

PPM 3-32, Discrimination, Harassment, and Sexual Misconduct (including Title IX)

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1.0 PURPOSE AND SCOPE

Weber State University is committed to providing an environment free from harassment and other forms of individual or institutional discrimination based upon “protected classifications,” as defined below. Such an environment is a necessary part of a healthy learning and working atmosphere. This will be accomplished through preventative educational and training efforts, support for those impacted by discrimination and harassment, effective policy enforcement and remedial activities.

Discrimination and harassment are prohibited by numerous federal and state laws and regulations. It is the policy of the University to enforce these among its students, employees, and others, as further described herein. When violations of this policy occur, appropriate actions will be taken. Any member of the University community who is being, or who has been subjected to discrimination or harassment or improperly denied an accommodation, as defined in this policy, may use the complaint procedures described herein.

The Office of Equal Opportunity is designated to oversee and carry out the responsibilities of this policy as outlined herein. The Office of Equal Opportunity acts under the supervision of the Executive Director of that office, who is also the Title IX Coordinator. The Office of Equal Opportunity shall provide all notices required by law, and make contact information for this office easily and widely available, including names or titles, office addresses, electronic mail addresses, and telephone numbers.

This policy and the procedures for addressing complaints of discrimination and harassment, apply to all University programs and activities. This includes those conducted off-campus and to all off-campus conduct that has on-campus effects, as more specifically outlined herein.

This policy shall not be construed to restrict constitutionally protected expression, as allowed by law, even though such expression may be unpleasant or even hateful. Constitutionally protected speech and traditional notions of academic freedom are valued in higher education. These ideals help to create the stimulating and challenging learning environment which should characterize higher education. In the spirit of a true university environment, individuals are encouraged to invite, rather than inhibit, discourse on ideas. With regard to student-on-student speech, the University follows Utah Code 53B-27-402.

In order to protect free speech and academic freedom of faculty, students, and other members of the University community, this policy shall not apply to expression that is protected from regulation by the U.S. Constitution, the Utah Constitution or falls within traditional boundaries of academic freedom set forth in [PPM 9-1 \(https://www.weber.edu/ppm/Policies/9-1_AcademicFreedom.html\)](https://www.weber.edu/ppm/Policies/9-1_AcademicFreedom.html). This includes, but is not limited to, faculty members' good faith selection of subject matter and methodology, the content of academic discussions, and protected expression in publications and public forums. This exemption shall not apply to harmful or offensive personal attacks substantially based on a person's protected classifications that violate this policy. The University retains the right to apply restrictions consistent with the Constitution and principles of forum analysis to regulate under this policy.

2.0 REFERENCES

2.1 [PPM 3-2 \(https://www.weber.edu/ppm/Policies/3-2_EmployeeDefinitions.html\)](https://www.weber.edu/ppm/Policies/3-2_EmployeeDefinitions.html), Employee Definitions

2.2 [PPM 3-10 \(https://www.weber.edu/ppm/Policies/3-10_Staff_Separations.html\)](https://www.weber.edu/ppm/Policies/3-10_Staff_Separations.html), Termination of Employment (Non-Faculty)

2.3 [PPM 3-31 \(https://www.weber.edu/ppm/Policies/3-31_StaffEmpGrievances.html\)](https://www.weber.edu/ppm/Policies/3-31_StaffEmpGrievances.html), Staff Employee Grievances (with provision for certain hourly employees)

2.4 [PPM 3-33 \(https://www.weber.edu/ppm/Policies/3-33_Discipline_Staff.html\)](https://www.weber.edu/ppm/Policies/3-33_Discipline_Staff.html), Discipline (Non-Teaching Personnel)

2.5 [PPM 3-34 \(https://www.weber.edu/ppm/Policies/3-34_ADA.html\)](https://www.weber.edu/ppm/Policies/3-34_ADA.html), Americans with Disabilities Act & Section 504 Request for Accommodations

