

[Interim] Rule 1-012B: Sexual Misconduct Complaint Process Rule.

Revision 2. Effective date: November 18, 2021

I. Purpose and Scope

The University of Utah (“University”) is committed to providing and fostering an environment that is safe and free from Sexual or Gender-Based Harassment and Discrimination. Among other forms of prohibited Discrimination, University Policy prohibits Discrimination on the basis of sex, which includes all forms of Sexual Misconduct. University Policy also prohibits Retaliation against individuals for engaging in protected activities, such as filing a Discrimination Complaint or participating in a Discrimination Complaint process.

This rule outlines the process the University will use to resolve Complaints of Sexual Misconduct. This rule is also intended to educate the University community, including current students, prospective students and employees, about Sexual Misconduct and about campus resources and processes available to victim-survivors of Sexual Misconduct.

II. Definitions

For purposes of Policy 1-012 and its associated Rules and Guideline, including this Rule 1-012B, the definitions of prohibited Discrimination and other words and phrases are provided in Rule 1-012.

III. Rule

- A. Prevention and Awareness.** The University offers comprehensive programming intended to end Dating Violence, Domestic Violence, Sexual Assault, and Stalking. The University provides education and training designed to raise awareness of these issues and engages in efforts that aim to reduce harm, improve communication skills, foster healthy relationships, improve bystander intervention skills, and educate the campus community on the definitions of Consent, Sexual Assault, Domestic Violence, Dating Violence, and Stalking through orientations each semester given to incoming students. The University of Utah Department of Public Safety (“UDPS”) offers sexual assault education and information programs to University students and employees upon request. Literature on date rape education, risk reduction, and University response, as well as educational programs about the same, are available through various University Student Affairs offices including the Office of Housing & Residential Education and through the University's Center for Student Wellness.

1. The University provides primary prevention and awareness programs for incoming students and new employees, and ongoing programs for students, staff, and faculty which includes:
 - a. a statement that the University prohibits the offenses of Domestic Violence, Dating Violence, Sexual Assault, and Stalking;
 - b. the Utah statutory definitions of domestic violence, dating violence, sexual assault, and stalking;
 - c. the Utah statutory definitions of consent, in reference to sexual activity;
 - d. safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of Domestic Violence, Dating Violence, Sexual Assault, or Stalking;
 - e. information on risk reduction to recognize warning signs of abusive behavior, information for those who may be at risk to perpetrate harm, and how to avoid potential attacks; and
 - f. definitions of Sexual Misconduct under University Policy, as well as a copy of University Policy 1-012, Rules 1-012, 1-012A, and 1-012B, and Guidance 1-012.

B. **Initial Response.** The first priority of any person who has been subject to Sexual Violence should be to get to a safe place and then obtain necessary medical treatment and emotional support. Victim-survivors may seek and receive a medical forensic examination free of charge from a local hospital emergency department without submitting a police report. The University strongly encourages victim-survivors to report all incidents of Sexual Misconduct as soon as possible. Time is a critical factor for evidence collection and preservation.

1. **Role of Law Enforcement.** The victim-survivor of an incident of Sexual Violence (rape, fondling, incest, statutory rape), Dating Violence, Domestic Violence and Stalking is encouraged, but not required, to report the incident directly to the University Department of Public Safety (“UDPS”) or the local law enforcement entity for the jurisdiction in which the incident took place.
2. Alternatively, or in conjunction with a report to law enforcement, victim-survivors may make a report to the

Office of Equal Opportunity & Affirmative Action (OEO/AA) (see Section (III)(C)), the Office of the Dean of Students, a Housing & Residential Education representative, and/or another University representative. Filing a police report will not obligate the victim-survivor to pursue a complaint through the criminal process. Filing a police report will:

- a. ensure the victim-survivor receives appropriate medical treatment, including a medical forensic exam at no expense;
 - b. provides the opportunity for collection of evidence helpful in prosecution, which cannot be obtained later (ideally, a victim-survivor of Sexual Violence should not wash, use the toilet, or change clothing prior to a medical forensic exam); and
 - c. provide the victim-survivor with available resources, including supportive resources.
3. A victim-survivor may request any University representative to assist them in notifying law enforcement authorities about an incident of Sexual Violence (rape, fondling, incest, statutory rape) Dating Violence, Domestic Violence, Stalking and any other behavior that may constitute a crime.
 4. When a victim-survivor contacts the UDPS, the UDPS will notify the Title IX Coordinator, the OEO/AA, and the Office of the Dean of Students (if related to a student). A victim-survivor may choose for an investigation to be pursued either through the criminal justice system, through this rule, or both. Victim-survivors may also choose not to proceed in the criminal justice system or under this rule (subject to Section (III)(D) of this rule). A representative from the Center for Student Wellness Victim-Survivor Advocacy program, Chief Safety Office Community Services Division, UDPS, the Office of the Dean of Students, the Title IX Coordinator, and/or the OEO/AA will guide the victim-survivor through the available options.
 5. Where applicable, UDPS will enforce orders of protection, no contact orders, restraining orders, civil stalking injunctions, or similar lawful orders issued by a criminal, civil, or tribal court.
- C. **Role of the OEO/AA.** The OEO/AA is the University department charged with responding to reports and investigating Formal Complaints of Discrimination, including Sexual Misconduct.

