

## Interim Rule R1-012B: Complaint Process Rule

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## **I. Purpose and Scope**

### **A. Purpose**

Rule R1-012B establishes the university's Complaint resolution procedures to provide for the prompt and equitable resolution of Complaints made by students, faculty members, and employees, or other individuals who are participating or attempting to participate in University Programs or Activities or made by the Title IX Coordinator or designee. These Complaint procedures address Complaints of Discrimination, including Sex-Based Harassment allegations.

### **B. Scope**

Allegations of Discrimination raised by patients of University of Utah healthcare providers/facilities (University Hospitals & Clinics) are not governed by this rule and shall be resolved under the procedures approved for that purpose by the Senior Vice President for Health Sciences (or designee) [Current version here: <https://healthcare.utah.edu/policies/discrimination>]. All other Complaints of Discrimination, including Sexual Misconduct and Retaliation, shall be governed by this rule.

## **II. Definitions**

The definitions provided in Rule R1-012A apply for this rule.

### **III. Rule**

#### **A. Complaint Resolution Process.**

##### **1. Conflicts of Interest or Bias.**

- a. The university is committed to providing processes for addressing Discrimination, including Sexual Misconduct and Retaliation, in a manner that is fair and impartial to the Parties and does not compromise the integrity of the university. A conflict of interest exists when an individual's personal, professional, or financial relationships, including relationships with family or friends, are such that a reasonable person would view the relationship as likely to result in bias, for or against either Party. Any individual contributing to an OEO Complaint or Informal Resolution process, may not have a bias for or against a Complainant or Respondent generally or any individual Complainant or Respondent.
- b. A person designated as a Title IX Coordinator, and any investigator or decision-maker, including any individual facilitating an Informal Resolution process or serving on a Hearing Committee, shall be free of conflict of interest or other form of bias for or against the Complainant or Respondent generally or individually. The fact that two people know each other or have worked together at the same entity or on the same project would not normally be enough to create a conflict of interest or apparent bias. A conflict of interest or assumption of bias would typically arise out of a close family relationship or could arise from a significant and longstanding personal relationship.
- c. If the OEO Director determines that a conflict of interest or bias exists for OEO staff to conduct an investigation, the OEO, in consultation with the Office of General Counsel, may appoint an Outside Entity to serve as the investigator and conduct the investigation. All information and reports from an investigation conducted by the Outside Entity as the investigator

will be subject to the same confidentiality and privacy requirements as for an investigation conducted by the OEO. Any report issued by the Outside Entity as investigator will be maintained by the OEO.

- d. For Sex-Based Harassment within the scope of Title IX, the OEO Investigator or the Title IX Coordinator may not be the decision-maker.
2. Equitable Treatment. The university must treat the Complainant and the Respondent equitably. In a case involving Sex-Based Harassment, for example, this means that remedies will be provided to a Complainant when a determination of responsibility for Sex-Based Harassment has been made against the Respondent and by following the Complaint resolution process before the imposition of any discipline.
3. Presumption about Respondent's Responsibility. The Respondent is presumed to be not responsible for any alleged violation of university policy until a determination regarding responsibility has been made through the university's Complaint resolution process.
4. Deadlines and Timeframes. The university shall attempt to conclude the evaluation for the acceptance or dismissal of a Complaint in 30 calendar days. Upon acceptance of a Complaint, the university shall attempt to complete the Complaint resolution process within 150 calendar days of the acceptance of the Complaint; this includes completion of the OEO investigation within 60 calendar days, 60 calendar days to conclude any related hearing, and 30 calendar days to conclude any appeal, if applicable.
  - a. If an extension is necessary due to efforts to resolve the matter through Informal Resolution as described in Rule R1-012A, the complexity of the investigation, the severity or extent of the alleged conduct, school breaks such as university closure days, or other good cause, the university will notify the Complainant and Respondent in writing of the status of the process.

- b. Deadlines and timeframes provided under this rule or associated regulations may be extended on a case-by-case basis for good cause with written notice to the Parties of the revised schedule and the reason for the extension.
  - i. Parties may request extensions for good cause by sending the relevant OEO staff member, such as the OEO investigator or OEO Hearing Coordinator, a written request for an extension and the reason for the request.
  - ii. Good cause may include, but is not limited to, consideration of: the absence of a Party or a Party's Advisor; the absence of a critical witness who could have a major impact on the investigation or hearing; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; the need to seek or obtain legal advice; not having access to a computer or the internet; or other unexpected emergencies such as health or medical reasons involving the Party or close family members.
  - iii. The requesting Party's request will be answered in writing. If any extension is granted all Parties will be informed of and be entitled to the same revised timeframes.
  - iv. Any extension granted for good cause may not be of a duration that would impede the university's ability to complete the Complaint resolution process promptly.