2.6 [PPM 3-67 \(https://www.weber.edu/ppm/Policies/3-37_SolicitationEmp.html\)](https://www.weber.edu/ppm/Policies/3-37_SolicitationEmp.html), Violence Prevention

2.7 [PPM 5-36 \(https://www.weber.edu/ppm/Policies/5-36_Safety_Response_and_Reporting_Policy.html\)](https://www.weber.edu/ppm/Policies/5-36_Safety_Response_and_Reporting_Policy.html), Safety, Response, and Reporting Policy (Clery)

2.8 [PPM 6-22 \(https://www.weber.edu/ppm/Policies/6-22_StudentCode.html\)](https://www.weber.edu/ppm/Policies/6-22_StudentCode.html), Student Code

2.9 PPMs 9-1 through 9-8, Faculty Rights and Responsibilities

2.10 PPMs 9-9 through 9-18, Academic Due Process

3.0 DEFINITIONS

3.1 Complainant - An individual who files an informal or formal complaint that there has been a violation of this policy.

3.2 Consent - Affirmative and freely given permission to engage in sexual activity. A person can affirm consent, or lack of consent, through words or conduct. Consent can be withdrawn at any time, irrespective of the consent which may have been given previously. Silence or absence of resistance does not, necessarily, imply consent. A complainant has not consented when the complainant is under the age they can legally consent; unconscious; unaware that the act is occurring; physically unable to resist; overcome by force, violence, concealment or surprise; or lacks the understanding to make rational decisions or engage in responsible actions due to alcohol or other drugs, or because the complainant is temporarily or permanently impaired by a disability.

Being intoxicated or incapacitated does not diminish one’s responsibility to obtain consent and will not be an excuse for sexual harassment and misconduct.

The University adopts other circumstances identified in Utah law as standards for determining consent as in Utah Code Ann. §76-5-406. However, criminal prosecution of offenses is subject only to standards in applicable law.

The University considers unconsented conduct as unwelcome conduct although consent, alone, does not necessarily indicate that conduct was welcomed.

3.3 Discrimination - Conduct which denies or limits a person’s opportunities or adversely affects a term or condition of employment or participation in University programs, services, or activities based on a person’s protected classification(s), except as permitted by law and as further outlined in this policy.

3.4 Discriminatory Harassment - Unwelcome conduct that is based on protected classifications (as defined, below) that creates a hostile work or learning environment. A hostile environment exists when conduct is so severe, persistent or pervasive, as determined by analyzing the totality of the circumstances, that it denies or limits a person's ability to participate in or benefit from the University's programs or activities or the conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creates an intimidating, or offensive work environment. Both subjective and objective factors shall be considered when evaluating whether a hostile environment exists. Conduct is considered unwelcome if the person did not request or invite it and considered the conduct to be undesirable or offensive.

3.4.1 Sexual Harassment - Sexual harassment and misconduct are types of discriminatory harassment, as defined above, that refer to a variety of behaviors that include these two common elements:

- The behaviors are unwelcome, and
- The behaviors are either: 1) of a nature that is related to sex or gender, gender identity or expression, or sexual orientation, and/or 2) they are directed at a person because of their actual or perceived sex or gender, gender identity or expression, or sexual orientation.

This policy prohibits all sexually harassing conduct, whether or not it is criminal, if such conduct occurs on University property or while one is engaged in University activities, when the results of such conduct create a hostile work or learning environment in University courses, activities or employment.

This policy also requires redressing a hostile environment that occurs on campus even if it relates to off-campus activities, when the results of such conduct create a hostile work or learning environment in University courses, activities or employment.

Sexual misconduct that may constitute sexual harassment includes, but is not limited to:

- Sexual assault
- Dating violence
- Domestic violence
- Stalking
- Sexual exploitation:

When a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
 - Prostituting another person or other sex trafficking;
 - Non-consensual video or audio-recording of sexual activity;
 - Allowing others to hide to watch consensual sex;
 - Voyeurism;
 - Knowingly transmitting an STD or HIV to another person;
 - Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
 - Sexually-based bullying;
 - Non-consensual removal of a condom or other form of birth/disease control by a sex partner, sabotage to a condom or other form of birth/disease control by a sex partner without the other's knowledge or consent, or false representation of the use of a condom or other form of birth/disease control.
- [PPM 5-36 defines sexual assault, dating violence, domestic violence, and stalking and includes further information about Clery crimes and reporting.]

