

## Participating in a Title IX Investigation Process as a Witness

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*The following information is provided to increase awareness and knowledge of the investigation process for witnesses, and to address some common questions and concerns regarding witness participation in the investigation process.*

An investigation is part of the administrative process the University uses to determine whether University policy has been violated. The investigation is not a legal or disciplinary proceeding, and as a result, a Title IX investigation does not determine guilt or innocence relative to any local, state or federal law, and thus does not adhere to the same rules that govern or might be applied in a legal or disciplinary proceeding.

In the Title IX investigation process, individuals bringing forward allegations are referred to as Complainants, and individuals responding to allegations are referred to as Respondents. Sometimes Complainants and Respondents are referred to individually as “a party” or jointly as “the parties.” Individuals who have direct experience with or knowledge of events, issues or circumstances related to the investigation, or who Complainants or Respondents want the investigator to speak with, are referred to as witnesses.

### **The Role of the Investigator**

The investigator is charged with gathering information (fact gathering) and determining what occurred (fact finding). The investigator will gather information and evidence, determine which of the information and evidence is relevant to the allegations, conduct an analysis of the relevant information, and make findings of fact. The investigator the University assigns to conduct the investigation, whether an internal or external investigator, does not act as an advocate, provide advice to the University with respect to what actions, if any, should be taken as a result of findings, represent the University in an legal action or proceeding, and does not provide any legal advice to the University related to the investigation process.

### **Interviewing with the Investigator**

When a witness meets with the investigator, the investigator will ask the witness questions related to the allegations, and may ask if the witness has any information to submit (e.g. documents, texts, emails, images, etc.) for the investigator to review and consider. In some cases, the investigator may ask to interview a witness more than once if additional information becomes available since the previous interview with the witness and/or to follow up with a witness to clarify information or previous statements.

It is important to note that while the investigator may ask a witness questions about what a witness may know or have observed, the investigator will only share with a witness information about the investigation, including the specifics related to an allegation, if the investigator determines it is necessary to do so to further information gathering or to seek clarification of information already gathered. In order to protect the privacy of all those involved, as well as the integrity of the investigation, the investigator is not otherwise obligated to share with a witness any information related to the investigation.

## **Notes and Recordings**

The investigator will take notes during the interview. However, interviews with the investigator are not recorded, and no recording is permitted by anyone participating in the investigation process, including complainants, respondents, witnesses, and advisors. UCSC students or employees who do record any portion of the investigation process may be subject to University sanction, discipline or other actions as appropriate under University policy. The University reserves the right to pursue available options and remedies if individuals not affiliated with the University, record any portion of the investigation without consent.

## **What Happens to the Information Witnesses Share with the Investigator**

When witnesses share information with the investigator, they are participating in the fact-gathering portion of the investigation process.

### The Relevance of the Information Shared by a Witness

Although witnesses share information with the investigator, not all information shared or offered to the investigator may pertain or be relevant to the allegations that prompted the investigation (i.e. information attesting to the character of someone in most cases is not considered to be relevant). As a result, the investigator will make a determination about what information is relevant to the allegations and what information is not relevant. The investigator will only use information the investigator deems relevant to the allegations to analyze and determine whether University policy has been violated.

### The Intersection of Privacy for Witnesses and the Rights of Complainants and Respondents

The University protects the privacy of individuals who participate in the investigation process, including witnesses. This means that information about witnesses, including their identity and what information they share with the investigator is shared only with those individuals involved in the investigation and resolution of a complaint who have a need to know in order to fulfill a responsibility in the investigation and complaint resolution process. However, the University cannot and does not guarantee confidentiality or anonymity to anyone participating in the investigation process, including complainants and respondents.

To ensure fairness, the investigation process provides rights to both complainants and respondents to: a) know the allegations the investigation is seeking to resolve (the scope of the investigator's inquiry); and, b) be offered a meaningful opportunity to respond to the information gathered during the investigation that will be used to analyze and determine whether University policy has been violated, and whether any action will be taken by the University against a respondent. As a result, in most cases, both the complainant and respondent will have knowledge of the information a witness shares with the investigator including the identity of the witness who shared the information.

Additionally, in order to conduct a thorough investigation, there may be times during the investigation when the investigator may be required to share information provided by one witness with other witnesses in order to facilitate the fact-gathering portion of the investigation.

## **Following the Interview with the Investigator**

In order to preserve the privacy of complainants and respondents, the University does not share with witnesses the investigation report or the outcome of the investigation nor any sanction, discipline or any other University action that may result from the investigation process.

### **The Investigation Report**

Once the investigation report is finalized, complainants and respondents have the right to receive a copy of the investigation report; witnesses do not have this same right. The investigation report does not contain the names of witnesses who participated in the investigation, instead the report will refer to each witness using a naming convention such as "Witness A" or "Witness 1." However, for completeness of the investigation file and University record, and consistent with due process rights for complainants and respondents, there is a separate witness key that is created and maintained in the Title IX Office and that is made available to complainants and respondents as needed and appropriate to complete the grievance and or resolution process that may result from the findings of an investigation.

### **The Responsibility of Being a Witness**

In order to protect the privacy of all who are involved in the investigation process (including complainants, respondents, and witnesses), and to protect the integrity of the investigation process, witnesses involved in the investigation are required to keep information learned during the investigation confidential and are not permitted to share such information with any third party. Any breach of this duty is subject to action by the University.

### **The Decision to Participate in the Investigation Process**

An investigation is the mechanism the University uses to determine whether its policies against discrimination and harassment have been violated and to correct and address violations that have occurred. The investigation process relies on the willingness of individuals to participate. However, the decision to participate as a witness in the investigation process is an individual one.

The investigator is charged with gathering information related to the allegations, and based upon that information, to determine what occurred. The determinations of the investigator rely directly upon the information gathered, thus the information gathered by the investigator forms the foundation upon which the allegations are substantiated and upon which the outcome of the investigation is based. Individuals identified as having information related to the allegations who refuse to participate in the investigation, are by extension withholding information that may be critical to the outcome of an investigation, and in turn a determination about whether University policy has been violated.

The University recognizes the difficulty of participating in an investigation and the concerns that witnesses have for how their participation may influence or impact their professional life and personal and professional relationships. Individuals who have such concerns are strongly encouraged to contact the Title IX Officer to discuss possible ways the University may help to prevent potential acts of retaliation, to respond to acts of retaliation that do occur, and/or work with a witness to provide mitigating solutions as appropriate and reasonable that may help a witness to participate in the investigation.

### **Questions and Clarification**

If you have any questions or would like additional clarification regarding the investigation process, please contact the Cherie Scricca, Interim Title IX Officer via phone at 831- 459-2462 or via email at [cscricca@ucsc.edu](mailto:cscricca@ucsc.edu).