1. The Director of the OEO/AA serves as the University's Title IX Coordinator.

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2. Upon receipt of a report of alleged Sexual Misconduct, Complainants will promptly receive information from the Title IX Coordinator that:
 - a. provides the Complainant with written notification of and assist the Complainant in accessing counseling, mental health and healthcare, victim advocacy, legal, academic support, and other resources available in the community and on-campus;
 - b. offers and discusses Supportive Measures with or without the filing of a Formal Complaint;
 - c. considers the Complainant's wishes with respect to Supportive Measures;
 - d. explains the process for filing a Formal Complaint; and
 - e. informs the Complainant of the right to report a crime to campus or local law enforcement and provide the Complainant with assistance, if requested.

D. **Confidentiality.**¹ The University encourages victim-survivors of Sexual Misconduct to talk to someone about what happened. Different employees on campus have different requirements to maintain a victim-survivor's confidentiality.

1. **Completely Confidential.** Professional and pastoral counselors are completely confidential, except any reporting required by state and federal law, and do not report any information disclosed by a Complainant to the University or to the OEO/AA.
2. **Limited Confidentiality.** Nonprofessional counselors and advocates (e.g., individuals who are not professional counselors and who work or volunteer, including front desk

¹ Adapted from White House Task Force to Protect Students from Sexual Assault, *Sample Language for Reporting and Confidentially Disclosing Sexual Violence* (Sept. 2014).

staff and students, in the University Counseling Center, Center for Student Wellness, Center for Student Wellness Victim-Survivor Advocacy program, Ombuds Office, or counseling services in the Women's Resource Center, must report only general information about crimes required to be reported under the Clery Act to the Chief Safety Office — such as the nature, date, time, and general location of the incident—in a way that does not identify the individuals involved.

3. **Clery Reporting Requirements.** Under the Violence Against Women Act (VAWA) and the Clery Act, the University is required to complete publicly available record-keeping on crimes required to be reported by the Clery Act in accordance with federal law, but will not disclose identifying information. The University will maintain as confidential any Protective Measures provided to the victim-survivor, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the Protective Measures.
4. **Confidential Resources.** The following are resources are **confidential**. *These offices must report general information about crimes reportable under the Clery Act to the Chief Safety Office in a way that does not identify the individuals involved, such as the nature, date, time, and general location of the incident. This information is required to be included in the University's Annual Security Report under the Clery Act, and in rare circumstances may result in the issuance of a timely warning or other University obligations under Clery/VAWA.

University Counseling Center

Student Services Building
201 S 1640 E, Room 426
Salt Lake City, UT 84112
(801) 581-6826

24-hour Crisis Line: (801) 587-3000

University Hospital Chaplains

University of Utah Hospital
50 N. Medical Drive
Salt Lake City, UT 84132
(801) 213-2484

Center for Student Wellness*

Eccles Student Life Center
1836 Student Life Way, Suite 2100

Salt Lake City, UT 84112
(801) 581-7776

Center for Student Wellness
Victim-Survivor Advocacy Program*
Student Services Building
201 S 1460 E, Room 330
Salt Lake City, UT 84112
(801) 581-7779
advocate@sa.utah.edu

Women's Resource Center (counseling services only)*

A. Ray Olpin Union
200 S. Central Campus Drive, Room 411
Salt Lake City, UT 84112
(801) 581-8030

The Psychology and Wellness Program

Student Athlete Support Services (SASS)
Department of Athletics
HPER East Pavilion, Room 113
Salt Lake City, UT 84112

Office of the Ombuds*

Health Science Office:
Health Sciences Education Building Fifth Floor, Suite
5515
26 South 2000 East
Salt Lake City, UT 84112
801-585-6283
facultyombudsman@hsc.utah.edu

Campus Office:
Office Locations:
1738G Marriott Library
3245 Eccles Institute of Human Genetics Office
Phone: 801.585.3482
Fax: 801.581.4233
ombudsman@utah.edu

E. Reporting to Mandatory Reporters.

1. A Mandatory Reporter must promptly report to the Title IX Coordinator all relevant details about the alleged Sexual Misconduct shared by a Complainant—including the names

of the Complainant and alleged Respondent(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident.

2. Before a Complainant reveals any information to a Mandatory Reporter, the Mandatory Reporter should ensure that the Complainant understands the Mandatory Reporter's reporting obligations. If the Complainant wants to maintain confidentiality, the Mandatory Reporter should direct the Complainant to confidential resources.
3. If the Complainant wants to tell the Mandatory Reporter what happened but also requests confidentiality, requests that no investigation occur, or requests that no action be taken against the Respondent, the Mandatory Reporter should tell the Complainant that the University will consider the request, but cannot guarantee that the University will be able to honor it.

F. **Requests for Confidentiality.** If a Complainant discloses an incident to a Mandatory Reporter but wishes to maintain confidentiality, or requests that no investigation into a particular incident be conducted or disciplinary action taken, the University must weigh that request against the University's obligation to provide a safe, non-discriminatory environment for all students, including the Complainant.