3.4.2 Title IX Sexual Harassment - 1) Any instance of quid pro quo harassment by a school's employee; 2) any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; and 3) any instance of sexual assault, dating violence, domestic violence, or stalking (see PPM 5-36 for definitions). Title IX sexual harassment may only occur when a student or employee is participating or attempting to participate in the University's education program or activity that occurs in the United States. (Note that Title IX Sexual Harassment complaints are distinct and encompass only a subset of sexual harassment prohibited by this policy.)

3.5 Formal Complaint - A document alleging a violation of this policy in which the complainant requests an investigation under this policy. The complaint must be signed by the complainant or the Executive Director.

3.6 Preponderance of Evidence - The evidentiary standard used during a sexual misconduct investigation/review to determine if the allegations occurred and if a policy violation has occurred. Preponderance of evidence means it is more likely than not, or more than 50 percent in favor, that the misconduct occurred as alleged.

3.7 Protected Classifications - Race, color, national origin, pregnancy, and pregnancy-related conditions such as childbirth, false pregnancy, miscarriage, abortion, or related conditions, (including recovery), genetics, disability (see PPM 3-34), religion, sex, sexual orientation, gender identity/expression, veteran, active military status, age (over 40 in employment discrimination), and other classifications protected by law.

3.8 Report - Information alleging a possible violation of this policy that comes to the attention of the Office of Equal Opportunity.

3.9 Respondent - A person who is alleged to have violated this policy.

3.10 Responsible Administrator - The administrator at the vice presidential level, or their designee, with direct line responsibility over the college, department, office, agency or other operational unit of the University with supervisory authority over the individual or individuals who are accused of discrimination or harassment. For students, the responsible administrator is the Dean of Students. For individuals who are not faculty, students, or staff, the Vice President for Administrative Services shall take the role of responsible administrator.

3.11 Retaliation - An action, performed directly or through others, that is aimed to dissuade a reasonable person from engaging in a protected activity or is done in retribution for engaging in a protected activity. Action in response to a protected activity is not retaliatory unless (i) it has a materially adverse effect on the working, academic, or other University-related environment of an individual; and (ii) it would not have occurred in the absence of (but for) the protected activity. Examples of protected activities include: reporting (internally or externally) a complaint of sexual harassment in good faith; assisting others in making such a report; or honestly participating as an investigator, witness, decision maker; or otherwise assisting in an investigation or proceeding related to suspected sexual harassment.

3.12 Title IX Coordinator - The employee given the overall responsibility to supervise compliance with Title IX. Other Deputy Title IX Coordinators may be appointed, as needed.

4.0 PROHIBITIONS

4.1 Employment Discrimination Prohibited. Illegal employment discrimination based on protected classifications is prohibited. The University will publicize that it is an Equal Opportunity/Affirmative Action employer. Recruitment of personnel shall frequently use off-campus recruiting sources to encourage applications from under-represented groups. Procedures for selection shall be based on job-related criteria including education, skills, experience and affirmative action requirements. Promotions, compensation, evaluations, access to facilities, discipline and terminations and all other aspects of University employment shall be administered in a nondiscriminatory manner.

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4.2 Student Discrimination Prohibited. Illegal student discrimination based on protected classifications is prohibited. The University will publicize that it is an Equal Educational Opportunity institution. Student recruitment; admissions to programs & classes; participation in co-curricular activities; access to University housing; eligibility for financial aid and student employment and all other aspects of the student program shall all be administered in a nondiscriminatory manner.

