stated was her intent when she requested the approval; instead, she took 156 more business days before issuing the investigation report, and she failed to request further extensions.

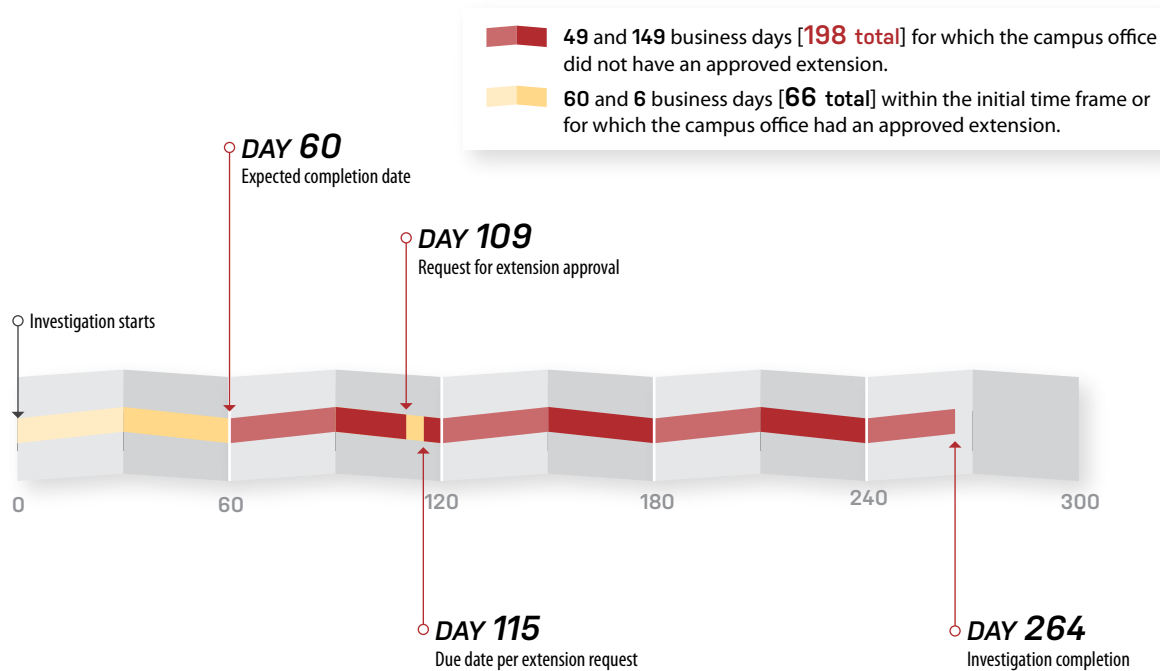
**Figure 8**  
Two of Three Campuses Did Not Always Obtain Approval to Extend Investigation Timelines



Sources: California State Auditor’s analysis of 29 investigation reports for sexual harassment complaints performed from 2014 through 2016: 10 from campus offices at Berkeley and Los Angeles and nine from the campus office at Davis—the number of formal process cases Davis conducted during these three years; and university policy in 2014, 2015, and 2016.

\* The campus office at Davis did not have cases without approved extensions.

**Figure 9**  
In One Example, Berkeley Did Not Receive All Necessary Extensions for an Investigation



Source: California State Auditor's analysis of the timeline for one investigation the campus office at Berkeley undertook.

In addition, when these campuses did request time extensions, some of the reasons they cited were not relevant or material to the facts of the investigations, making it unclear why the extensions were needed. Since 2016 university policy has stated that a campus office can approve an extension for good cause. Although university policy does not define *good cause*, it is reasonable to conclude that good cause should be related to material or unforeseen circumstances connected to that specific case, such as the discovery of new evidence or the recognition of the overall complexity of the investigation. For example, when submitting an extension request, a Los Angeles investigator stated that the case was long delayed due to difficulties contacting the respondent, which is a legitimate reason for an extension. However, the investigator also cited reasons unrelated to the case—her own personal leave and increased workload from other cases. This investigation took 303 business days to complete, well past the 60 business-day time frame. In another case, a Berkeley investigator cited several legitimate reasons for the requested extension but also said that the campus office's increased caseload had delayed the investigation. In both these examples, the justifications are not all relevant to the specific cases, and they make the real causes for the extensions difficult to determine. When a campus office seeks or approves

an extension for reasons other than good cause, the added length to the investigation unnecessarily hinders the complainant and respondent from receiving prompt resolution.

Campus offices also have not consistently provided complainants and respondents with all of the information required at the beginning of an investigation. In the past, university policy for respondents differed from that for complainants. From 2014 through 2016, policy required that at the beginning of an investigation a campus send notification to the respondent containing a statement of the allegation and providing the university's policy. In 2016 university policy added that the notification must inform the respondent of the complaint resolution process and the resources available to him or her, such as counseling or advocacy services. Complainants were afforded the same notifications as respondents starting in 2016. However, based on our review of 29 cases, the three campuses sent complete notifications at the beginning of investigations to respondents in only 20 of the 29 cases and to complainants in six of the 11 cases that required it. In the exceptions we noted, the campuses omitted one or more of the information requirements from the notifications or did not send the required notifications at all.

Most frequently, the campuses—particularly Los Angeles—did not include a copy of the university policy. Sending respondents and complainants the policy is important because the formal process used to resolve a sexual harassment complaint is complicated and can be lengthy. The parties deserve to understand the process and their roles and rights in it; thus, including the policy in the notification at the beginning of the investigation provides that necessary information. The three campuses were unable to explain why they did not follow the university's notification requirements.

Campus offices generally provided notifications to complainants and respondents at the conclusions of the investigations in the cases we reviewed. University policy requires a campus to notify the parties at the completion as to whether it found that the respondent had violated university policy. As we show in Table 7 on page 35, the campuses notified complainants at the conclusion of 23 of the 25 cases that had listed complainants. Berkeley and Los Angeles did not notify one complainant each. Further, the campuses notified respondents at the conclusion of the investigations for 26 of the 29 cases, again with Berkeley and Los Angeles sometimes not providing these notifications. Similar to others that we describe, this notice helps the campuses maintain transparent and fair processes and bring closure to the complaint.

***Campus offices have not consistently provided complainants and respondents with all of the information required at the beginning of an investigation.***

*In its February 2018 letter report, OCR expressed concerns with Berkeley's formal process that mirror our concerns regarding the length of investigations.*

Finally, as required, the three campuses included a determination of whether the respondent violated university policy in 28 of 29 investigation reports we reviewed. We identified one case in which the Los Angeles campus office began an investigation but failed to publish a final investigation report. In response to our inquiry, the current campus coordinator plans to contact the academic department where this complaint occurred and possibly the complainant to see how the matter was resolved and whether additional action needs to happen. Further, the current campus coordinator told us that the campus office prepared a draft report that did not substantiate the complaint. However, because of a change in staffing, the campus failed to finalize the investigation. This case involved a complainant who was no longer attending the campus, and although the faculty respondent had retired in 2014, he continued to work on campus in a limited teaching role. This case raises the concern that when investigations are not completed, it could result in sexual harassment not being identified or addressed appropriately.

In its February 2018 letter report, OCR expressed concerns with Berkeley's formal process that mirror our concerns regarding the length of investigations. OCR reported that in at least 12 of the 200 cases that it reviewed for complaints received from 2011 through 2015, Berkeley did not resolve investigations in a reasonably prompt manner; these investigations ranged in length from eight to 14 months. Further, none of these cases included information about mitigating circumstances that might have contributed to the delays. Since OCR did not identify the individual cases it reviewed, we cannot conclude we analyzed the same cases.

### **Los Angeles Administratively Closed Some Complaints Inappropriately**

Sexual harassment data show that some campuses administratively closed complaints more often than others. On average, campuses classified complaints as administratively closed 27 percent of the time. Of the three campuses we reviewed, Los Angeles administratively closed 32 percent of its cases, which was more than Berkeley, at 23 percent, and Davis, at 8 percent. Because Los Angeles was an outlier among these three campuses, we reviewed 10 complaints that the campus administratively closed from 2015 through 2016. Of the 10 complaints we reviewed, we believe that the campus office closed six complaints reasonably because, for example, the respondent or complainant was not identified, the complaint was addressed at another campus, or the campus office could not contact the complainant.