1. The University has designated the Title IX Coordinator to evaluate requests for allegations of Sexual Misconduct.
2. If the University determines that it cannot maintain a Complainant's confidentiality, the University will inform the Complainant prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the University's response.
3. **Supportive Measures.** When the University receives information about alleged Sexual Misconduct, an appropriate University representative (such as the Dean of Students, cognizant supervisor, or Human Resources (HR) representative) may offer Supportive Measures to either or both parties which will generally remain in effect throughout and potentially beyond the duration of the University investigation. Supportive Measures will be offered under the auspices of the Title IX Coordinator; University representatives should consult with the Title IX Coordinator

in offering any Supportive Measures. The University will offer Supportive Measures if they are reasonably available, regardless of whether the Complainant chooses to file a complaint with the OEO/AA or with law enforcement.

4. Because the University is under a continuing obligation to address the issue of Sexual Misconduct campus-wide, reports of Sexual Misconduct (including non-identifying reports) will also prompt the University to consider broader remedial action.
- G. **Amnesty.** An individual who makes a good faith report of Sexual Harassment or Sexual Misconduct that was directed at them or another person will not be sanctioned for a violation related to the use of drugs or alcohol that is related to the report.
- H. **Non-Disclosure of Information.** Parties will be provided evidence obtained by the OEO/AA as part of the investigation that is directly related to the allegations raised in the Formal Complaint (the "Evidence"); the parties and party advisors must keep all such evidence strictly confidential and use such evidence solely for the purposes of participating in the Sexual Misconduct investigation and grievance process. Parties who disseminate or use such evidence for any other purpose may be subject to discipline.
- I. **OEO/AA Investigation.** In cases of Sexual Misconduct, the OEO/AA will begin an investigation upon acceptance of a Formal Complaint. The University will not require a Complainant to participate in any investigation or disciplinary proceeding; however, failure to participate may limit the University's ability to respond.
1. Upon acceptance of a Formal Complaint, the OEO/AA will provide written notice:
 - a. to the appropriate University administrator, which may include the supervisor, Chair, Dean, and/or cognizant Vice President with responsibility over the Respondent and any others with a legitimate business need.
 - (i) If the Respondent is a student, the Vice President for Student Affairs and the Office of Dean of Students will also be notified.
 - (ii) If the Respondent is a Vice President, another Vice President will be selected as the

cognizant Vice President for purposes of this rule.

- b. to the Complainant and the Respondent providing:
 - (i) the applicable policies and associated rules by which the proceedings will be governed;
 - (ii) sufficient details of the allegations including the identities of the parties involved, the date and location of the alleged incident(s), and the conduct allegedly constituting a violation of University Policy, if known;
 - (iii) a statement that each party will have an equal opportunity to submit and review evidence throughout the investigation;
 - (iv) a statement that the Respondent is presumed not responsible for the alleged conduct until a determination is made at the conclusion of the grievance process;
 - (v) a statement informing the Complainant and Respondent that they may have one advisor of their choice, who may be, but is not required to be an attorney and one Support Person of their choice; and
 - (vi) that Rule 1-012(III)(D)(10) prohibits knowingly making false statements or knowingly submitting false statements during the grievance process.
- 2. If, during the course of the investigation, allegations arise about the Complainant or Respondent that were not included in the initial notice, the OEO/AA will provide notice of the additional allegations and provide the Respondent with an opportunity to respond.
- 3. The Respondent shall be afforded a full opportunity to respond to the allegations contained in the Complaint. Failure to respond or participate in an interview by the Respondent or a witness will not prevent the completion of the investigation.
- 4. The OEO/AA will not draw an inference about the determination of responsibility based solely on a party's or witness's decision not to participate in the investigative or hearing process; however, evidence for review will be limited to that provided by parties and witnesses who participate in

the investigation.

5. The OEO/AA shall interview the Complainant, the Respondent, and may interview any other person with relevant information. The OEO/AA will objectively review all relevant information, including that which is submitted by the parties.
6. The Complainant and the Respondent may each be accompanied at any meetings or interviews with the OEO/AA by one advisor who may be, but does not have to be, an attorney. During the investigation, the advisor may only advise the Complainant or Respondent and may not actively participate. Prior to the hearing, any advisor is at the Complainant or Respondent's own expense.
7. The Complainant and the Respondent may each be accompanied at any meetings or interviews by one Support Person. The Support Person's role is to provide support to the Complainant or Respondent and cannot speak on behalf of the party.
8. At the conclusion of the investigation, the OEO/AA shall issue the draft of its investigative report ("OEO Draft") simultaneously to the parties and their advisors, if any, in an electronic or hard copy format. The OEO Draft shall include:
 - a. a summary of the relevant evidence;
 - b. an analysis of whether the evidence, evaluated under a Preponderance of the Evidence standard, supports a recommendation that Sexual Misconduct occurred;
 - c. any mitigating or aggravating factors; and
 - d. any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint.
9. To protect the privacy of witnesses and all parties involved, and pursuant to Family Educational Rights and Privacy Act (FERPA) and other state and federal privacy laws, names and other personally identifiable information may be redacted from the copies of the OEO Draft Report and the OEO Report that are provided to the Complainant and Respondent.
10. Both parties shall have ten (10) calendar days after receipt of the OEO Draft Report to submit written comments and

any additional documents and/or evidence to the OEO/AA. If information from either party raises new issues or allegations, the OEO/AA may conduct additional investigation.