4.3 Other Discrimination Prohibited. Illegal discrimination against persons, other than students or employees, who are participating or attempting to participate in, or are receiving or are applying for the benefits of, any program, service or activity conducted under the sponsorship or auspices of the University, including but not limited to spectators, visitors, and volunteers based on protected classifications is prohibited.

4.4 Discriminatory Harassment Prohibited. No person may engage in conduct that creates a hostile environment, as defined herein, for employees, students or others on the basis of their protected classifications. This includes behavior occurring off-campus that creates a hostile environment on campus or in University activities.

4.5 Title IX Sexual Harassment Prohibited. Title IX Sexual Harassment of any persons participating, or attempting to participate, in any University program or activity is prohibited.

4.6 Noninterference with Investigations. University employees and students are prohibited from interfering with and are strongly encouraged to cooperate with investigations of violations of this policy.

4.7 False Complaints and Testimony Prohibited. University employees, students, and others shall not file false claims or provide false information during an investigation of a complaint under this policy. Charging an individual in good faith with a code of conduct violation for making a bad faith, materially false statement in the course of a grievance proceeding under this policy does not constitute retaliation.

4.8 Retaliation Prohibited. No employee or student shall engage in retaliation. Any retaliatory threat or act of violence against a victim or witnesses of sexual violence is a third degree felony under Utah Code Ann. 53B-28-304 and may be subject to criminal prosecution. Retaliation should be reported immediately to the Office of Equal Opportunity.

5.0 REASONABLE ACCOMMODATIONS

5.1 Reasonable Accommodation of Disabilities Required. Faculty and staff will not illegally discriminate in admissions to the University or specific programs, or enrollment in courses based on disability. Faculty and staff will provide accommodations, academic adjustments, auxiliary aids, and services for persons with disabilities, as required by PPM 3-34 and state and federal law. Procedures for requesting accommodation for disabilities and resolving disputes regarding such requests are set forth under PPM 3-34.

5.2 Reasonable Accommodation of Religious Beliefs Required. Faculty and staff shall reasonably accommodate religious and other deeply held beliefs, as required by law and University policy.

5.3 Reasonable Accommodation of Pregnancy Required. Faculty and staff will reasonably accommodate students and employees who are pregnant, in accordance with the law. Students' absences due to medical conditions relating to pregnancy will be excused for as long as deemed medically necessary by a student's doctor and students will be given a reasonable opportunity to make up missed work.

6.0 REPORTING AND CONFIDENTIALITY

6.1 Responsible Employees. All employees, with the exception of confidential employees, who know or should have reason to know that this policy is being violated, including receiving reports of alleged violations, must immediately report to the Office of Equal Opportunity such violations including information that is known, such as names of individuals involved, facts, dates, times, and locations of suspected policy violations. In order to help prevent violations of this policy, anyone who suspects this policy is being violated is strongly encouraged to report suspected violations of this policy, or similar conduct, even if the individual does not believe it has reached the level of discriminatory harassment. Non-disciplinary remedial measures such as education and training, mediation, voluntary transfers or reassignments, etc., that may help to avoid the creation of hostile environment should be considered. Individuals who desire to make a report of suspected violation of this policy, but who are concerned about their identifying information being shared with others, should make those concerns known prior to reporting to a University employee. Employees responsible for reporting such information should alert individuals of their reporting responsibilities as soon as possible. Reporting employees should communicate the reporter's desire regarding confidentiality to the Office of Equal Opportunity.

6.2 Confidential Employees. All employees of the Counseling & Psychological Services Center, Women's Center, Student Health Center, and employees of the WSU Police Department, are confidential employees. These individuals do not have reporting requirements for purposes of this policy and Title IX, unless the reporter gives written consent for these individuals to disclose information. These individuals may have other legally mandated reporting requirements, such as for purposes of fulfilling Clery Act requirements (see PPM 5-36), where there is imminent danger, or the victim is a minor or vulnerable adult. Employees who have a legal privilege also do not have reporting requirements under this policy. Confidential employees should inform such individuals of this policy, options available under Section 7.0, resources for supportive measures, counseling, medical, and academic support, and what retaliation and safety protections may be available.