However, we questioned why the campus office did not take action on four of the complaints. Based on our review, those four complaints appeared to include enough information to warrant responses. They included allegations of prohibited conduct and identified both the respondents and complainants. For example, one student filed a complaint that a staff person at the student health and wellness center made inappropriate comments during the student's visit to the center. However, the campus office administratively closed the complaint citing insufficient evidence and did not indicate it took additional actions. The current Los Angeles campus coordinator reviewed the four complaints we questioned and agreed that all four allegations were appropriate for review and action. However, because he was not at Los Angeles at the time, he could not be certain why the campus office had administratively closed the complaints, and he said it was possible the campus office did not document all actions taken on them. However, by administratively closing these complaints, the campus did not fulfill its responsibility under university policy to address allegations of prohibited conduct that were reported to it.

### **Recommendations**

To ensure that campuses administer the informal process correctly for complaints alleging conduct that would violate university policy, the Office of the President should do the following by July 2019:

- Identify required elements for capturing the agreement between a complainant and respondent to use the informal process and require the campuses to integrate these required elements into their processes.
- Identify required elements for communications that inform a complainant and respondent of the informal and formal processes available to address the complaint, as well as what to expect of each process, and that also inform the complainant of his or her right to end the informal process at any time by requesting the formal process. The Office of the President should require the campuses to integrate these required elements into their processes.
- Modify university policy to require that the campus office either participate directly in the resolution with the respondent and responsible campus officials or that the campus office receive written confirmation from the responsible campus officials describing the resolution and documenting that it took place.

To ensure that campuses retain adequate and consistent documentation for complaints they handle through the informal and formal processes, the Office of the President should determine the types of documents campuses should retain. The Office of the President should consider the types of complaint information, correspondence, and interview notes that would be necessary when determining a campus's response to a complaint. The Office of the President should modify university policy to include these requirements, and they should take effect by July 2019.

To ensure timely completion of investigations, the Office of the President should modify university policy to address investigation extensions. The policy changes should include, but not be limited to, defining good cause for an extension as material or unforeseen circumstances directly related to the complaint, specifying a standard extension period, requiring that an extension be requested and granted before the initial 60 business-day period expires, and specifying the time frame within which a campus must notify the parties about each approved extension. The policy should also outline examples of the material or unforeseen circumstances that could warrant an extension and specify the number of extensions available for an investigation before requiring approval from the systemwide coordinator. The changes should take effect by July 2019.

To ensure that the campuses send complete notifications at the start and end of an investigation, the Office of the President should identify required elements for the campuses to include in these notifications and require the campuses to integrate these required elements in their notifications by July 2019.

To ensure that the campuses are using the *administratively closed* classification correctly and consistently, the Office of the President should modify university policy to include criteria for identifying and classifying complaints as closed. These criteria should identify the circumstances in which it is appropriate to close cases and the documents that campuses should retain. The criteria should also define what services campuses should provide to complainants and detail the type of communication campuses should provide to them. These modifications should take effect by July 2019.



## The Systemwide Title IX Office Has Opportunities to Improve and Standardize the University's Response to Sexual Harassment Complaints

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### Key Points:

- The systemwide office lacks a clear mission that would enable it to ensure that the university's response to sexual harassment is coordinated and consistent. At a minimum, the systemwide office should play a central role in setting university policy, analyzing complaint data, and overseeing the campus offices.
- University policy does not fully align with federal regulations and best practices, an issue that the systemwide office should address.
- Most campuses do not effectively analyze complaints data to identify and address trends. The systemwide office has an opportunity to improve the university's use of complaints data.
- The campuses have not used consistent standards when hiring Title IX investigators. By defining minimum staff qualifications for the campus offices, the systemwide office could help ensure a consistent response to sexual harassment complaints systemwide.

### The Systemwide Office's Mission to Ensure Consistency and Coordination Is Unclear

Established in February 2017, the systemwide office has begun coordinating and standardizing the university's response to sexual harassment, but the Office of the President needs to clarify the authority of the systemwide office to change campus procedures and to implement consistent practices. The Office of the President charged the systemwide coordinator with ensuring consistency and coordination in the university's sexual harassment policies and procedures. In addition, it gave the systemwide coordinator shared authority over the 10 campus coordinators, thereby creating a dual reporting structure between the Office of the President and campus leadership. The Office of the President stated that a key role of the systemwide coordinator was to ensure that the 10 campus coordinators all possess the same competencies and execute the same responsibilities.

Although the Office of the President has stated a goal of implementing a consistent and coordinated response systemwide, it needs to define how much consistency it desires and provide the systemwide coordinator the authority to achieve that level of consistency. Over the past year, the systemwide office has consolidated several systemwide Title IX responsibilities. For example, in July 2017, the systemwide coordinator issued new investigation and adjudication procedures (systemwide procedures) for faculty and staff cases. These procedures added a number of new requirements, including that the chancellor's designee approve the discipline in staff cases, a step intended to aid campuses in maintaining a consistent and proportional response to misconduct across different campus departments. Some campuses, such as Berkeley and Los Angeles, have added provisions to their local Title IX procedures (local procedures) to adapt the systemwide procedures to their circumstances

or to incorporate additional information. Although university policy requires campuses to establish and implement local procedures that are consistent with policy, doing so maintains existing inconsistencies between the campuses and introduces new ones. For example, under its local procedures, Los Angeles has maintained an existing inconsistency: it has a separate charges committee that reviews charges of misconduct against Senate faculty to determine if probable cause exists of policy violations before the vice chancellor of academic personnel submits the charges to the tenure committee.

Permitting the campuses to use a variety of documentation further illustrates the lack of clarity in the Office of the President's vision for a consistent and coordinated Title IX response. For example, the systemwide office has provided campus offices with templates for their investigation reports and general guidance documents about Title IX. The former systemwide coordinator encouraged the campus offices to use these templates and guidance but did not require it. In our review of cases from 2014 through 2016, we noted inconsistencies in case file documentation at the campus offices. For example, the Davis campus coordinator prepared a charge letter to the investigator that detailed the allegations in the complaint and the expected date that the investigator would submit a report. We did not find evidence that the campus coordinators did this at Berkeley or Los Angeles. Doing so may represent a best practice, and having standard templates that all campuses use would ensure that they follow such best practices. The former systemwide coordinator stated that determining how to oversee the campuses has presented challenges because her position is new and its authority has been evolving. One such challenge is that not all campus coordinators share the view that practices and protocols should be the same among campuses.

We recognize that refining procedures will take time, but more importantly, achieving consistency comes from establishing a clear vision of a desired goal and ensuring that those charged with achieving that goal have the authority to implement that vision. The Office of the President has taken some, but not all, necessary steps to define a clear mission for the systemwide office and give it the authority to carry out the mission. Over the course of four years—from 2014 into 2018—the Office of the President has received significant feedback about necessary changes and improvements to the university's response to sexual harassment complaints. Federal and state oversight entities and internal stakeholder groups—as we describe in the Introduction—have reviewed and made recommendations to the Office of the President to improve the university's practices. The message in these reviews has been consistent—that the university must do more to stop, prevent, and remedy sexual harassment. As Table 8 summarizes, the findings in

***The Office of the President has taken some, but not all, necessary steps to define a clear mission for the systemwide office and give it the authority to carry out the mission.***

our current report align with the findings in those earlier reviews. For example, later in this report, we note that the university could use systemwide data to monitor trends and address issues at underperforming campuses; three prior reviews—including the university’s own internal reviews—also identified data use as an area for improvement.