B. Formal Complaint.

- 1. A person may choose for an investigation to be pursued either through the criminal justice system, through Policy 1-012, or both.
- 2. While any person may submit a report to OEO, only the following people have the right to make a Complaint of Discrimination, Sexual Misconduct, or Retaliation:

- a. any individual who believes they have been subjected to Discrimination, including Sexual Misconduct or Retaliation; or
    - b. The Title IX Coordinator or another designated Title IX Coordinator acting on behalf of the university and alleging a violation of university policy.
  3. When the Title IX Coordinator or designee signs and files a Formal Complaint on behalf of the university, the Title IX Coordinator or designee is not a Complainant or otherwise a Party under this rule and must comply with the requirements of impartiality under this rule.
  4. A Formal Complaint must include a Complainant's physical or digital signature or otherwise indicate that the Complainant is filing the Formal Complaint or must be signed by the Director or designee. When a Formal Complaint is signed and filed by the Director or designee, the Title IX Coordinator is not a Complainant or otherwise a Party.
  5. By filing a Complaint, the Complainant or person filing the Complaint is authorizing the collection and examination of all records and other documentation relevant to the allegations and discussion with other persons who may have relevant knowledge of the underlying circumstances of the allegations in the Complaint for the purposes of participating in the investigation, hearing, and appeal process.
  6. The university does not require a Complainant to participate in any investigation or proceeding; however, failure to participate may limit the university's ability to respond to allegations of Discrimination.
- C. Consolidation of Formal Complaints.
1. The OEO may consolidate Formal Complaints for investigation when there are allegations against more than one Respondent, by more than one Complainant against one or more Respondents, by one Party against another Party, or when the allegations of Discrimination arise out of the same facts or circumstances. If any of the Complaints allege Sexual Misconduct,

then the entirety of the consolidated Complaints shall be managed consistent with the requirements for allegations of Sexual Misconduct. When more than one Complainant or more than one Respondent are involved, references to a Party, Complainant, or Respondent refer to all Parties, as applicable.

D. Acceptance or Dismissal of a Formal Complaint.

1. Timeliness of a Formal Complaint.

- a. A Formal Complaint of Sex-Based Harassment within the scope of Title IX is timely if at the time of filing the Formal Complaint the Complainant is participating in or attempting to participate in a University Program or Activity.
- b. A Complaint alleging any other type of Sex-Based Discrimination, Sexual Misconduct, or other type of Discrimination is timely if submitted within 180 calendar days of the last alleged discriminatory act.
- c. A Complaint of Retaliation is timely if submitted within 180 calendar days of the last alleged act of Retaliation.
- d. The OEO shall dismiss a Formal Complaint not filed within the appropriate time-period as untimely unless at the Director's discretion and for good cause, the Director accepts as if timely a Formal Complaint that is not filed within the appropriate period.

2. Acceptance or Dismissal. After initial review of a Formal Complaint, the Director or designee shall either accept the Complaint and proceed with the OEO Complaint resolution process or dismiss the Complaint. Prior to a Final Result, a Formal Complaint may also be dismissed at any time during the Complaint resolution process subject to the following conditions:

- a. The Director may dismiss a Formal Complaint for any of the following reasons:
  - i. the Formal Complaint was not timely filed;

- ii. the Formal Complaint fails to state a claim of Discrimination, Sexual Misconduct, or Retaliation;
  - iii. the Complainant has submitted a written request to withdraw the Formal Complaint or any allegations therein;
  - iv. the Respondent is no longer enrolled as a student, or is no longer an employee;
  - v. there are specific circumstances which prevent the OEO from gathering evidence sufficient to reach a decision as to the Formal Complaint or allegations; or
  - vi. the allegations in the Formal Complaint have already been or are currently being investigated or addressed in a university or other regulatory process, with no new substantial evidence offered to warrant another Formal Complaint.
- b. The Director must dismiss, for Title IX purposes, a Formal Complaint alleging Sex-Based Harassment (and must inform the Respondent in writing that it is being dismissed for Title IX purposes) if:
- i. the Sex-Based Harassment did not occur against a person in the United States;
  - ii. the Sex-Based Harassment allegations do not meet the specific definition of Sex-Based Harassment as defined by federal Title IX regulations (as being so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's education Program or Activity);
  - iii. the Sex-Based Harassment did not occur within a University Program or Activity; or
  - iv. for any other reason that requires dismissal and notification that the Formal Complaint is not within the scope of Title IX.



- c. In cases alleging Sexual Misconduct, if the Formal Complaint is being dismissed for Title IX purposes but being accepted under other provisions of Policy 1-012 and its associated regulations, OEO must notify the Complainant and the Respondent, with notice as to under which provisions the Complaint is being accepted.
- d. In Sexual Misconduct cases within the scope of Title IX, the OEO shall promptly send written notice of the dismissal and reasons simultaneously to the Complainant and the Respondent. In cases alleging only another type of Discrimination, including Sexual Misconduct or Retaliation, the Director shall send prompt written notice of the dismissal only to the Complainant. The written notice of dismissal shall describe the procedures and permissible bases for appeal.