11. At the conclusion of the OEO/AA's investigation, the OEO/AA shall issue a final investigative report ("OEO Report") simultaneously to the parties and their advisors, if any, and the appropriate administrator with responsibility over the Respondent in an electronic or hard copy format. The OEO Report shall include:
 - a. a summary of the relevant evidence;
 - b. an analysis of whether the evidence, evaluated under a Preponderance of the Evidence standard, supports a recommendation that Sexual Misconduct occurred;
 - c. any mitigating or aggravating factors; and
 - d. any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint.
12. Upon determining a recommended sanction, the appropriate administrator will provide written notice of a recommended sanction to the parties, to the OEO/AA, and the Hearing Coordinator, and to the cognizant Vice President with responsibility over the Respondent and any others with a legitimate business need, contemporaneous with the OEO/AA issuing the OEO Report.
13. At the conclusion of the investigation, the OEO/AA shall convene a Hearing Committee ("Committee"). This Committee shall serve as the decision-maker with regard to the allegations of Sexual Misconduct, any associated disciplinary sanction or other corrective measures, and any remedies for the Complainant. The Committee shall make an independent judgment in objectively evaluating relevant evidence to reach a determination regarding responsibility, independent from the recommendation from the investigator or the appropriate administrator.

J. Hearing Process.

1. Hearings should take place as soon as practicable, but should be no less than fifteen (15) and no more than forty (40) calendar days from the issuance of the OEO Report. Although the OEO/AA Hearing Coordinator may endeavor to

find a hearing date that will be convenient for all the parties involved, the Hearing Coordinator and Committee Chair have the final authority for determining the date of the hearing.

2. If any party is a faculty member, a hearing and any appeals shall proceed pursuant to University Policy 6-011, *Function and Procedures of the Senate Consolidated Hearing Committee*. When conducting Hearings involving allegations of Sexual Misconduct, the CHC shall follow the Hearing Procedure outlined below.

3. **General Provisions for Hearings.**

a. A Hearing Coordinator may facilitate the work of the Committee. Hearing Coordinator responsibilities include:

- (i) serve as the Secretary to the Committee;
- (ii) notify the Complainant, the Respondent, the Committee, and the OEO/AA of the date and time of the hearing;
- (iii) notify the Complainant and the Respondent of the names of the Committee members and any witnesses requested by the Complainant, the Respondent, or the Committee;
- (iv) notify persons requested by the Committee, Complainant, and/or Respondent to testify at the hearing of the time and place of the hearing.
- (v) distribute the Hearing Procedure and any documentary evidence to the Complainant and the Respondent;
- (vi) make appropriate technological arrangements;
- (vii) arrange for an electronic recording of the hearing; and
- (viii) provide other reasonable support services at the Committee's request.

b. OEO/AA responsibilities include:

- (i) provide the Committee with a copy OEO Report, the attachments (including a copy of the complaint), and a list of the material witnesses identified in the OEO Report;

- (ii) provide other reasonable investigatory and support services at the Committee's request.
- c. Appropriate Sanctioning Administrator responsibilities include:
 - (i) provide the Committee with a recommended sanction, disciplinary action, or other corrective measures.
- d. **Closed Hearing.** Hearings shall be closed to the public.
- e. **Advisor.** The Complainant and the Respondent may each be accompanied at the hearing by one advisor of their choice, who may be an attorney and who may participate in the hearing as provided in this Hearing Process. If a party does not have an advisor present at the hearing, the University will provide, without fee or charge to that party, an advisor of the University's choice to conduct cross-examination on behalf of that party.
- f. **Support Person.** The Complainant and Respondent may each be accompanied at the hearing by one Support Person of their choice, who may attend but not participate in the hearing.
- g. **Witnesses.** The Committee, the Complainant, and the Respondent may request the appearance of witnesses at the hearing. It is the responsibility of the party or the Committee calling a particular witness to encourage that witness to attend the hearing.
- h. **Documentary Evidence.** The Complainant and the Respondent may submit documentary evidence for consideration by the Committee. The Committee may also request additional documentary evidence.
- i. **Rules of Evidence.** The Committee shall not be bound by strict rules of legal evidence or procedure and may consider any evidence it deems relevant.
- j. **Privacy.** Committee Chairs and other Committee members are prohibited from discussing any matter related to the hearing with the parties or the

witnesses, or with others before or after the hearing. Violation of privacy may result in dismissal from the Committee and/or other corrective action.