**Table 8**  
The Issues Raised in This Report Have Been Noted in Previous Reviews of the University’s Response to Sexual Harassment

ISSUE IDENTIFIED	2014 CALIFORNIA STATE AUDITOR REPORT	2014 UNIVERSITY INTERNAL TASK FORCE	2016 UNIVERSITY INTERNAL JOINT COMMITTEES	2016 AND 2017 UNIVERSITY INTERNAL CAMPUS REVIEWS	2018 OCR REPORT	2018 CALIFORNIA STATE AUDITOR REPORT
<b>Discipline</b>						
The faculty discipline process is lengthy			●		●	●
The campus coordinator’s role in the discipline process needs clarification			●*	●		●
<b>Complaints Process</b>						
The complainant’s right to pursue the formal process at any time is not recognized	●			●	●	●
The informal process does not ensure preventive action is taken	●			●	●	●
Investigations often surpass the 60-day time frame	●			●		●
<b>Data</b>						
The data are not used to monitor trends	●	●	●*			●
The sexual harassment data quality is inconsistent	●		●*			●
<b>Training</b>						
The training requirements for individuals involved in the university’s response to sexual harassment complaints are inadequate	●	●	●		●	●

Sources: California State Auditor’s analysis of the June 2014 audit report titled *Sexual Harassment and Sexual Violence: California Universities Must Better Protect Students by Doing More to Prevent, Respond to, and Resolve Incidents*, Report 2013-124; university president’s task force report titled *Initial Report to the President: President’s Task Force on Preventing and Responding to Sexual Violence and Sexual Assault*, September 2014; university president’s committees’ reports titled *Report of the Joint Committee of the Administration and Academic Senate*, April 2016 (Senate faculty), and *President’s Committee on Sexual Violence Sexual Harassment Disciplinary Process for UC Personnel Other Than Faculty, Report of Findings and Draft Recommendations*, August 2016 (non-Senate faculty and staff); the university’s 2016 and 2017 campus Title IX office reviews; and OCR’s 2018 letter to Berkeley.

● = The report identified this issue.

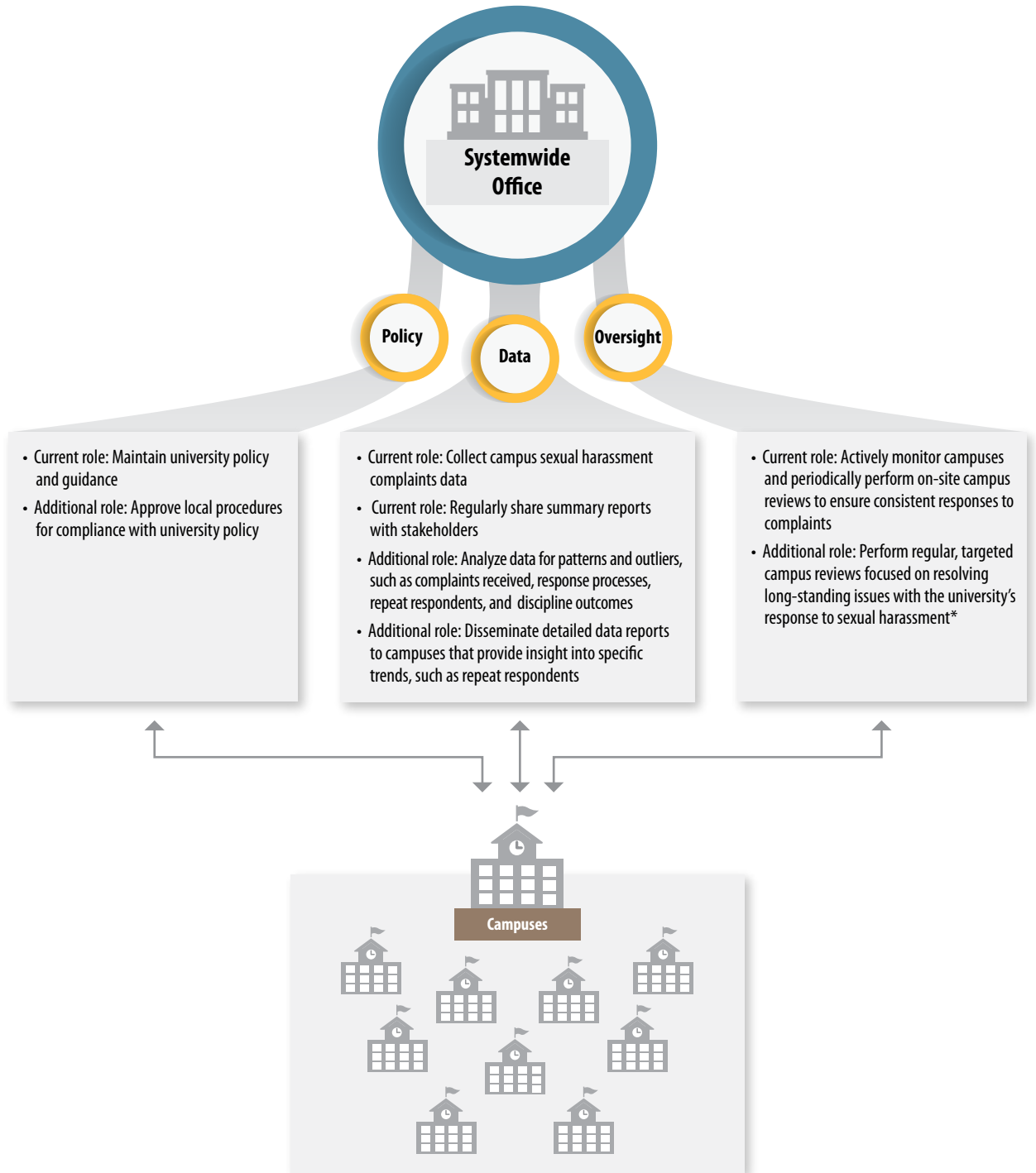
\* This issue is identified only in the committee report for Senate faculty.

***We identified three fundamental areas in which the systemwide office should play a central role in the university's efforts to prevent and respond to sexual harassment: setting policy, analyzing applicable data, and overseeing the campus offices.***

To address these consistently identified problems, the Office of the President must further clarify the systemwide office's mission and authority. Based on the university's stated goals for the systemwide office, we identified three fundamental areas in which the systemwide office should play a central role in the university's efforts to prevent and respond to sexual harassment: setting policy, analyzing applicable data, and overseeing the campus offices.

As Figure 10 shows, the systemwide office is already doing some things in these areas, but it could do more. Currently, it has responsibility for the university's policy; however, to better fulfill this role, it should ensure that the campuses have guidance to consistently implement policy and that it approves the campuses' local procedures to ensure that they align with university policy. Further, although the systemwide office is already undertaking some data collection efforts, it must build on these efforts by analyzing the data for complaint patterns and then acting on those patterns by providing technical assistance to campuses or by clarifying policy to address any trends that indicate that campuses are not effectively addressing sexual harassment. Finally, to achieve consistent campus responses to sexual harassment, the systemwide office must have the authority to hold the campuses accountable for operating in accordance with university policy. Through its Office of Ethics, Compliance and Audit Services, the Office of the President has reviewed the 10 campuses' Title IX operations once, and it has committed to conducting routine Title IX reviews at each campus at least every three years. However, the systemwide office should regularly perform focused reviews of selected issues it identifies through its analyses of data. These reviews could also target one at a time the long-standing issues raised in this report and earlier reviews to ensure the campuses fully resolve each issue. The Office of the President needs to take steps of this nature to ensure that it achieves a consistent and effective response to sexual harassment across the university.

**Figure 10**  
Recommended Mission and Authority for the Systemwide Title IX Office to Help Ensure the University Effectively and Consistently Responds to Complaints



Sources: California State Auditor's analysis of the university's plans, policies, and procedures related to the systemwide office.

\* The Office of Ethics, Compliance and Audit Services located in the Office of the President currently plans to conduct campus reviews every three years that are similar to its 2016 and 2017 reviews.

### University Policy Needs Improvements to Satisfy Regulations and Best Practices

As the Office of the President moves to amend university policy and enforce it at each campus, it also needs to ensure that university policy better aligns with federal regulations and best practices. The systemwide office's authority over university policy means it will oversee future revisions to the current policy, including revisions required through the agreement that OCR reached with Berkeley in February 2018. As Table 9 shows, many current policy sections, which became effective in January 2016, satisfy regulations and best practices. However, other areas need improvement. For example, defining when an investigation begins will better allow the university to determine whether a campus office promptly resolved an investigation or took longer than the current 60 business-day time frame. Further, the policy needs to state that its scope includes third parties when they are on university property or participating in university-sponsored activities. OCR also identified that the university policy needs to state its applicability to third parties, and the Office of the President agreed to make this change by February 2019.