E. Appeal of Dismissal of Formal Complaint

- 1. Any Party informed of the Formal Complaint's dismissal may appeal the Director's dismissal by submitting an appeal in writing within five calendar days from the date of the dismissal. The Chief Human Resources Officer or their designee shall decide the appeal.
- 2. The appealing Party must articulate the applicable bases for their appeal, which must include at least one of the following:
  - a. a procedural irregularity that affected the dismissal of the Formal Complaint;
  - b. new evidence that could affect the outcome is now available that was not reasonably available at the time the determination to dismiss was made; or
  - c. the Title IX Coordinator, or an investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent, that affected the outcome.

3. If a dismissal is appealed, the OEO shall facilitate the following with the cooperation of the Chief Human Resources Officer or their designee:
  - a. inform any applicable Party that an appeal has been filed and implement appeal procedures equally for all Parties;
  - b. give all Parties who were notified of the dismissal five calendar days to submit a written statement in support of, or challenging, the outcome;
  - c. issue a written decision describing the result of the appeal and the rationale for the result; and
  - d. provide the written decision simultaneously to all applicable Parties.
4. If the written decision concurs with the Director or designee's decision to dismiss the Formal Complaint, the decision made on the appeal is the university's Final Result.

F. Investigation of Formal Complaint.

1. Upon acceptance of a Complaint the OEO shall begin an investigation. The OEO shall provide for adequate, reliable, and impartial investigations of Complaints.
2. Standard of Proof. The university uses the Preponderance of the Evidence standard as the standard of proof to determine responsibility for Discrimination, including Sexual Misconduct or Retaliation. For cases involving allegations of Sex-Based Harassment, in compliance with Title IX, the university will use the Preponderance standard for determining responsibility for such violations, for any Respondents, including students, employees, and faculty members, regardless of standards described in other university regulations.
3. Upon acceptance of a Formal Complaint, the OEO shall provide a written notice of allegations to the Complainant and Respondent, whose identities are known, and may provide a copy or notification to an appropriate

university administrator with responsibility over the Respondent, or others with a legitimate business need. The notice of allegations shall include:

- a. the applicable policies and rules by which the OEO proceedings will be governed;
  - b. 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;
  - c. a statement that each Party will have an equal opportunity to submit and review evidence throughout the investigation;
  - d. a statement that the Respondent is presumed not responsible for the alleged conduct until a determination is made at the conclusion of the Complaint resolution process under this rule;
  - e. a statement that each Party may have an Advisor of their choice, who may be, but is not required to be an attorney, and one Support Person of their choice; and
  - f. a statement that Policy 1-012 and its regulations prohibit knowingly providing false or misleading statements or information in the OEO Complaint resolution process.
4. Delays for Safety Concerns. If the OEO has reasonable concerns for the safety of a person as a result of providing a notice of allegations or any other document, the OEO may reasonably delay providing the document in order to address the safety concern. Reasonable concerns must be based on individualized safety and risk analysis and not speculation or assumptions about Complainants or Respondents generally or individually.
  5. Notice of Additional Allegations. If, during the investigation, the OEO decides to investigate additional allegations that were not included in the initial notice of allegations, the OEO shall provide written notice of the additional

allegations to both Parties and provide the Respondent with an opportunity to respond.

6. Opportunity to Respond. The Respondent shall be afforded a full opportunity to respond to the allegations contained in the Formal Complaint. Failure to respond or participate in an interview by the Respondent or a witness does not prevent the completion of the investigation.
7. No Inference of Responsibility. The OEO will not draw an inference about the determination of responsibility based solely on a Party's or witness' decision not to participate in the investigative or hearing process; however, evidence for review is limited to that provided by Parties and witnesses who participate in the investigation and other evidence gathered by the OEO.
8. Interviewing Parties and Witnesses. The OEO shall offer interviews to the Complainant and Respondent. The OEO may interview any other person with relevant information. The OEO will objectively review all relevant information, including that which is submitted by the Parties.
9. Notice of Meetings. The university shall provide to the Complainant and the Respondent written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings and proceedings with that Party, with sufficient time for the Party to prepare to participate.
10. Employee Release Time. The university will provide reasonable time away from regular work duties during scheduled working hours, with pay, to the Parties, or any witnesses called to testify, for time spent participating in the Complaint resolution process.
11. Advisors and Support Persons.
  - a. The Complainant and the Respondent may each be accompanied at any meetings or interviews with the OEO by one Advisor of their choice 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

answer questions on behalf of a Party during an interview but may advise the Party with regard to the questions. Any Advisor is at the Complainant or Respondent's own expense during the investigation. Advisors are expected to act in a civil and professional manner and may not disrupt meetings or proceedings.

- b. The Complainant and the Respondent may each be accompanied at any meetings or interviews with the OEO by one Support Person. The Support Person's role is to provide support to the Complainant or Respondent and may not speak on behalf of the Party. Support Persons may not disrupt meetings or proceedings.