- k. **Electronic Hearings.** Hearings shall be conducted remotely through electronic means, instead of in-person, when at all possible. These remote hearings shall include audio and video capabilities which will allow for parties to simultaneously see, hear, and interact with the Committee, witnesses, and each other in real-time as if physically present in the same location.
- l. **Recording of Hearings.** The hearing, except for deliberations, shall be recorded and a copy in electronic format shall be made available to either party upon request at the requesting party's expense.
- m. **Failure of Party to Participate.** In the event either party fails to attend the hearing without prior notice to the Hearing Coordinator and good cause, the Committee may proceed with the hearing. Neither party is required to participate in the hearing in order for the hearing to proceed, subject to restrictions in Section (III)(I)(4).
- n. **Disruptive Behavior.** The Committee has authority to exclude from the hearing any party, advisor, or other participant whose behavior the Committee finds disruptive after having provided a warning.
- o. **Time Allocation.** Each party shall have up to forty-five (45) minutes for personal and/or opening statements, presentation of evidence and questioning of witnesses, and concluding remarks. The Committee Chair shall have discretion to grant extensions of time when necessary.
- p. **Role of Office of General Counsel.** The Office of General Counsel may provide a staff attorney to be present at hearings in order to provide guidance to the Committee on substantive law and procedural matters.
- q. **Sanctions and Remedies.** At the conclusion of the hearing, the Committee shall determine the

appropriate sanctions and remedies. The Committee will ensure that any sanctions and remedies are appropriate to end the prohibited conduct, to prevent further violation of policy and remedy the effects of any violation.

- (i) The Committee will review the recommendation submitted by the appropriate administrator and may call that individual as a witness during the hearing to speak to the reasoning supporting the recommendation when making their decision. In determining the appropriate sanction, the Committee shall consider the severity, persistence or pervasiveness of the misconduct; the egregiousness of the misconduct, including the use of weapons, drugs, or alcohol, if applicable; the impact of the misconduct on the Complainant; the impact or implications of the misconduct on the University community, prior misconduct by the Respondent, including the Respondent's relevant prior disciplinary history; whether the Respondent has accepted responsibility for the misconduct; the maintenance of a safe, nondiscriminatory and respectful working and learning environment; and any other mitigating, aggravating or compelling factors.
 - (a) If the Respondent is a student, the Office of the Dean of Students will recommend to the Hearing Committee the disciplinary sanction or other corrective measures. Sanctions or other corrective measures in cases of Sexual Misconduct are not subject to Policy 6-400, *Code of Student Rights and Responsibilities ("Student Code")* and may only be appealed under Policy 1-012 and its associated regulations including this Rule. Possible sanctions include, but are not limited to: fines, restitution, warning, withholding diploma, organizational sanction, permanent no-contact directives, educational training, referrals to counseling or behavioral coaching,

limitations, restrictions, or exclusion from campus or campus programs or activities, notation on the student's transcript consistent with the Family Educational Rights and Privacy Act, suspension from one semester to five years, dismissal from the University, or revocation of certificate or degree.

- (b) If the Respondent is a staff member, the appropriate University administrator with supervisory responsibility over the Respondent, in consultation with Human Resources, will recommend to the Hearing Committee a disciplinary sanction or other corrective measures. Sanctions or other corrective measures in cases of Sexual Misconduct are not subject to Policy 5-203, *Staff Employee Grievance Procedures*, and may only be reviewed and/or appealed under Policy 1-012 and its associated regulations including this Rule. Possible sanctions include, but are not limited, to: verbal counseling or warning, extension of probationary period, reassignment, transfer, limitations, restrictions, or exclusion from campus or campus programs or activities, reduction in pay, written warning, final written warning, suspension without pay, demotion, and termination.
- (c) If the Respondent is a faculty member, the appropriate University administrator, such as the faculty member's Department Chair or Dean, in consultation with the cognizant Vice President, will recommend to the Hearing Committee the disciplinary sanction or other corrective action. Sanctions or other corrective actions against a faculty member may only be imposed by filing a complaint with the Consolidated Hearing Committee (CHC) pursuant to Policy 6-011, *Function and Procedures of the Senate Consolidated Hearing Committee*. Possible sanctions

include, but are not limited, to: verbal counseling or warning, limitations, restrictions, or exclusion from campus or campus programs or activities, written reprimand, suspension without pay and dismissal (termination).

(d) If the Respondent is a vendor/contractor/visitor/patient, possible sanctions or other corrective measures include limitations, restrictions, or exclusion from all or part(s) of campus or campus programs or activities and/or ending business relationships with vendors and contractors.

(ii) **Remedies.** At the conclusion of the hearing, the Committee shall make a determination regarding any appropriate remedies for the Complainant, including but not limited to: reinstatement, transfer or reassignment of employees, Supportive Measures, implementing changes in programs and activities, providing training, or other remedies designed to restore equal access to University Programs or Activities. The Title IX Coordinator is responsible for effective implementation of any remedies.

4. **Hearing Committee.**

a. The OEO/AA shall create a standing pool of committee members to hear and be the decision-makers determining whether allegations of Sexual Misconduct violate University Policy. The Hearing Committee will be the decision-maker with regard to a finding of responsibility related to allegations of Sexual Misconduct and any resulting disciplinary sanction or corrective measures. The pool of eligible Committee members includes the following:

(i) staff employees of the University nominated by the Chief Human Resources Officer and/or Staff Council and appointed by the University President and/or designee, and who will serve for a three-year term.

- (ii) students (graduate and/or undergraduate) nominated pursuant to procedures of Associated Students of the University of Utah (ASUU) and/or the Office of the Dean of Students, and appointed by the University President or designee, who will serve a one-year term; and
- (iii) faculty members from the Consolidated Hearing Committee pool.

b. The Committee shall be composed of a three-person panel selected from the pool of eligible Committee members.