*The most significant deficiency with university policy involves the procedures governing the informal process.*

The most significant deficiency with university policy involves the procedures governing the informal process. In our 2014 report on the university's sexual harassment policies, we determined that the university policy at the time was inconsistent with OCR guidelines because it gave the campus coordinator the discretion to decide whether to use the formal process instead of explicitly giving the complainant the right to the formal process if he or she requested it. Despite the recommendation in our 2014 report that it change its policy, the university has continued to give the campus coordinator this discretionary authority. In its February 2018 letter report, OCR also determined that the university policy was noncompliant in this matter, and the Office of the President has agreed to amend its policy to include this provision by February 2019.

**Table 9**  
**University Policy Needs Improvements to Better Reflect Regulations and Best Practices**

REGULATORY REQUIREMENT AND BEST PRACTICE	PRESENT IN UNIVERSITY POLICY	DEFICIENCY
Defines prohibited conduct	✓	None
States the university's commitment to addressing prohibited conduct	✓	None
Encourages reporting	✓	None
Explains assistance guidelines	✓	None
Defines reporting procedures	✓	None
Provides guidelines for prevention and education	✓	None
Identifies scope, including to whom it applies	◆	Policy does not: <ul style="list-style-type: none"> <li>• Explain applicability to third parties</li> <li>• State that it applies to online or social media behavior that may affect the educational experience</li> <li>• State that the university may initiate a complaint</li> </ul>
Defines formal process procedures	◆	Policy does not define: <ul style="list-style-type: none"> <li>• The date that initiates the investigation</li> <li>• The allowable length of an extension and good causes for requiring an extension</li> </ul>
Explains confidentiality guidelines	◆	Policy does not: <ul style="list-style-type: none"> <li>• Explain how confidentiality works in regards to interim measures, which are temporary remedies to the complaint</li> <li>• Provide clear guidelines on what information is required to be confidential and what must be disclosed</li> </ul>
Defines informal process procedures	X	Policy does not: <ul style="list-style-type: none"> <li>• Give the complainant or respondent the right to end the informal process and begin a formal process</li> <li>• Provide procedures for the informal process that ensure a prompt and equitable resolution of the complaint</li> </ul>

Sources: California State Auditor's analysis of university policy effective January 2016; federal regulations for Title IX and the Violence Against Women Act; Education Code; 2001 U.S. Department of Education, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*; 2014 White House Task Force to Protect Students from Sexual Assault; 2014 Association for Student Conduct Administration, *Gold Standard Practices for Resolution of Allegations of Sexual Misconduct on College Campuses*.

Note: These policy areas all include regulatory requirements and best practices, except the area on scope, which represents only best practices. Regulations provide the high-level requirement, while best practices provide more detailed guidance.

- ✓ = Regulation and best practice reflected
- ◆ = Regulation and best practice partially reflected
- X = Regulation and best practice not reflected

***One use for complaints data is to identify trends of the types of harassment that predominate and the locations on campus where sexual harassment is more likely to occur.***

### **The Systemwide Office Has an Opportunity to Improve the Use of Complaints Data**

Opportunities exist for the systemwide office to refine its data collection and analysis and to increase the use of data in identifying trends and potential problems in how campuses respond to sexual harassment complaints. Data analysis is a powerful tool that helps organizations to efficiently identify trends and exceptions that require further attention. Although university policy requires campus offices to identify and address any patterns or systemic problems, most campus coordinators have not effectively used complaints data to do so. In July 2017, the systemwide office began collecting campus-level sexual harassment data and is currently working to improve and finalize its data collection process.

One use for complaints data is to identify trends of the types of harassment that predominate and the locations on campus where sexual harassment is more likely to occur. However, when we spoke to the campus coordinators at the 10 campuses, several explained to us that because they lacked case management systems in the past, they used data in limited ways, including annual reporting to campus officials of complaint statistics. Those summary reports are informational, but often they are only snapshots of complaints within a short time, and they do not demonstrate trends in complaints. The campus coordinators at Irvine, San Diego, and San Francisco told us that in addition to their annual reports, they produced internal reports to analyze their sexual harassment complaints data. For example, the San Francisco campus office produced statistics on the number of sexual harassment complaints that it received over a three-year period, and the Irvine campus office sends memos to other campus units summarizing the number of sexual harassment complaints related to the unit that the campus office received and resolved. Nonetheless, we found that almost all of these analyses were too general to assist the campus office in identifying campus locations where complaints frequently occur or in identifying common behaviors that result in complaints. By not using data to systematically identify trends in sexual harassment behaviors or in individuals accused of perpetrating it, the campus offices have missed opportunities to stop, prevent, and remedy sexual harassment. As most campus offices have now begun to use case management systems, opportunities exist for the systemwide office to work with campuses to develop and implement processes and data reports to assist them regularly in identifying patterns related to sexual harassment to inform their training and outreach efforts, among other things.

The systemwide office also has an opportunity to use campus complaints data to support its goal of coordinating and standardizing the university's response to sexual harassment.



Gathering complaints data from all campuses would allow the systemwide office to identify trends among campuses to effectively inform prevention efforts, reduce inconsistencies in discipline, and monitor campus performance. For example, as we previously noted, our analysis of complaints data found that some campuses use the informal process to resolve complaints much more frequently than others. Performing a similar analysis could help the systemwide office identify which campuses are not meeting its expectations and give the systemwide office a basis to focus its on-site reviews.

As we discuss earlier, because the campuses we visited imposed discipline inconsistently for faculty, we believe the university should give the campus coordinators an established role in the discipline process. For campus coordinators to inform decision makers about whether proposed disciplines are commensurate with respondents' substantiated misconduct, they should have a systemwide view of disciplinary decisions. This information would need to come from the systemwide office's compilation and analyses of the campuses' complaints data. Although the systemwide office is currently requesting complaints data from campuses, including summaries of disciplinary decisions, it would benefit the systemwide office to collect information on repeat respondents as well. By having systemwide records of disciplinary decisions for repeat respondents, the campus coordinators will have better information to evaluate disciplinary decisions to prevent imposing the same ineffective discipline that allowed for repeat misconduct in the past. By effectively collecting and analyzing data on the campuses' sexual harassment complaints, the systemwide office can establish a baseline to measure how each campus is responding to these complaints, eliminate inconsistencies among the campuses, and guide each campus office to respond more effectively to these complaints.

### **The Systemwide Office Has Opportunities to Define Staff's Minimum Qualifications and Training Standards**

Opportunity exists for the systemwide office to establish minimum hiring qualifications for campus Title IX investigators. In the broadest sense, Title IX work requires an individual to understand the Title IX law and issues and to possess interview skills, good oral and written communication skills, and analytical and critical thinking skills. We analyzed the job announcements for the 21 individuals involved in investigations during 2016 and 2017 at the three campuses we visited. We found multiple examples of job postings omitting skills that are important for Title IX investigators to have. Not only did the campuses use different hiring standards from year to year, but the standards also varied from campus to campus. For example, three of the four postings at

*Although the systemwide office is currently requesting complaints data from campuses, including summaries of disciplinary decisions, it would benefit the systemwide office to collect information on repeat respondents as well.*

*The systemwide office has an opportunity to establish training standards that specify content, frequency, and quantity, which is information that university policy currently lacks.*

Davis did not require knowledge of Title IX or sexual harassment laws, policies, or procedures. Five of the nine announcements at Los Angeles reflected the same omission. In addition, five job announcements at Los Angeles and one at Berkeley did not list interviewing as a requirement. The Office of the President stated that its vision for the university is a consistent and coordinated Title IX response. Achieving that vision will rely, in part, on those staff performing Title IX work all possessing appropriate skills, which can be facilitated by campuses using consistent and comprehensive job announcements.