G. Acceptance of Responsibility by Respondent.

1. A Respondent may elect to resolve the allegations in a Complaint by accepting responsibility for a violation of Policy 1-012. By accepting responsibility, the Respondent is confirming their conduct is a violation of Policy 1-012 and the Respondent is electing to waive any due process rights related to a determination of whether the Respondent violated Policy 1-012.
2. If a Respondent accepts responsibility, the OEO will convene a Hearing Committee. In these matters the Hearing Committee will not be the decision-maker as to whether Policy 1-012 has been violated (which has been determined by Respondent's acceptance of responsibility). The Hearing Committee will be charged with determining only the appropriate sanctions for the Respondent and remedies for the Complainant.
3. Any hearing convened under this section will otherwise be managed in the same manner as the other hearings under this rule, including the provisions of this rule that apply to any failure of Party to appear or participate in a hearing and to the participation of Advisors and Support Persons, and with the same due process afforded to each Party. Parties shall have the ability to address, challenge, or support any recommended sanctions or remedies.

4. The sections of this rule that apply to university disciplinary action and remedies apply in these instances. For these matters the appropriate university administrator will provide a recommended sanction to the Hearing Committee. The Director or designee will provide a recommended remedy to the Hearing Committee.
5. When a faculty member is a Respondent and accepts responsibility, the matter will not be referred to the Senate Consolidated Hearing Committee ("SCHC"), per Policy 6-011.

H. Evidence.

1. Production and Treatment of Evidence. The OEO is responsible for gathering evidence sufficient to reach a determination of responsibility.
  - a. The university will provide the Complainant and the Respondent with an equal opportunity to present witnesses, including fact and expert witnesses, as well as inculpatory and exculpatory evidence.
  - b. All relevant evidence will be objectively evaluated, both inculpatory and exculpatory, without respect to a person's status as a Complainant, Respondent, or witness. The OEO or other decisionmaker may not base a credibility determination on a person's status as a Complainant, Respondent, or witness.
  - c. The university may not require, allow, rely upon or otherwise use questions or evidence that is protected under a legally recognized privilege, unless the person holding the privilege waives it.
  - d. The university may not access, consider, disclose, or otherwise use a Party's records that are maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting or assisting in their professional capacity, and that are made and maintained in connection with the provision of treatment to the Party, without the Party's written consent.

2. Right to Gather and Produce Evidence. The university may not restrict the ability of the Complainant or the Respondent to discuss the allegations under investigation or gather and present relevant evidence in a manner consistent with other provisions of Policy 1-012 and its associated regulations, other university policies, and state and federal law.
  3. Non-Disclosure of Evidence. Parties shall be provided evidence obtained by the OEO as part of the investigation that is relevant to the allegations raised in the Formal Complaint. The Parties and Party Advisors must keep all provided evidence strictly confidential and use such evidence solely for the purposes of participating in the investigation and Complaint resolution process. Parties who disseminate or use evidence for any other purpose may be subject to discipline.
  4. The university shall take reasonable steps to protect the privacy of the Parties and witnesses during its Complaint resolution procedures. These steps will not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses; consulting with their family members, confidential resources, or Advisors; or otherwise preparing for or participating in the Complaint process. The Parties may not engage in Retaliation, including against witnesses or other participants.
- I. False Statements.

The Complainant, the Respondent, and any witness may not knowingly make any materially false or misleading statement or knowingly submit any materially false information during the Complaint resolution process. Knowingly proffering a material falsehood during the Complaint resolution process is a violation of Policy 1-012 and its associated regulations and may result in the individual being subject to discipline. However, a determination regarding the Respondent's responsibility for the underlying alleged Discrimination, Sexual Misconduct or Retaliation, alone, is not a sufficient basis to conclude that any individual proffered a material falsehood during the process.

J. Conclusion of Investigation and OEO Draft Report.

1. At the conclusion of the investigation, the OEO shall issue the draft of its investigative report (“OEO Draft Report”) simultaneously to the Parties and their Advisors, if any, in an electronic or hard copy format. The OEO Draft Report or its attachments 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 finding or recommendation that Discrimination, including Sexual Misconduct or Retaliation, if applicable, occurred; and
  - c. any mitigating or aggravating factors.
2. For Sex-Based Harassment allegations subject to Title IX, the OEO Draft Report or its attachments will also include any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint.
3. Privacy. 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 Final Report that are provided to the Complainant and Respondent.
4. Each Party shall have 10 calendar days after receipt of the OEO Draft Report to submit written comments and any additional documents or evidence to the OEO. If information from either Party raises new issues or allegations, the OEO may conduct additional investigation.

K. OEO Final Investigative Report

1. After reviewing any submitted comments or additional documentation by the Parties regarding the OEO Draft Report, and following any subsequent investigation if applicable, the OEO shall issue a final investigative report



(“OEO Final 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 Final Report or its attachments 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 finding or recommendation that Discrimination, including Sexual Misconduct or Retaliation, if applicable, occurred; and
  - c. any mitigating or aggravating factors.
2. For Sex-Based Harassment allegations subject to Title IX, the OEO Final Report or its attachments will also include any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint.
  3. The OEO Final Report is the university’s decision, except in the following cases, for which the OEO Final Report is a recommendation to a Hearing Committee:
    - a. any allegation of Sexual Misconduct, including Sex-Based Harassment within the scope of Title IX; or
    - b. any allegation of Discrimination involving a student Respondent that may result in suspension from the university for 10 calendar days or more, or dismissal from the university.