- (i) The panel will consist of the Committee Chair, and one Committee member of the same status as the Complainant (student, staff, or faculty), and one Committee member of the same status as the Respondent (student, staff, or faculty), subject to the following exceptions. In the interest of prompt resolution, a Committee may be convened without student representation during school breaks or other time periods that present student scheduling difficulties. No more than one student will serve on a Committee.

- (ii) The Committee Chair will be selected from the pool of eligible committee members who have previously served on a Committee and will receive specific training relevant to their duties as Chair.

c. A Committee member may be disqualified due to bias, conflict of interest, or for other good cause. Alternates will be appointed as needed.

- (i) In order to provide an objective and fair hearing, each Committee shall take precautions against real or apparent conflicts of interest on the part of Committee members. Committee members shall recuse themselves in any case in which they have a personal bias or conflict of interest that would preclude their making a fair and objective decision and shall

avoid any individual communication with a party.

- (ii) If there is a challenge to the participation of any Committee member, the remaining Committee members shall hear that dispute and make a final decision about the participation of that member in the hearing.

5. Pre-Hearing.

a. At least fifteen (15) calendar days before the hearing, the Hearing Coordinator shall notify the Complainant and Respondent in writing, in either an electronic or hard copy format, of:

- (i) the date, time, location, participants, and purpose of the hearing;
- (ii) the name the Chair and the Committee members;
- (iii) the names of all witnesses that the Committee intends to call;
- (iv) any additional documentary evidence that was not included in the OEO Report that the Committee is requesting; and
- (v) of the applicable policies and associated rules and guidelines by which the proceedings will be governed.

b. At least ten (10) calendar days before the hearing, the Complainant and the Respondent must notify the Hearing Coordinator in writing:

- (i) of any request that a Committee member be disqualified based on bias or conflict of interest;
- (ii) the name and contact information of their selected advisor, if any;
- (iii) the name and contact information of their selected Support Person, if any;
- (iv) a list of any witnesses they wish to speak on their behalf as well as contact information for each witness;
- (v) any additional documentary evidence to be submitted to the Committee, including

- information the Committee has requested from the parties; and
- (vi) any other requests for accommodations, including technological accommodations. The request will be reviewed by Committee Chair and at the Chair's request, the Hearing Coordinator will make any appropriate accommodations.

- c. At least five (5) calendar days before the hearing, the Hearing Coordinator shall notify the Complainant and Respondent in writing, in electronic or hard copy format:
 - (i) of the names of all witnesses requested;
 - (ii) provide copies of all evidence that has not already been provided; and
 - (iii) of any accommodations, including technological accommodations that will be made at the hearing based upon the request of a party.

6. **Hearing Process.**

- a. The OEO Consultant who conducted the investigation may be present at the hearing and available for questioning.
- b. The Complainant and the Respondent shall each have an opportunity to make a personal statement. The statement may describe the events that are the subject of the Complaint, the personal impact of the alleged conduct, the relief sought, and any other relevant information. In addition to the personal statements by the parties, each party's advisor shall have the opportunity to make an opening statement.
- c. The Committee, Complainant, and the Respondent shall have the opportunity to call witnesses.
- d. The Committee may ask questions of the OEO Consultant, the Complainant, the Respondent, and any witness. The time of Committee questions and answers shall not count against either party's time.

- e. Prior to any party or witness answering a question, the Committee Chair must first determine whether such question is relevant and explain any decision to exclude a question as not relevant. Only the person to whom a question is directed may answer (i.e., an advisor shall not be permitted to answer the Committee's questions on a party's behalf).
 - (i) Questions and evidence about the Complainant's sexual predispositions or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
 - (ii) if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.

- f. The Committee must permit each party's advisor to ask the OEO Consultant, the Complainant, the Respondent, any witnesses, and any others providing testimony, all relevant questions and follow-up questions, including questions challenging credibility. The cross-examination of any person providing testimony (including the parties, witnesses, and the OEO Consultant) shall be conducted directly, orally and in real time by the party's advisor and not by the party themselves and must be directed through the Committee Chair (not directly). The Committee cannot draw an inference about the determination regarding responsibility based solely on a party's or witnesses absence from the hearing or refusal to answer cross-examination or other questions.

- g. The parties may also present other evidence. If a party presents documentary evidence at the hearing that was not previously provided to the other party and or the Committee prior to the hearing, the Committee Chair shall make a determination as to whether to admit such evidence.

- h. Following the presentation of evidence, the Committee will then ask the appropriate administrator (in cases where the Respondent is a student, a

representative from the Office of the Dean of Students; in cases where the Respondent is a staff employee, a representative from the Human Resources department and/or the Respondent's manager; and, in cases where the Respondent is a faculty member, a representative from the Office for Faculty and/or the Respondent's Chair/Dean) to speak to the recommended sanction or corrective measures.

- i. The Committee will conclude the hearing by providing an opportunity for the parties to make concluding remarks. The Chair will then adjourn the hearing and begin Committee deliberations.
- j. Committee deliberations and voting shall be closed sessions from which all other persons are excluded, except, at the Committee's request, an advising attorney from the Office of General Counsel. The advising attorney may remain present for deliberations but shall have no vote. The Committee in its discretion may take votes openly or by secret written ballot. A majority vote by the members of the Committee who attended the hearing shall be required for decisions. The Committee Chair shall be entitled to vote on all questions. The OEO/AA, including the Director, shall not participate in the Committee's deliberations and shall have no vote.