The systemwide office also has an opportunity to set training standards for the campus offices. Federal law sets training requirements for Title IX investigators; those requirements state that annual training is required and must cover topics such as understanding sexual assault and conducting investigations. University policy, however, only broadly addresses training, stating that investigators must take regular comprehensive training with a trauma-informed perspective. The policy does not specify the minimum training hours per year or any required classes. The systemwide office has an opportunity to establish training standards that specify content, frequency, and quantity, which is information that university policy currently lacks. These more specific training standards will help ensure that all university employees associated with or performing Title IX functions—the campus coordinators, investigators, office staff, and other campus staff—develop relevant skills and stay current in emerging theories and techniques for stopping, preventing, and remedying sexual harassment.

Although the Berkeley campus coordinator indicated that the university's broad view of training allows individuals to take advantage of a full range of training options, we identified a number of concerns with this approach. We analyzed training records for the same 21 individuals involved in investigations at the three campuses we reviewed, noting training hours and topics, and we found that although investigators and coordinators are indeed taking training, the total hours and content vary widely. For example, training hours during 2017 for the three Los Angeles investigators that worked that year ranged from 8.75 hours to 30 hours. During the same year, four investigators at Davis recorded training ranging from 31 hours to 87.5 hours and the training topics ranged from implicit bias to dating and domestic violence in the digital age to diversity awareness. Requirements also varied for new staff, as Davis and Los Angeles generally required newly hired investigators to take a comprehensive training course, whereas Berkeley simply encouraged staff to take such a course because it believes its staff already possess that knowledge and those skills. Additionally, the three campuses

lacked formal training programs that defined new hire expectations, outlined different aspects of the complaint process, and reviewed office procedures. A best practice would include the systemwide office more explicitly defining training content to ensure that all individuals involved in investigations are supplementing the skills that the university determines are most relevant to their jobs.

Both the systemwide and campus offices have an opportunity to improve their oversight of training. Campus offices at the three campuses we reviewed relied on staff to self-report their annual training. Beyond this, however, the campus offices did not actively monitor the accuracy of training information. We found that their training records included errors ranging from incorrect dates to incorrect or missing hours, as well as instances of investigators reporting courses they did not take and more hours than they actually completed. For example, one investigator incorrectly recorded taking an extra seven hours of training because she included a course twice, listing it once as a webinar and then as an in-person training course. Without accurate information, campus offices cannot ensure that their investigators are up to date on their training and, as a result, that they are current on any new information and techniques presented in those trainings. Similarly, because the Office of the President desires consistency across the university, the systemwide office must play a role in monitoring campuses to ensure that each meets systemwide training standards, thereby verifying that all staff, regardless of their locations, are adequately prepared to carry out their Title IX responsibilities.

### **Recommendations**

To ensure that the systemwide office has appropriate direction and the systemwide coordinator has the necessary authority, the Office of the President should work with the systemwide coordinator to develop a strategic plan for the systemwide office that delineates how it will approach achieving consistency systemwide. This plan should also ensure that the systemwide office updates university policy to comply with federal and state requirements and best practices, that it reviews and approves local procedures for compliance with university policy, that it oversees campus Title IX activities, and that it improves the university's use of campus data on sexual harassment complaints. The Office of the President should grant the systemwide coordinator the authority needed to enforce the desired plan, and it should develop the plan by December 31, 2018.

To ensure that university policy complies with best practices, the systemwide office should amend that policy by July 2019 to incorporate the following provisions in addition to the other changes that it has already agreed upon in its resolution with OCR:

- A statement that the policy applies to third parties.
- A statement that the policy applies to online behavior or social media that may affect an individual's educational experience.
- A statement that the university may initiate a complaint.
- The date that identifies or defines the start of an investigation.
- The allowable length of an extension for an investigation and what constitutes good cause for an extension.
- An explanation of how a campus can protect confidentiality when implementing interim measures.
- An explanation of what information a campus can keep confidential and what information it must disclose.
- The requirement to give the complainant the right to end the informal process and begin a formal process.
- Procedures to ensure that the informal process provides prompt and equitable resolution of complaints.

To address any patterns or systemic problems of sexual harassment, the systemwide office should do the following by July 2019:

- Continue to improve and finalize the data collection process, including identifying data points that campuses should gather for each complaint and data points for tracking repeat respondents.
- Work with each campus to develop and implement processes and data reports to assist the campus in regularly identifying patterns and systemic problems related to sexual harassment and in instituting sexual harassment prevention education and training in those areas that need it.
- Work with each campus to implement ongoing data quality control processes in order to ensure sexual harassment complaints data are accurate and complete.
- Identify and review campuses' complaints data to identify outliers in their use of the formal, informal, and administratively closed processes.

To ensure that each campus hires the most qualified individuals to perform Title IX-related functions, the systemwide office should, in consultation with the campuses, develop a list of key Title IX positions and the associated minimum and desirable qualifications. The systemwide office should ensure that effective July 2019, each campus follows those qualifications when hiring new staff.

To ensure that all investigators and staff performing Title IX-related functions have necessary and consistent training, the systemwide office should amend university policy to take effect July 2019 to make clear the Title IX training requirements. The policy should do the following:

- Specify the number of training hours required of each investigator and staff member, the period within which the training must be completed, and the minimum number of training hours within each period.
- Specify the topics that the training must cover and the minimum number of training hours required on each topic.
- Set training topics and the requisite number of hours by topic that new employees must complete and the period within which the new employee must do so.
- Require that each campus develops and implements processes to track staff training.
- Specify that the systemwide office will monitor each campus to ensure it adheres to the training requirements.

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## OTHER AREAS WE REVIEWED

### The University's Settlements Did Not Unreasonably Limit Student Victims' Access to Academic and Employment Opportunities

Based on our review of the Regents' settlement policy and university practices, the university's settlements were reasonable and were not intended to restrict students' opportunities with the university. When a student believes that the university is responsible for harm that a university employee has inflicted upon him or her, such as by failing to prevent sexual harassment, he or she may consider taking action against the university in the form of a lawsuit or a demand for restitution that does not involve litigation. As Table 10 shows, the 10 campuses and the Office of General Counsel for the Office of the President reported entering into 20 settlements with complainants and respondents stemming from sexual harassment complaints, for which the university paid nearly \$4.5 million. The Office of General Counsel was responsible for monitoring and approving these settlements. The settlements spanned the 10-year period from January 2008 through December 2017. We chose this period in order to encompass the most recent settlements because settlements typically begin after campuses have assessed the complaints through their Title IX complaint resolution processes and because settlements can take significant time to resolve.

**Table 10**

**The University Paid Nearly \$4.5 Million in Settlements Related to Sexual Harassment Complaints From January 2008 Through December 2017**  
(Dollars in Thousands)

CAMPUS	NUMBER OF SETTLEMENTS	TOTAL PAYMENTS*
Berkeley	7	greater than \$1,000
Davis	1	50–100
Irvine	0	0
Los Angeles	6	500–999
Merced	0	0
Riverside	1	50–100
San Diego	1	less than 50
San Francisco	2	101–499
Santa Barbara	1	500–999
Santa Cruz	1	greater than 1,000
<b>Totals</b>	<b>20</b>	<b>\$4,455</b>

Sources: California State Auditor's analysis of settlements stemming from sexual harassment cases involving staff or faculty respondents and student complainants obtained from the 10 campuses and the Office of General Counsel for the Office of the President.

\* To protect the identity of individuals associated with the settlements, we display the settlement amounts in ranges.

The Regents' settlement policy and the university's templates for settlement agreements are the basis for the university's agreements with claimants. The Regents' policy, amended in 2008, defines the levels of authority required to approve a settlement. These levels of authority are based primarily on the dollar amounts the university must pay. According to that policy, the university may negotiate settlements to resolve any litigation or claims, provided that the litigation or claims do not involve significant questions of university policy, university or Regents officers, or payment greater than \$500,000. The university does not have a specific policy governing what terms may be included in settlements stemming from sexual harassment complaints; instead, the university uses standard templates as a foundation guiding its settlements with student and employee claimants. Based on our review, these templates do not include terms that would be potentially punitive to student sexual harassment victims. The templates contain common settlement terms, along with legal advice for when to include those terms. For example, the templates do not contain terms barring students from studying at the university. Although the employee liability template contains a term prohibiting future employment at the university, this term is not included in the settlement template currently used for student employees. Further, the deputy general counsel of the Labor, Employment, and Benefits group for the Office of the President (deputy general counsel) clarified that there is no requirement that a student employee end his or her employment as part of a settlement. Therefore, by relying upon its templates, the university is likely to consistently negotiate settlements that do not include terms restricting students' access to educational and employment opportunities.