L. University Disciplinary Action.

1. The OEO shall provide a copy of the OEO Final Report to the appropriate university administrator to consider appropriate discipline if the OEO Final Report includes a recommendation or finding that the Respondent has violated Policy 1-012 or if the matter will be submitted to a Hearing Committee.

- a. Recommendations to a Hearing Committee. For any allegation of Sexual Misconduct, or an allegation of Discrimination for which the Respondent is a student who may face a sanction of suspension of at least 10 calendar days or dismissal, upon receipt of an OEO Final Report that includes a recommendation that a violation of university policy occurred, the appropriate university administrator shall recommend a disciplinary sanction or other corrective measures. The university administrator shall provide written notice of a recommended sanction to the Parties, to the OEO, and the Hearing Coordinator, and to any others with a legitimate business need.
  - b. Sanction Determinations. For allegations of Discrimination that are not automatically referred to a Hearing Committee, upon receipt of an OEO Final Report that includes a finding that a violation of university policy occurred, the appropriate university administrator shall determine a disciplinary sanction or other corrective measures. The university administrator shall provide written notice of their determination to the Parties, to the OEO, and to any others with a legitimate business need.
2. Any university disciplinary action recommendation or decision shall be issued to the Parties at the same time as the OEO Final Report.
3. The appropriate university administrator and range of possible sanctions includes:
  - a. If the Respondent is a student, the Dean of Students shall determine or recommend the disciplinary sanction or other corrective measure. Sanctions in Discrimination cases are not subject to Policy 6-400: Student Rights and Responsibilities and may only be reviewed and/or appealed under 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 for a period of time, dismissal from the university, or revocation of a certificate or degree.

- b. If the Respondent is a staff member, the appropriate university administrator with supervisory responsibility over the Respondent or university human resources acting on behalf of the department shall determine the disciplinary sanction or other corrective measure. Sanctions in Discrimination cases are not subject to Policy 5-203, Staff Employee Grievance Procedures, and may only be reviewed under this rule. Possible sanctions include but are not limited to: 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 appropriate Academic Affairs office, shall determine the disciplinary sanction or other corrective measure. Possible sanctions include, but are not limited to: 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.

M. Remedies.

- 1. If the OEO Final Report includes a recommendation or finding that the Respondent has violated Policy 1-012, the OEO Director or designee shall determine whether remedies, in addition to the imposition of disciplinary

sanctions, will be provided by the university to the Complainant. Remedies may include but are not limited to: reinstatement, transfer or reassignment of employees, Supportive Measures, implementing changes in programs and activities, providing training, separating Parties such as with a No Contact Directive, or other remedies designed to restore or preserve equal access to University Programs or Activities.

N. Automatic Hearings and Requested Hearings.

1. Automatic Hearings.

- a. The OEO must hold a hearing to decide all:
  - i. Investigations of Sexual Misconduct. Such matters shall be resolved by the determination of a Hearing Committee, which acts as the university's decision-maker regarding potential policy violations.
  - ii. Investigations involving a student Respondent that would result in a disciplinary action that includes a suspension from the university of 10 calendar days or more or dismissal from the university. Such matters will be automatically referred to a Hearing Committee which would act as the university's decisionmaker regarding potential policy violations.
- b. The Hearing Committee shall consider the following recommendations during its review:
  - i. the OEO Final Report that includes a recommendation to the Hearing Committee on whether the Respondent violated Policy 1-012;
  - ii. the appropriate university administrator's recommendation of a disciplinary sanction or other corrective measures, if applicable; and
  - iii. the OEO Director's or designee's recommendation of a remedy for the Complainant, if applicable.

2. Requested Hearings.

- a. In all cases of Discrimination, except those that require an automatic hearing, any Party may request a hearing to appeal the outcome of the OEO Final Report or the sanctions, by submitting a request in writing within five calendar days of the OEO Final Report being issued.
- b. If the OEO Final Report finds that cause exists to show the Respondent violated a policy, and any Party requests an appeal, the matter shall be referred to the OEO Hearing Coordinator who shall form a Hearing Committee to hold a Hearing.
- c. If the OEO Final Report finds no violation of university policy, following a request by any Party for a hearing, the OEO Hearing Coordinator shall form an Initial Hearing Committee to determine, based on the written request for a hearing and the OEO Final Report, whether to hold a hearing. The Initial Hearing Committee may determine that it is unnecessary to hold a hearing if there is:
  - i. insufficient evidence to support a claim of Discrimination, or
  - ii. the issue is no longer relevant or is moot.
- d. The initial Hearing Committee shall issue its written decision whether to hold a hearing within five calendar days of its initial review.
  - i. If the initial Hearing Committee determines that a hearing should be held, the initial Hearing Committee shall inform the OEO Hearing Coordinator, who shall notify the Parties concurrently in writing.
  - ii. If the initial Hearing Committee determines that a hearing will not be held, any Party may appeal the decision to deny a hearing within five calendar days by submitting a written request to the cognizant vice president or their designee via the OEO Hearing Coordinator. The decision of the cognizant vice president or their designee is final.
- e. The OEO shall inform the appropriate university administrator, which may include the supervisor, chair, dean, or cognizant vice president with

responsibility over the Respondent, of the decision to hold or deny a hearing. If the Respondent is a student, the vice president for student affairs and the Office of Dean of Students shall be notified.