6.3 Other Exceptions. Exceptions to the reporting requirements described herein may be made in circumstances where disclosure was made during academic programs or awareness, prevention, or support programs and disclosure was not intended by the individual to constitute a report to the University for purposes of this policy.

6.4 Confidentiality upon Reporting to the Office of Equal Opportunity.

6.4.1 Information shall be treated with discretion to protect the privacy of those involved, except as required by law and as described herein.

6.4.2 Supportive measures will be kept confidential to the extent that maintaining such confidentiality would not impair the University's ability to provide the supportive measures.

6.4.3 A (potential) complainant may request confidentiality or anonymity, and may choose not to submit a complaint at all. The University will attempt to cooperate with requests for confidentiality, if possible. In so doing, the Office of Equal Opportunity will evaluate any such request in the context of the University's goal to provide a safe and nondiscriminatory environment for all members of the University community. The factors that may be considered include the seriousness of the alleged discrimination or harassment, the age of the complainant, whether there have been other complaints or reports of discrimination or harassment against the respondent, and the rights of the respondent to receive information about the complainant and the allegations if a formal complaint with sanctions may result. The Office of Equal Opportunity shall inform potential complainants that their requests or their refusals to disclose names, pursue an investigation, or file a formal complaint may limit the University's ability to investigate and to respond to complaints. Regardless, the Office of Equal Opportunity shall offer to provide supportive measures and strive to stop prohibited ongoing violations of this policy, take steps to prevent their recurrence and address any effects on campus and in the context of any University programs and activities.

7.0 OPTIONS FOR COMPLAINANTS

Complainants may utilize one or more of the following options:

7.1 Seek to resolve issues directly with the individual(s) alleged to have violated this policy.

7.2 Seek to resolve issues through a Responsible Supervisor.

7.3 Seek to resolve issues through the Faculty Ombud.

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7.4 Consult with the Office of Equal Opportunity to discuss the options available through this and other policies, including provision of supportive measures.

7.5 Explore options for informal resolution.

7.6 File a formal complaint with the Office of Equal Opportunity.

7.7 Pursue criminal charges through the police.

8.0 SUPPORTIVE MEASURES

8.1 Description. Supportive measures are individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to provide equal access to educational or employment-related opportunities, protect safety, or deter violations of this policy.

8.1.1 Examples of possible supportive measures for all parties that may be available include, but are not limited to: medical and mental health services, including counseling; issuing no-contact directives; providing assistance with transportation such as shuttle service, cab voucher, or parking arrangements; assistance identifying an advocate to help secure additional resources or assistance including off-campus and community advocacy, support and services; or providing an escort while on campus.

8.1.2 Supportive measures for employees may include, but are not limited to, temporarily reassigning work schedules or assignments, or placing employees on non-disciplinary leave with pay.

8.1.3 Supportive measures for students may include, but are not limited to: reassigning student housing or dining locations; providing assistance in finding alternative housing; transferring to another section of a lecture or laboratory; rescheduling class assignments or test schedules; providing opportunities to make up missed academic work; accessing academic support (e.g., tutoring); preserving eligibility for academic, athletic or other scholarships, financial aid, internships, study abroad or foreign student visas; arranging for incompletes; or allowing students to retake or withdraw from courses without penalty, to the extent academically feasible.

8.2 Provision of Supportive Measures. During all stages of the process, the Office of Equal Opportunity will take steps to coordinate supportive measures to protect and support the parties and minimize the likelihood of retaliation. Supportive measures can be requested by contacting the Office of Equal Opportunity. The University will provide written notification about options for, available assistance with, and the procedure to request supportive measures. Such supportive measures and accommodations will be provided as reasonably available, regardless of whether the complainant chooses to report to police. The Office of Equal Opportunity should consult with the parties throughout the investigation to assess whether supportive measures continue to be necessary and effective based on their evolving needs. Where parties are students, every effort should be made to avoid depriving them of their education.