The university's settlements result in legally binding signed agreements that can contain a balance of cash payment and other terms, some of which may be restrictive. Restrictive terms are designed to minimize the risk of any future litigation or claims against the university arising from a settled claim. Examples of restrictive terms include confidentiality terms and terms barring a claimant from future employment. As Table 10 shows, the three campuses we reviewed entered into 14 settlements stemming from sexual harassment complaints. We reviewed only those signed agreements stemming from substantiated complaints; Table 11 summarizes these 10 settlements. As the table shows, nine of the 10 settlements were with complainants, and one was with a respondent. In total, the university paid these 10 individuals over \$1.3 million. Because Davis did not have any settlements stemming from substantiated complaints, the 10 settlements in Table 11 are from complaints at Berkeley and Los Angeles.



**Table 11****The Office of the President's Settlement Agreements Contain a Variety of Terms, Some of Which Are Restrictive**

PARTY ROLE IN SEXUAL HARASSMENT CASE	PAYMENT	OTHER TERMS*	NO REHIRE	CONFIDENTIALITY	OTHER RESTRICTIVE TERMS
Complainant	Yes	No	No	Yes	Mutual non-disparagement term
Complainant	Yes	No	No	Yes	
Complainant	Yes	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>Prohibited from returning from leave of absence</li> <li>Prohibited from studying at or applying for admission to any University of California campus</li> <li>Given a no-contact order</li> </ul>
Complainant	Yes	Yes	No	No	
Complainant	Yes	No	No	No	
Complainant	Yes	No	No	No	
Complainant	Yes	No	No	No	
Complainant	Yes	No	No	No	
Complainant	Yes	Yes	No	No	
Respondent	Yes	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>Restricted from using letter of recommendation to apply to any University of California campus</li> <li>Mutual non-disparagement term</li> </ul>

Sources: California State Auditor's analysis of settlement agreements obtained from the Office of the President's Office of General Counsel.

Note: These 10 settlements are a subset of the 20 settlements summarized in Table 10. Table 10 contains settlements from all sexual harassment cases, but this table contains only settlements from cases at Berkeley and Los Angeles involving student complainants and faculty or staff respondents where the investigation that the campus office performed found that sexual harassment occurred.

\* *Other Terms* refers to benefits the claimants received in addition to the cash payments, such as retaining student health insurance, special assistance with educational progress, and letters of recommendation.

As Table 11 shows, the signed agreements we reviewed contained a variety of terms, many of which were not present in the university's templates. For example, as part of a settlement, one complainant negotiated to receive a dissertation-year fellowship—a program, usually requiring an application, that allows doctoral candidates to focus solely on completing their dissertations. The no-rehire and confidentiality terms were part of the standard templates for non-student employees; however, as Table 11 shows, those terms were sometimes included in settlements with student complainants. The deputy general counsel explained that in some circumstances, it is reasonable to include a confidentiality term, such as when the claimant requests it or when publicizing a settlement would harm the university or its employees. The deputy general counsel explained that the settlement process occurs outside of the Title IX complaint resolution process and that whether a settlement term is reasonable depends on the specific circumstances of each negotiation. More often than not, she noted claimants also have legal representation during settlements.

Furthermore, Table 11 lists several examples of other restrictive terms not found in the templates, such as a term barring a student from studying or working at the university. By including this term, the university sought to fully close the dispute and to minimize its risk that the complainant would pursue future action against it. We did not observe other settlements that included a term barring the student complainant from studying or working at the university at the campuses we reviewed.

### **Campuses Can Improve Their Record Keeping Practices to Eliminate Data Errors**

The data the campuses maintain related to sexual harassment complaints contain errors, and before the campus offices can effectively use these data for analyses and reporting, the campuses need processes in place to ensure their reliability. Beginning July 2017, the Office of the President collected from all campuses some sexual harassment data monthly and more comprehensive data semiannually. However, in reviewing complaints data from Berkeley, Davis, and Los Angeles, we found errors in two of the three databases. After obtaining sexual harassment complaints data from the remaining seven campuses and randomly selecting 29 items from each campus for review, we also found errors in four other campuses' databases. To ensure that the complaints data for all 10 campuses were complete, we selected 29 case files from each campus, then verified that each complaint was recorded appropriately in the campus's database. As Table 12 indicates, we found that of the 10 campuses, only Berkeley's database was not complete in two instances. However, these errors and the others that we found indicate that the university's complaints data contains some unreliable information that can limit the university's ability to identify sexual harassment trends.

The data errors we found may have occurred because the campuses lack quality control processes to ensure that their data are accurate. Data quality is supported by an entity's ongoing commitment to ensuring that its data are entered correctly and consistently. However, most of the campus coordinators we interviewed told us that their campus offices did not have regular data review processes in place but instead relied on staff noticing data errors. Additionally, most campuses have maintained data in two or three data systems over the past 10 years. Because of these multiple systems, campuses have been exposed to the inherent risk of data loss during system transfers as well as inconsistencies in the way complaints were formatted and inputted into the various systems. We note that most campuses have recently upgraded to data software programs that are specifically designed for case management purposes. Although implementing new systems often represents progress, changes

in data systems may pose a challenge to the campuses' ability to maintain reliable data spanning multiple years. The Office of the President should ensure that university campuses implement ongoing data quality control processes to help ensure that sexual harassment complaints data are accurate and complete. That way, both campuses and the systemwide office can effectively use data to identify trends to better prevent sexual harassment, as well as to reduce disciplinary inconsistencies among campuses.

**Table 12**  
The University's Sexual Harassment Data From 2007 Through 2016 Contains Errors

CAMPUS	ACCURACY OF SELECTED COMPLAINTS DATA					COMPLETENESS OF COMPLAINTS DATA
	YEAR COMPLAINT FILED	COMPLAINANT'S AFFILIATION WITH CAMPUS	RESPONDENT'S AFFILIATION WITH CAMPUS	COMPLAINT TYPE	COMPLAINT PROCESS	
Berkeley*	✓	1 error	✓	2 errors	1 error	2 errors
Davis*	✓	✓	✓	✓	✓	✓
Irvine	✓	✓	✓	1 error	✓	✓
Los Angeles*	✓	✓	✓	✓	5 errors	✓
Merced	✓	✓	✓	✓	✓	✓
Riverside	✓	✓	✓	✓	✓	✓
San Diego	✓	✓	✓	✓	1 error	✓
San Francisco	✓	✓	✓	✓	✓	✓
Santa Barbara	✓	✓	✓	✓	1 error	✓
Santa Cruz	✓	1 error	✓	1 error	✓	✓

Sources: California State Auditor's analysis of complaints data obtained from the 10 campuses for 2007 through 2016.

✓ = No issue identified.

\* The data errors we note for Berkeley or Los Angeles are from our observations and selected case file reviews. As we describe in the Assessment of Data Reliability section beginning on page 65, we applied the alternative procedures of making observations and using the data to identify cases for review to determine that the Berkeley and Los Angeles databases contained data errors and that the Davis database did not.

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## SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (Audit Committee) directed the California State Auditor to conduct an audit of the university's practices for handling sexual harassment complaints. The analysis the Audit Committee approved contained seven objectives. We list the objectives and the methods we used to address them in Table 13.