K. Complaints Involving Patients.

- 1. When the Complainant is a patient, Section J above shall not apply and will be addressed by the procedure outlined at <http://healthcare.utah.edu/policies/discrimination.php>. In lieu of a live hearing, the parties may submit a written personal statement, and submit relevant written questions they wish to be asked of the other party and/or witnesses no later than three (3) calendar days prior to the designated date. The Committee will ask those questions (along with any questions the Committee may have for the parties and/or witnesses) in writing to the other party and/or witnesses and shall provide each party with the answers and allow for limited follow-up questions in writing from each party.
- 2. The Committee shall then meet on a designated date, no later than five (5) days following the conclusion of the written

question and answer period, to consider the evidence and deliberate.

L. Post-Hearing.

1. Within ten (10) calendar days after the conclusion of the hearing, the Committee shall provide its written determination (“Committee Report”) simultaneously to the parties, their advisors, if any, and the OEO/AA. The Committee Report shall include:
 - a. identification of the allegations potentially constituting Sexual Misconduct;
 - b. a description of the procedural steps taken from the receipt of the Formal Complaint through the determination;
 - c. findings of fact supporting the determination;
 - d. conclusions regarding application of the relevant policies to the facts;
 - e. a statement of, and rationale for, the result as to each allegation including a determination regarding responsibility and any disciplinary sanctions the Committee imposes on the Respondent and whether remedies designed to restore or preserve equal access to the University’s Program or Activity will be provided to the Complainant; and
 - f. the procedures and permissible bases for the parties to appeal.

M. Appeals.

1. The appealing party (whether student, staff, or faculty) must articulate the applicable bases for their appeal, which must include at least one of the following:
 - a. a procedural irregularity that affected the outcome of the matter;
 - b. new evidence that was not reasonably available at the time the determination was made, that could affect the outcome of the matter;
 - c. the Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; and

- d. the findings regarding responsibility and or the disciplinary sanction or corrective measure are arbitrary and capricious.
2. If a party files an appeal:
 - a. The Hearing Coordinator must notify the other party in writing that an appeal has been filed.
 - b. Appeal procedures must be applied equally to both parties.
 - c. Each party may provide a written statement in support of, or challenging, the decision within five (5) days of the notice that an appeal has been filed.
 3. Appeal to the Vice President or their designee.
 - a. In cases where the either party is not a faculty member, the Complainant and the Respondent may each appeal the decision of the Hearing Committee to the cognizant Vice President or their designee by submitting a request in writing to the Hearing Coordinator within five (5) calendar days of notice of the Hearing Committee's decision. Failure to file a timely written request for appeal shall constitute a waiver of the right to an appeal under this section. If there is no timely written request for an appeal, the Hearing Committee's decision shall become the final and binding decision of the University ("Final Result").
 - b. The Vice President or their designee shall have available for review all relevant documentation, including the Committee Report, any other materials presented to the Committee, the statements of the parties supporting or opposing the appeal, and if requested by the Vice President or their designee, a recording of the proceedings. The Vice President or their designee may not base a decision on information not presented at the hearing unless the nature of that information is fairly communicated to the parties and a reasonable opportunity to respond is given. The Vice President or their designee may seek advice from neutral advisors; and
 - c. The Vice President or their designee will issue a final and binding decision ("Final Result") in writing within ten (10) calendar days of the written request for

appeal. The written decision will describe the result of the appeal and the rationale for the result. For good cause, the Vice President or their designee may extend the ten-day period. The Vice President or designee shall simultaneously notify the parties, their advisors, if any, and the supervisor, Dean, Chair, and any other cognizant University representatives of the Final Result.

4. Appeal to the President or their designee.
 - a. In cases where either party is a faculty member, the Complainant and the Respondent may each appeal the decision of the Hearing Committee to the President or their designee instead of the Vice President, by submitting a request in writing to the Hearing Coordinator within five (5) calendar days of notice of the Hearing Committee's decision. Failure to file a timely written request for appeal shall constitute a waiver of the right to an appeal under this section. If there is no timely written request for an appeal, the Hearing Committee's decision shall become the final and binding decision of the University ("Final Result").
 - b. On appeal, the President or their designee shall have available for review all relevant documentation, including the Committee Report, any other materials presented to the Committee, and if requested by the President, an audio recording of the proceedings. The President may not base a decision on information not presented at the hearing unless the nature of that information is fairly communicated to the parties and a reasonable opportunity to respond is given. The President may seek advice from neutral advisors.
 - c. The President or their designee will issue a final and binding decision ("Final Result") in writing within ten (10) calendar days of the written request for appeal. For good cause, the President or their designee may extend the ten-day period. The Hearing Coordinator shall concurrently notify the Complainant, the Respondent, and the supervisor, Dean, Chair, and any other cognizant University representatives of the Final Result.

- N. **Training.** All materials used to train Title IX Coordinators, investigators, Hearing Committee members and other decision-

makers, including any person who facilitates an Informal Resolution process related to Sexual Harassment and the grievance process shall be made publicly available on the OEO/AA website at oeo.utah.edu. Training materials must not rely on sex/gender stereotypes and must promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment.