8.3 Cooperation Required. Faculty and staff shall cooperate with the Office of Equal Opportunity, Human Resources, Disability Services and the Safe@Weber Survivor Advocate to provide supportive measures.

8.4 Other Services. The University will provide written notification to students and employees about existing counseling, health, mental health, survivor advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for survivors, both within the University and in the community.

9.0 INITIAL REPORTS AND FORMAL COMPLAINTS

9.1 Reporting Violations. Any person who believes they have experienced discrimination or harassment, or who has knowledge of such conduct impacting other students, employees or others, is encouraged, and in some instances is required (see Section 6.0), to report that conduct directly to the Office of Equal Opportunity.

9.2 Timeframes for Reporting. Reports of violations of this policy should be made as soon as possible after the event(s) which gives rise to the violation. Formal complaints of violations of this policy should be filed within six months of the most recent alleged act which violates the policy. However, the Office of Equal Opportunity may waive this time limit in consideration of extenuating circumstances. Regardless of whether a formal complaint is accepted and investigated, supportive measures will be offered to the parties.

9.3 Manner of Making a Report. Reports of violations of this policy may be either written or oral.

9.4 Manner of Making a Formal Complaint. Formal complaints may be filed in person, by mail, or by electronic mail. Formal complaints and responses must be written, signed, and sworn as true and accurate. A formal complaint (or complaint summary) should include, at a minimum, the identities of the parties involved, the specific section(s) of the University's policy(ies) allegedly violated, the conduct allegedly constituting the potential violation(s), and the date(s) and location(s) of the alleged violations, a description of witnesses who have knowledge that is relevant to the complaint, other relevant evidence of which the parties are aware, the harm the complainant alleges resulted from the conduct, and the remedial action(s) sought by the complainant.

9.5 Confidentiality. Complainants may request anonymity or confidentiality for informal complaints, as described above.

9.6 Notice and Options. Upon receipt of a report or formal complaint, the Office of Equal Opportunity shall provide the complainant written notice of this policy, explain supportive measures and the options available to them.

9.7 Initiation of Formal Complaint. Although consideration shall be given to the complainant's preferences in the complaint investigation process, the Office of Equal Opportunity may initiate a formal complaint and an independent investigation into alleged violations of this policy. This does not need to be based on the complainant's preference, if the Office of Equal Opportunity determines that doing so is not clearly unreasonable in light of the known circumstances. If the complainant elects not to file a formal complaint under this policy, the Office of Equal Opportunity may sign a formal complaint or may appoint a designee to pursue the matter in the complainant's stead. The complainant shall be permitted to provide input, including whether the complainant appeals a decision under the grievance process. The Office of Equal Opportunity shall consider factors discussed in Section 6.4.3. When the Office of Equal Opportunity signs a formal complaint, the Office of Equal Opportunity is not a complainant or otherwise a party under this policy and must remain free of bias or conflict of interest with respect to any party. In this situation, the complainant is treated as a party, though they continue to have a right not to participate.

9.8 Referrals to Law Enforcement. If a report, formal complaint, or an investigation reveals evidence of criminal conduct, the Office of Equal Opportunity shall determine whether the matter must be referred to the appropriate law enforcement agency. Where a referral is discretionary, the Office of Equal Opportunity will generally refer the matter, but an exception may be made in deference to the wishes of the complainant. The Office of Equal Opportunity shall consider factors discussed in Section 6.4.3. In all cases, reporting will take place as required by law. The University may proceed with an investigation, even in cases involving referrals to law enforcement.

9.9 Neutral Assistance. The Office of Equal Opportunity and others designated by the University may provide impartial assistance to those involved in a discrimination complaint.

9.10 Consolidation of Formal Complaints. The Office of Equal Opportunity may consolidate formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or cross-complaints by one party against the other party, where the allegations arise out of the same facts or circumstances. Where there are multiple respondents, written summaries of those portions of the complaint that bear on that

respondent may be substituted.