**Table 13**  
**Audit Objectives and the Methods Used to Address Them**

	AUDIT OBJECTIVE	METHOD
1	Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Identified and reviewed relevant federal and state laws, regulations, university policy, and other background materials applicable to the university's responses to sexual harassment complaints.
2	Review the university's policies and procedures regarding faculty-student relationships and sexual harassment. Determine whether they are adequate to prevent, detect, and address sexual harassment and that they are consistent with best practices. In addition, assess the university's policies and procedures regarding sexual harassment settlements to determine how long any university policy or practice has existed that includes provisions that bar students from attending or working at the university.	<ul style="list-style-type: none"> <li>• Interviewed university officials.</li> <li>• Identified and reviewed relevant university policies and federal guidance.</li> <li>• Determined the adequacy of university policy and procedures to prevent, detect, and address sexual harassment.</li> <li>• Identified best practices from other large universities, the California State University, and professional organizations offering Title IX guidance. Compared the current university policy to the best practices we identified.</li> <li>• Reviewed the Regents' settlement policies and university procedures, and looked for provisions barring students from attending or working at the university.</li> </ul>
3	Determine whether California law and university policy regarding protecting the confidentiality of repeat harassers is consistent with other states' best practices.	<ul style="list-style-type: none"> <li>• Interviewed university officials.</li> <li>• Reviewed relevant laws and university policies pertaining to confidentiality.</li> <li>• Assessed whether those laws and policies impact the ability of the campus offices to identify repeat respondents and if they are consistent with any best practices we identified.</li> </ul>
4	To the extent possible, identify the total number of sexual harassment complaints made by students at the university against university faculty and staff over the past 10 years and identify separately those submitted to each campus and those submitted to the Office of the President. For each complaint, determine whether an investigation was initiated, the outcome of the investigation, if applicable, and whether any individuals were the subject of multiple investigations.	<p>Selected three campuses to visit: Berkeley, Davis, and Los Angeles. In making our selections, we considered factors such as campus size, location, external funding received, and number of sexual harassment cases per recent media reports.</p> <p>Performed the following steps for sexual harassment complaint data for the period of 2007 through 2016:</p> <ul style="list-style-type: none"> <li>• Interviewed university officials from the 10 campuses.</li> <li>• Obtained data for all complaints at our three selected campuses. As necessary, we constructed electronic data sets from hard copy files. For those complaints involving students as complainants and identified as following the formal process, we determined whether the investigations substantiated the complaints.</li> <li>• For the seven other campuses, requested that each campus summarize its complaint data by category: formal process, informal process, and administratively closed. We also requested a list of settlements that each campus made with complainants or respondents from sexual harassment cases involving student complainants.</li> <li>• When possible for each campus, performed necessary data reliability tests for completeness and accuracy.</li> <li>• Reviewed these data to determine the total number of sexual harassment complaints made by students against faculty and staff over the 10-year period. We also identified those faculty and staff with multiple complaints during the period.</li> </ul>

*continued on next page ...*

AUDIT OBJECTIVE	METHOD
<p>5 For complaints identified in Objective 4, review the adequacy of the university's investigations, based on factors such as timeliness; communication; and adherence to policies, procedures, laws, or best practices.</p>	<p>Performed the following steps for the three selected campuses:</p> <ul style="list-style-type: none"> <li>• Interviewed university officials.</li> <li>• Randomly selected 29 total cases recorded as handled through the formal process from 2014 through 2016. We determined whether the campuses followed university policy for performing the complaint investigations. We reviewed the length of the investigations, the approval of timeline extensions, notices to complainants and respondents, and the determinations of policy violations.</li> <li>• Randomly selected 10 cases recorded as handled through the informal process from 2014 through 2016—30 cases in total. We reviewed the alleged behaviors, the factors considered when deciding to use alternative resolution, and the types of resolution that resulted.</li> <li>• Analyzed the 10 campuses' complaints in the administratively closed data category and determined that Los Angeles had a high percentage of these cases in comparison to the other two campuses we selected for review. We randomly selected 10 total administratively closed complaints to determine whether Los Angeles appropriately closed these complaints. We considered whether a complainant and respondent were identified and whether the complaint alleged sexual harassment.</li> <li>• For the campus staff performing Title IX functions, assessed the minimum qualifications listed in job postings and their sexual harassment-related training.</li> </ul>
<p>6 For complaints identified where a violation of law or university policy was substantiated in Objective 5, assess the level of egregiousness of the misconduct and determine, to the extent possible, the following:</p> <p>a. Whether the discipline the university administered was consistent with university policy. Identify whether the disciplinary measures in each case were proportional to the substantiated conduct, likely to deter future harassment, and consistent with policies, procedures, laws, or best practices. Identify any trends in the types of discipline administered.</p> <p>b. Whether the university entered into a settlement agreement with the victim and/or harasser and what the terms of the settlement agreement(s) were. Determine the extent to which these settlements included prohibitions against the victims continuing to attend or work at university campuses. In addition, determine whether and how often settlement agreements included other potentially punitive measures for the victims.</p>	<p>For each of the three campuses, randomly selected 10 cases with substantiated complaints from 2007 through 2016—a total of 30 substantiated cases.</p> <p>Performed the following steps for the 30 substantiated complaints:</p> <ul style="list-style-type: none"> <li>• Interviewed university officials.</li> <li>• Reviewed each case to determine the discipline the campus imposed and assessed if it was consistent with the relevant university policy, union contracts, and employment contracts.</li> <li>• Compared disciplinary measures in these cases to identify any trends.</li> </ul> <p>From the list of complainants and respondents from substantiated cases at the three selected campuses (see Objective 4), determined the university's settlements over the 10-year period from January 2008 through December 2017 as follows:</p> <ul style="list-style-type: none"> <li>• Interviewed university officials.</li> <li>• Searched each name in the Office of General Counsel's databases related to settlements.</li> <li>• Obtained a copy of the final signed agreement if the name corresponded with a settlement in the database.</li> <li>• For each signed agreement, identified the separate provisions. With the assistance of legal counsel, we assessed whether those provisions were reasonable, or contained punitive measures.</li> </ul>

AUDIT OBJECTIVE	METHOD
<p>c. Whether relevant information was gathered pertaining to the alleged harasser(s) and the victim, including the alleged harasser’s professional background and whether the harasser met any of the following criteria:</p> <p>i. Was in a position of control or authority over the victim.</p> <p>ii. Was a member of faculty, a member of the senior management group, or an executive, and the status of his or her tenure during the time the victim was a student.</p> <p>iii. If the alleged harasser was faculty, determine that faculty member’s number of publications or other research produced and that faculty member’s past relationships to other institutions as both a student and as faculty.</p> <p>iv. Played a key role on one or more externally funded projects within the prior three years. If so, provide the total funding for the project(s) and the amount of funding directly attributable to the individual, if available.</p> <p>v. Was the subject of prior substantiated complaints and what action the university took in response to the prior complaint(s).</p>	<p>Performed the following steps for the 30 substantiated complaints:</p> <ul style="list-style-type: none"> <li>• Interviewed university officials.</li> <li>• Reviewed investigation reports and other relevant files to determine whether the respondents were in positions of authority over the complainants.</li> <li>• Reviewed respondents’ personnel files and other relevant documents to determine their titles and tenure status.</li> <li>• For faculty respondents, reviewed their personnel files and other relevant documents to determine the number of publications or other research produced and the respondents’ past relationships to other institutions, as both students and faculty.</li> <li>• For each faculty respondent, reviewed records of external funding and other relevant documents within the three years prior to the conclusion of the Title IX investigation.</li> <li>• Created a list of faculty and staff who had at least one complaint by a student of sexual harassment or sexual violence and one or more additional sexual harassment allegations, regardless of the complainant’s status. We assessed the respective campus’s response and resolution of each of these allegations.</li> </ul>
<p>7 Review and assess any other issues that are related to the audit.</p>	<p>Determined whether the systemwide office has a strategic plan, what its goals are, and whether its goals are reasonable and consistent with best practices.</p>

Sources: California State Auditor’s analysis of the Audit Committee’s audit request 2017-125, planning documents, and information and documentation identified in the table column titled *Method*.