O. Hearing Committee Composition.

1. The OEO shall create a standing pool of Hearing Committee members. The pool of eligible Hearing Committee members includes the following:
  - a. staff employees of the university nominated by the Chief Human Resource Officer, Staff Council, or other university leaders, and who serve for a three-year term;
  - b. students (graduate and undergraduate) nominated pursuant to procedures of Associated Students of the University of Utah (ASUU), the Office of the Dean of Students, or by other university leaders, who serve a one-year term; and
  - c. faculty members from the Consolidated Hearing Committee pool.
2. Each Hearing Committee shall be composed of a three-person panel selected from the pool of eligible Hearing Committee members.
  - a. The Hearing Committee shall consist of the Committee Chair, 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.
  - b. The Committee Chair shall be selected from the pool of eligible Committee members who have previously served on a Hearing Committee and will receive specific training relevant to their duties as Chair.

- c. Parties may request that a Committee member or Committee Chair be disqualified based on bias or conflict of interest.
  3. In order to provide an objective and fair hearing, each Hearing 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. Committee members may not have a bias for or against the Complainant or Respondent generally or any individual Complainant or Respondent. A Committee member may be disqualified due to bias, conflict of interest, or for other good cause. Alternates will be appointed as needed.
  4. Prior to the hearing, if there is a challenge to the participation of any Committee member, the OEO Director shall review for potential conflict of interest or bias by the Committee member and may assign a different Committee member.
  5. If there is a challenge to the participation of any Committee member during the hearing, the remaining Committee members shall hear that dispute and make a final decision about the participation of that member in the hearing.
- P. General Provisions for Automatic Hearings and Requested Hearings.
1. If a Hearing Committee is formed, it shall serve as the decisionmaker (either as the initial decisionmaker or the decisionmaker for an appeal) with regard to allegations of Discrimination, including Sexual Misconduct and Retaliation, any associated disciplinary sanction or other corrective measures for the Respondent, and any remedies for the Complainant that are brought before it. The Committee shall make an independent judgment in objectively evaluating relevant evidence to reach a determination regarding responsibility, independent from the OEO Final Report, and if appropriate, a sanction, independent from the appropriate administrator.

2. 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 or other corrective action.

Q. Pre-Hearing Process.

1. Hearings should take place as soon as practicable. Although the OEO Hearing Coordinator may try 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. 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.
3. The Complainant and the Respondent may submit documentary evidence for consideration by the Committee. The Committee may also request additional documentary evidence.
4. At least 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:
  - a. the date, time, location, Parties, and purpose of the hearing;
  - b. any additional documentary evidence that was not included in the OEO Final Report that the Committee is requesting from the Parties; and
  - c. of the applicable policies and associated rules and guidelines by which the proceedings will be governed.
5. At least 10 calendar days before the hearing, the Complainant and the Respondent must notify the Hearing Coordinator in writing and provide to the Hearing Coordinator:



- a. the name and contact information of their selected Advisor, if any;
  - b. the name and contact information of their selected Support Person, if any;
  - c. a list of any witnesses they wish to speak on their behalf as well as contact information for each witness;
  - d. any additional documentary evidence to be submitted to the Committee, including information the Committee has requested from the Parties; and
  - e. any other requests for accommodations, including technological accommodations. Any request will be reviewed by the Director or Committee Chair and at the Director or Chair's request, the OEO Hearing Coordinator will make any appropriate accommodations.
6. At least five calendar days before the hearing, the Hearing Coordinator shall:
- a. notify the Complainant and Respondent in writing of the names of all witnesses requested by the Parties and the Committee; and
  - b. provide copies of all evidence submitted to the OEO Hearing Coordinator that has not already been provided to the Parties.

R. Live Hearing Process.

1. Hearings shall be closed to the public.
2. Hearings shall be conducted remotely through electronic means, instead of in-person, when 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. All Parties must be clearly viewable on camera during the hearing. A Party may not attend a hearing in the form of a bot or avatar or an AI persona or other artificial person.
3. Recording of Hearings. The hearing, except for deliberations by the Committee, shall be recorded and a copy in electronic format shall be made available to either Party upon request at the requesting Party's expense.