9.11 Amnesty for Reporting Sexual Violence. Because sexual violence may occur in circumstances where individuals may have engaged in violations of the University codes of conduct regarding usage of alcohol or drugs, individuals may fear reporting because they might be charged with violations of conduct codes. In order to encourage reporting, the University will not sanction an individual who makes a good faith report regarding sexual violence, as defined in Utah Code Ann. §53B-28-302, that was directed at them or another person for a violation related to the use of drugs or alcohol that is discovered because of the report.

9.12 Interim Safety Measures. If a matter comes to the attention of the Office of Equal Opportunity that raises concerns about safety or risk of individuals or the campus, the Office of Equal Opportunity may, if appropriate in their professional judgment, refer the matter to law enforcement and/or the responsible administrator, who may consult with the Strategic Threat Assessment Team (see PPM 3-67). An individualized safety and risk assessment should be undertaken, as deemed appropriate, to determine whether there is an immediate threat to the physical health or safety of any individual or the campus arising from the allegations, and appropriate actions that may be taken, including removal from campus. Title IX regulations and all other appropriate University policies shall be followed where interim actions are taken against an individual. Notice and an opportunity to challenge the decision shall be provided to the individual, consistent with PPM 3-33, Discipline (Staff Employees), PPM 6-22, Student Code, and Section 9, Academic Freedom, Rights, Responsibilities and Due Process, and PPM 3-67, Violence Prevention, as applicable.

10.0 INFORMAL RESOLUTION

10.1 When is Informal Resolution Appropriate. Informal resolution is encouraged to resolve concerns at the earliest stage possible with the cooperation of all parties involved. Participation in the informal resolution process is voluntary; the Office of Equal Opportunity shall not compel either party to engage in informal resolution. Informal resolution may be appropriate for responding to anonymous reports and/or third-party reports. Informal resolution may be inappropriate when one or both of the parties are reluctant to participate in good faith. Informal resolution will not be used in situations where safety concerns are present, where alleged conduct was so traumatic that there is a risk of further psychological harm, or where a power differential between the parties makes informal resolution otherwise inappropriate.

10.2 Voluntary Agreement. The Office of Equal Opportunity shall determine whether all parties agree to attempt to resolve the complaint through informal resolution. If the parties voluntarily agree to pursue an informal resolution, the Office of Equal Opportunity shall attempt to facilitate a resolution of the conflict that is agreeable to all parties.

10.3 Title IX Informal Resolution. In order to commence an informal resolution for allegations that would amount to a Title IX Sexual Harassment complaint, a formal complaint must be filed and the allegations shared with the respondent. The Office of Equal Opportunity shall provide the parties written notice of the requirements of the informal resolution process, possible consequences, and records that will be maintained or could be shared. The parties must provide written consent to continue with the informal resolution process. Informal resolution is not appropriate where an employee is alleged to have committed Title IX Sexual Harassment against a student.

10.4 Fact-finding for Informal Resolution. The Office of Equal Opportunity may conduct fact-finding that is necessary and useful to: end any discrimination and harassment; resolve the conflict; protect the interests of the parties; eliminate a hostile environment; remedy the effects of such an environment and prevent reoccurrence.

10.5 Ending Informal Resolution. The Office of Equal Opportunity will notify parties of their right to end the resolution informal process at any time prior to agreeing to a resolution and may initiate a formal investigation. The Office of Equal Opportunity will document conciliated agreements to resolve formal complaints in writing with all parties signing and receiving copies.

11.0 FORMAL COMPLAINT INVESTIGATION

11.1 Dismissal

11.1.1 Dismissal non-Title IX complaints. If the complainant wishes to file a formal complaint, the Office of Equal Opportunity shall determine whether the complaint includes allegations, which, if true, would constitute a violation of this policy, and whether the complaint is timely, and is neither frivolous nor without merit. If so, the Office of Equal Opportunity shall promptly initiate an investigation as described below. If not, the Office of Equal Opportunity will not proceed with an investigation, but may attempt to resolve the underlying complaint.