### Assessment of Data Reliability

The U.S. Government Accountability Office, whose standards we are statutorily required to follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support findings, conclusions, and recommendations. In performing this audit, we obtained electronic data files from three campuses—Berkeley, Davis, and Los Angeles—to identify the total number of sexual harassment complaints with student complainants and staff or faculty member respondents and to evaluate the university’s practices for handling such sexual harassment complaints. Because supporting documentation for their electronic complaint records was lacking, we were unable to perform standard accuracy testing for these three campuses’ databases; however, through observation and using the data to identify cases for review, we identified data errors in the databases of both Berkeley and Los Angeles. We also performed completeness testing by haphazardly selecting 29 complaint files from each campus’s paper file system and ensuring that these complaints

were recorded in the campus's electronic database. Our testing found that Davis and Los Angeles maintained complete electronic data, but we cannot ensure the completeness of Berkeley's electronic database.

For the remaining seven campuses—Irvine, Merced, Riverside, San Diego, San Francisco, Santa Barbara, and Santa Cruz—we requested that each campus provide us with its data on sexual violence and sexual harassment complaints involving students, faculty, and staff members for the 10-year period from 2007 through 2016. We performed accuracy testing by randomly selecting 29 items from each campus's electronic dataset and testing key data elements against their supporting documentation. These key fields included the year the complaint was filed, the complainant and respondent's affiliation with the campus, the complaint type, and the complaint process used in addressing the complaint. For example, we verified that the complaint type, which describes a complaint allegation, was of a sexual harassment nature. We found that the data from four of the seven campuses contained errors, which we discuss in the Other Areas We Reviewed.

We also performed completeness testing by haphazardly selecting 29 complaint files from each campus's paper files and ensuring that no relevant cases related to sexual harassment complaints were erroneously excluded from the electronic data the campuses provided to us. Our testing found that all seven campuses maintained complete electronic data. Based on our tests at the 10 campuses, we determined that the campuses' data are not sufficiently reliable for purposes of this audit. However, these data are the only available source of sexual harassment complaints at the university. Although the lack of reliability of these data may affect the precision of the numbers we present, there is sufficient evidence in total to support our audit findings, conclusions, and recommendations.



We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the Scope and Methodology section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

Date: June 21, 2018

Staff: John Baier, CPA, Audit Principal  
Sharon L. Fuller, CPA  
Brendin James, MPSA  
Cori Knudten, PhD  
James Stallworth  
Cecilia White, MPPA, CFE  
Ashley Yan

Legal Counsel: J. Christopher Dawson, Sr. Staff Counsel

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

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## THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

1111 Franklin Street, 12th Floor  
Oakland, CA 94607-5200  
(510) 987-9220  
Fax: (510) 987-9224

May 31, 2018

Ms. Elaine M. Howle  
California State Auditor  
621 Capitol Mall, Suite 1200  
Sacramento, California 95814

State Auditor Howle:

Thank you for the opportunity to respond to the recommendation made to the Board of Regents in the draft audit report on the University of California's response to sexual harassment and sexual violence complaints.

We agree with the recommendation and will ensure that the Academic Senate further define its bylaws with written requirements for the Privilege and Tenure Committee to specify exact time frames for completing the phases of the disciplinary process by July 2019.

Respectfully,

A handwritten signature in black ink, appearing to read "George Kieffer".

George Kieffer  
Chair, UC Board of Regents

A handwritten signature in black ink, appearing to read "Charlene Zettel".

Charlene Zettel  
Chair, Compliance and Audit Committee

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1111 Franklin Street  
Oakland, CA 94607-5200  
Phone: (510) 987-9074  
<http://www.ucop.edu>

May 31, 2018

Dear State Auditor Howle:

I write regarding your draft audit report on the University of California's response to sexual harassment and sexual violence (SVSH) complaints. UC shares your commitment to combatting and preventing SVSH, as demonstrated by the many proactive changes and improvements we have made throughout our University system since I arrived in 2013.

UC accepts all of the recommendations made to the University of California Office of the President and is committed to implementing them, as they further reinforce and improve our Title IX policies and procedures. I am pleased that the audit found no instances of punitive settlement agreements, and that settlement agreements are reasonable and not intended to restrict the opportunities of students who bring legal challenges against the University. I understand it was these concerns that gave rise to the legislative request for the audit, and I am gratified CSA's conclusions underscore our strong commitment to protecting our community from retaliation.

I would like to highlight some crucial context for the audit report:

- **UC has made recent, significant improvements not yet in place during the period of CSA's review.** UC issued a robust systemwide SVSH policy in 2016 that defined prohibited behavior, set forth the University's prevention and response obligations, and established the authority of the Title IX coordinators. As CSA recommends, we will soon revise this policy to ensure that it better reflects best practices. The University later adopted systemwide procedures for investigating and adjudicating SVSH reports for student respondents in 2016 and for faculty and staff respondents in 2017. The timeliness of investigations, transparency of outcomes and consistency of discipline are among the critical issues UC took the initiative to address. These major procedural changes were not yet in place during most of the timeframe that CSA analyzed. The improvements and progress in the 2017 procedures for faculty and staff respondents, in particular, are not reflected in the data reviewed during the audit.

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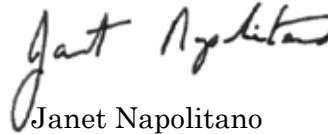
- **In its efforts UC has been, and must continue to be, mindful of the University’s shared governance system.** We value our consultative relationship with the University’s Academic Senate, which has its own faculty code of conduct and bylaws. Although UC adopted a framework establishing timelines and procedures for some parts of the faculty disciplinary process, Privilege and Tenure proceedings – and any associated timeframes – are governed by the faculty bylaws and associated procedures, which can only be changed by the Academic Senate. We have sought to fully engage the Senate in our SVSH efforts, including through the Joint Committee of the Administration and Academic Senate in 2015. More recently, I asked the Senate to provide recommendations on how to define a reasonably prompt timeframe to complete the Privilege and Tenure process. Such a timeframe would address the concerns previously identified by my office, which are now echoed in CSA’s findings.
- **Better University procedures and more resources have led to an encouraging rise in the number of SVSH complaints.** I am pleased your audit recognized that UC’s improvements have resulted in increased reporting. Campuses have significantly improved their ability to track the complaints they receive. We believe more people have come forward with concerns because of our systemwide improvements: mandatory education and training for employees and students, additional Title IX staff on each campus, and a more robust SVSH policy that requires “responsible employees” to notify their Title IX offices of any complaints. The increased number of reports also reflects the campus communities’ greater trust in the Title IX offices, trust essential for their continued successful operations and earned through their significant work.
- **The creation of a systemwide Title IX office marks an important step toward further strength and consistency.** My office established the first systemwide Title IX coordinator position in February 2017 and directed that campus Title IX officers report to this office, as well as to their campus leadership. The office is in charge of implementing the SVSH policy and related procedures and best practices across UC campuses. In a very short time, this office has provided strong guidance enabling UC to develop fundamental systemwide procedures, streamline processes, clarify policy and improve consistency. We intend to continue that progress through this critical component of UC’s response to SVSH, and CSA’s recommendation for a strategic plan will help provide this office a clear direction for its future efforts.

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- **UC has taken many other measures to strengthen its efforts to combat SVSH in our community.** In addition to the improvements described above, UC has taken many additional proactive steps since 2014, including requiring each campus to have both a confidential advocacy office to support individuals who have experienced SVSH, and a respondent services coordinator to assist students alleged to have engaged in SVSH. We have implemented mandatory systemwide SVSH education for students, faculty, and staff, and have established a response team on each campus to ensure responses to all reports are prompt, equitable, and trauma-informed. We have formed a systemwide peer review committee to assess and approve all sanctions that involve a senior University leader, appointed a committee to recommend improvements in responding to SVSH complaints against staff, and established a student advisory board to advise the systemwide Title IX office on prevention and response.

UC understands the need for a strong stance against sexual violence and sexual harassment, meaningful efforts at prevention, and fair and timely processes for addressing complaints. To that end, the University has made great, proactive strides in improving its response to SVSH issues. We appreciate the time CSA has taken to identify ways for us to build upon our momentum and progress. We will continue to uphold our commitment to ensure a safe and secure environment for all members of the UC community.

Yours very truly,



Janet Napolitano  
President