4. 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. Consistent with other provisions of this rule, the Committee may not consider evidence related to a Party's privilege or a Party's personal medical documentation unless the Party has waived or consented to the consideration of that evidence.
5. The Hearing Committee shall use the Preponderance of the Evidence standard as the standard of proof to determine responsibility for Discrimination, including Sexual Misconduct and Retaliation.
6. Failure of Party to Participate.
  - a. For cases for which there is an automatic hearing, in the event either Party does not attend the hearing without prior notice to the Hearing Coordinator and good cause, the Committee may proceed with the hearing. If neither Party attends the hearing, without prior notification and good cause, both Parties waive the right to a hearing and any appeal rights. The OEO Final Report is therefore the Final Result and the recommended sanctions are final.
  - b. For requested hearings, if the Party who requested the hearing does not attend the hearing, without prior notification and good cause, the Party waives the right to a hearing and the right to appeal. The OEO Final Report is the Final Result and any proposed sanctions are final. If the other Party who did not request the hearing does not attend, the Hearing Committee may proceed with the hearing and take testimony and evidence and reach a decision.
  - c. The Hearing Committee may not draw an inference about the determination of responsibility based solely on a Party's or witness' decision not to participate in the hearing process; however, evidence for review is limited to that provided by Parties and witnesses who participate in the hearing process, and other evidence gathered by the OEO.

- d. If a Party does not attend a hearing, their Advisor and Support Person may not attend the hearing.
7. The Complainant and the Respondent may each be accompanied at the hearing by one Advisor of their choice, who may be, but does not have to be, an attorney and who may participate in the hearing as provided in this rule. During the hearing, the Advisor may participate in opening and closing statements, and the presentation of evidence. The Advisor may not answer questions on behalf of a Party but may advise a Party with regard to the questions. Advisors are expected to act in a civil and professional manner and may not disrupt meetings or hearing proceedings.
  - a. For Automatic Hearings concerning matters of Sexual Misconduct, if a Party does not have an Advisor present at the hearing, the university shall provide an Advisor of the university's choice without fee or charge to the Party. The university appointed Advisor shall conduct cross-examination on behalf of that Party.
8. 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.
9. The Committee has authority to exclude from the hearing any Party, Advisor, Support Person, or other participant whose behavior the Committee finds disruptive after having provided a warning.
10. The Office of General Counsel may provide a staff attorney to be present at hearings to provide guidance to the Hearing Committee on substantive legal and procedural matters.
11. The OEO Investigator who conducted the investigation and authored the OEO Final Report may attend the hearing and be available for questioning.
12. Each Party and their Advisor, if any, shall have up to 45 minutes for personal or opening statements, presentation of evidence and questioning of

witnesses, and concluding remarks. The Committee Chair shall have discretion to grant reasonable extensions of time when necessary.

13. Opening Statements. The Complainant and the Respondent shall each have an opportunity to make an opening or 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, a statement supporting or challenging the OEO Final Report, and any other relevant information. In addition to the personal statements by the Parties, each Party's Advisor, if any, shall have the opportunity to make an opening statement.
14. Presentation of Evidence. The Complainant and the Respondent, and their Advisors, if any, shall have an opportunity to present their narrative regarding the allegations of Discrimination. The Parties may also present other evidence.
  - a. If a Party presents documentary evidence at the hearing that was not previously provided to the other Party and the Committee prior to the hearing, the Committee Chair shall determine whether to admit such evidence.
15. The Committee, Complainant, and the Respondent shall have the opportunity to call and question witnesses.
16. The Committee may ask the appropriate university administrators to speak to the recommended sanction or corrective measures and remedies.
17. Concluding Remarks. The Committee shall conclude the hearing by providing an opportunity for the Parties to make concluding remarks. In addition to the concluding remarks by the Parties, each Party's Advisor, if any, shall have the opportunity to make a concluding statement. The Committee Chair shall then adjourn the hearing and begin private Committee deliberations.

18. 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 be present for deliberations but may not 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 OEO, including the Director, may not participate in the Committee's deliberations and shall have no vote.

S. Live Questioning and Cross Examination.

1. The Committee may ask questions of the Complainant, the Respondent, and any witness. The time of Committee questions and answers does not count against either Party's time.
2. The Hearing Committee must permit each Party, or their Advisor, consistent with this rule, to ask the OEO Consultant, the other Party, any witnesses, and any others providing testimony, all relevant questions and follow-up questions, including questions challenging credibility.
3. The Committee may not draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.
4. Proposing Questions.
  - a. For hearings that do not involve matters of Sexual Misconduct, the questioning 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 or their Advisor and must be directed through the Committee Chair (not directly to or at a Party or witness).
  - b. For hearings concerning matters of Sexual Misconduct, 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 to or at a Party or witness).

5. Prior to any Party or witness answering a question, the Committee Chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
  - a. Questions and evidence about the Complainant's sexual predispositions or prior sexual behavior are not relevant, unless:
    - i. 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.
6. Only the person to whom a question is directed may answer (i.e., an Advisor shall not be permitted to answer questions on a Party's behalf).