1. Title IX Coordinators, investigators, decision-makers and any person who facilitates an Informal Resolution process will receive training on the definition of Sexual Harassment, the scope of the University's Programs or Activities, how to conduct an investigation and grievance process including hearings, appeals, Informal Resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
2. Decision-makers will be trained on how to determine issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, on evidentiary standards and on hearing procedures.
3. Investigators will be trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
4. The Title IX Coordinator, hearing officers and other necessary parties will be trained on all technology to be used in hearings.

[Note: *Parts IV-VII of this Regulation (and all other University Regulations) are Regulations Resource Information – the contents of which are not approved by the Academic Senate or Board of Trustees, and are to be updated from time to time as determined appropriate by the cognizant Policy Officer and the Institutional Policy Committee, as per [Policy 1-001](#) and [Rule 1-001](#).*

IV. **References**

- 20 U.S.C. § 1092(f)
- 20 U.S.C. § 1681 *et seq.*
- 29 U.S.C. § 794 *et seq.*
- 42 U.S.C. § 2000d *et seq.*

42 U.S.C. § 2000e *et seq.*
42 U.S.C. § 6101 *et seq.*
42 U.S.C. § 12112
42 U.S.C. § 12132
42 U.S.C. § 18116
34 C.F.R. § 668.46 Institutional Security Policies and Crime Statistics
Utah Code Ann. § 76-5-106.5 Stalking—Definitions—Injunction—Penalties
Utah Code Ann. § 76-5-402 to -405 Sexual Offenses
Utah Code Ann. § 76-5-406 Sexual offense against the victim without consent of victim—Circumstances
Utah Code Ann. § 76-5b Sexual Exploitation Act
Utah Code Ann. § 76-9-702.7 Voyeurism offenses—Penalties
Utah Code Ann. § 77-36-1 Definitions
Utah Code Ann. § 78B-7-402 Definitions
Utah Board of Higher Education (*formerly* Board of Regents) Policy No. R256: Student Disciplinary Processes
Utah Board of Higher Education (*formerly* Board of Regents) Policy No. R831: Minimum Requirements for Non-Faculty Staff Employment Grievances Policy
Utah Board of Higher Education (*formerly* Board of Regents) Policy No. R841: Minimum Requirements for Disciplinary Sanctions and Termination of Staff Personnel
Policy 1-004: Violence in the Workplace and Academic Environment
Policy 1-011: Campus Security
Rule 1-012: Discrimination Complaint Rule
Rule 1-012A: Discrimination Complaint Process Rule
Rule 1-012B: Sexual Misconduct Complaint Process Rule
Policy 5-106: Equal Opportunity and Nondiscrimination Employment
[Policy 1-020](#): Required Professional Boundaries in Relationships
Policy 5-117: Americans with Disabilities Act (ADA) Policy
Policy 5-203: Staff Employee Grievances

Policy 6-011: Senate Consolidated Hearing Committee
Policy 6-316: Code of Faculty Rights and Responsibilities
Policy 6-400: Code of Student Rights and Responsibilities

V. **Contacts:**

The designated contact officials for this Policy are:

A. **Policy Owner (primary contact person for questions and advice):
Office of Equal Opportunity and Affirmative Action**

B. **Policy Officer: Vice President and General Counsel**

These officials are designated by the University President or delegee, with assistance of the Institutional Policy Committee, to have the following roles and authority, as provided in University Rule 1-001:

"A "Policy Officer" will be assigned by the President for each University Policy, and will typically be someone at the executive level of the University (i.e., the President and his/her Cabinet Officers). The assigned Policy Officer is authorized to allow exceptions to the Policy in appropriate cases.

"The Policy Officer will identify an "Owner" for each Policy. The Policy Owner is an expert on the Policy topic who may respond to questions about, and provide interpretation of the Policy; and will typically be someone reporting to an executive level position (as defined above), but may be any other person to whom the President or a Vice President has delegated such authority for a specified area of University operations. The Owner has primary responsibility for maintaining the relevant portions of the Regulations Library. [and] bears the responsibility for determining which reference materials are helpful in understanding the meaning and requirements of particular Policies..." University Rule 1-001-III-B & E

VI. **History:** *[reserved]*

Renumbering: Not Applicable.

Renumbering: Not Applicable.

Revision History:

A. **Current version--** Interim Rule Revision 2

Editorial revisions to current version: None

Legislative history of Interim Revision 2 [{link}](#)

B. Earlier Versions.

Revisions 1. Interim Rule Revision 1 was put into effect on August 20, 2020, by University President Ruth Watkins, after consultation with the Academic Senate Executive Committee July 13, 2020, and presentation to and approval of the Executive Committee of the Board of Trustees August 17, 2020. It was subsequently presented for the Information and Recommendations of the Academic Senate, August 31, 2020. It was enacted as an Interim revision (in accord with Policy 1-001) in order to comply with recently changed federal regulations. It will remain in effect until a permanent version is adopted, which is anticipated to occur by August 14, 2022 after review by appropriate internal University groups.

Revision 0. [link](#) Approved by the Academic Senate: January 9, 2017. Approved by the Board of Trustees: February 14, 2017, with the designated effective date of February 14, 2017.

Legislative history of Revision 0. [link](#)

Outdated