T. Sanctions and Remedies.

1. Sanctions. The Committee shall determine the appropriate sanctions for the Respondent, if necessary. The Committee shall ensure that any sanctions are appropriate to end the prohibited conduct, to prevent further violation of policy, and remedy the effects of any violation.
  - a. The Committee shall review the sanction decision or sanction recommendation submitted by the appropriate administrator and may call that individual during the hearing to speak to the reasoning supporting the recommendation when making their decision.
  - b. 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.

2. Remedies. The Committee shall make a determination regarding any appropriate remedies for the Complainant, if necessary, including but not limited to: reinstatement, transfer or reassignment of employees, Supportive Measures, implementing changes in programs and activities, providing training, separating Parties such as with a No Contact Directive, or other remedies designed to restore equal access to University Programs or Activities. The OEO Director is responsible for effective implementation of any remedies.

U. Post-Hearing Determination.

1. Within 10 calendar days after the conclusion of the hearing, the Committee shall provide its written determination ("Committee Report") to the OEO Hearing Coordinator who shall send the Committee Report to the Parties simultaneously. The Committee Report or accompanying notice and documentation shall include:
  - a. identification of the allegations potentially constituting Discrimination, including Sexual Misconduct or Retaliation, if applicable;
  - b. a description of the procedural steps taken from the receipt of the Formal Complaint through the Committee's determination, including any notifications to the Parties, interviews with the Parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - 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 Program or Activity will be provided to the Complainant; and
- f. the procedures and permissible bases for the Parties to appeal.

V. Appeals.

1. Any Party may request an appeal of the Hearing Committee's decision by submitting a request in writing to the OEO Hearing Coordinator within five calendar days of notice of the Hearing Committee's decision.
2. 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;
  - b. new evidence that could affect the outcome is now available that was not reasonably available at the time the Committee's determination was made; or
  - c. the Title IX Coordinator, investigator, or other 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.
3. 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 will be applied equally to both Parties.



- c. Each Party may provide a written statement in support of, or challenging, the Hearing Committee decision within five calendar days of the Hearing Coordinator's notice that an appeal has been filed. Parties are not provided the written statements of the other Party supporting or challenging the Hearing Committee decision.
- 4. Appeal to the Vice President or their designee.
  - a. In cases where either Party is not a faculty member, the Complainant or the Respondent may 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 consistent with this rule. Failure to file a timely written request for appeal shall constitute a waiver of the right to an appeal. If there is no timely written request for an appeal, the Hearing Committee's decision becomes the 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.
  - c. The vice president or their designee shall issue the Final Result, the final and binding decision, in writing within 10 calendar days of their receipt of notice of the appeal. The written decision shall 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 provide their decision to the Hearing Coordinator who shall simultaneously notify the Parties and their Advisors, if any, of the Final Result.

- d. Any person reviewing an appeal may not have a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent in the matter submitted for appeal.
5. Appeal to the President or their designee.
- a. If either Party is a faculty member, the Complainant and the Respondent may each appeal the decision of the Hearing Committee to the president of the university or their designee, by submitting a request in writing to the Hearing Coordinator consistent with this rule. 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 becomes the Final Result.
  - b. 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, a 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 shall issue the Final Result, the final and binding decision, in writing within 10 calendar days of their receipt of notice of the appeal. For good cause, the president or their designee may extend the ten-day period. The president shall provide their decision to the Hearing Coordinator who shall simultaneously notify the Parties and their Advisors, if any, of the Final Result.

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*Sections IV- VII are for user information and are not subject to the approval of the Academic Senate or the Board of Trustees. The Institutional Policy Committee, the Policy Owner, or the Policy Officer may update these sections at any time.*

#### **IV. Policies/ Rules, Procedures, Guidelines, Forms, and other Related Resources**

##### **A. Policies/ Rules.**

1. Policy 1-012: University Non-discrimination Policy
2. Rule R1-012A: Non-Discrimination Rule
3. Rule R1-102C: Student Pregnancy or Related Conditions Rule

##### **B. Procedures, Guidelines, and Forms.**

1. Guideline 1-012A: Consent
2. Guideline 1-012B: Advisors and Support Persons

##### **C. Other Related Resources.**

#### **V. References**

- A. Policy 1-012: University Non-discrimination Policy includes the list of references applicable under this rule.

#### **VI. Contacts**

The designated contact officials for this regulation are:

- A. Policy Owner(s) (primary contact person for questions and advice): Director of the Office of Equal Opportunity and Title IX
- B. Policy Officer(s): Vice President and General Counsel

See Rule 1-001 for information about the roles and authority of policy owners and policy officers.

#### **VII. History**

##### **A. Current version. Revision 5.**

1. Approved as an interim rule by President Randall with effective day of February 13, 2025.
2. Legislative History

3. Editorial Revisions

B. Previous Versions

1. Revision 4. Effective August 1, 2024
2. Revision 3. Effective March 16, 2022
  - a. Legislative History Revision 3.
3. Revision 2. Effective November 10, 2021
  - a. Legislative History Revision 2.
4. Revision 1: Effective August 12, 2020
5. Revision 0: Effective February 14, 2017

C. Renumbering

1. Not applicable.