11.1.2 Dismissal of Title IX complaints. The Executive Director must review any complaint of sexual harassment to determine whether, if true as alleged, it would constitute a violation of Title IX and adjudicate it accordingly. The Executive Director must apply the standards for dismissal, required or permissive, as outlined in 34 CFR §106.45 (3) and document any such decisions made. This decision does not preclude the University from moving forward with a complaint on grounds of other violations of this or other University policy.

11.1.3 Appeals. The Office of Equal Opportunity must promptly send the parties simultaneous written notice of the dismissal and reason(s) for dismissal. Parties may appeal decisions of dismissal in Section 11.1.1 to the responsible administrator, who in the case of faculty respondents, shall conduct the decision in accordance with PPM 9-11. Parties may appeal decisions of dismissal described in Section 11.1.2 as outlined in Appendix A.

11.2 Investigator. The Office of Equal Opportunity shall conduct an investigation or appoint an investigator. The investigation shall be conducted by an individual who is free of conflict of interest or bias for or against complainants or respondents, generally or individually. The investigator shall disclose their role as a neutral investigator for the University, as distinguished from an advocate for any of the parties involved. The investigation shall be conducted by an individual trained to analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence—including both inculpatory and exculpatory evidence—and take into account the unique and complex circumstances of each case. The University reserves the right to engage an outside investigator to conduct an investigation.

11.3 Extent of Investigation. The investigator shall determine the extent of a formal investigation, but shall include, at the discretion of the investigator, potential violations of other policies and procedures that arise out of the same facts that are alleged in the complaint of violations of this policy and may make recommendations regarding those potential violations as well. If at any point during the investigation, the investigator determines a need to investigate allegations not included in the formal complaint, the investigator must provide notice of the additional allegations to the parties, if known.

11.4 Title IX Investigation – The burden of proof and the burden of gathering the evidence sufficient to reach a determination rests on the University and not on the parties.

11.4.1 The University shall not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains the party's voluntary, written consent to do so for a grievance process under this policy.

11.5 Notice of Investigation. The Office of Equal Opportunity shall promptly and effectively inform all parties of the initiation of an investigation and their rights and responsibilities during the investigation, including providing a copy of the formal complaint and this policy. For respondents, this shall occur prior to interviewing individuals about allegations of misconduct. This notice shall include:

11.5.1 the presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;

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11.5.2 the right to have an advisor throughout the process who may, but need not be, an attorney, and the right to postpone for a reasonable time, an initial interview until arrangements for an advisor can be made;

11.5.3 the right to expect the University to gather sufficient evidence to reach a fair, impartial determination as to whether a policy violation has occurred; and

11.5.4 the duty not to obstruct the investigation;

11.5.5 the right to participate or not participate in the investigation, and notice that the investigation may proceed without the participation of any party to the complaint; or may be dismissed;

11.5.6 the timeframes involved, including any deadlines;

11.5.7 the right to present witnesses and other inculpatory and exculpatory evidence, including fact and expert witnesses; and

11.5.8 the right to pursue criminal charges independent of the investigation.

Where there are multiple respondents, the Office of Equal Opportunity shall provide each respondent a written summary of those portions of a complaint to each respondent that bear on that respondent.

11.6 Law Enforcement Impact on Investigation. Where criminal charges are involved, the Office of Equal Opportunity will maintain regular contact with law enforcement to determine when it may begin its investigation. The Office of Equal Opportunity will promptly begin its investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process, or sooner if the Office of Equal Opportunity determines that the evidence gathering process will be lengthy or delayed, or where it is otherwise in the best interest of the University. The Office of Equal Opportunity will not delay its investigation until the ultimate outcome of the criminal investigation is completed.

11.7 Prior Sexual Conduct. Investigators or others shall not question the complainant about, or otherwise seek evidence, regarding the complainant's sexual predisposition or prior sexual conduct with anyone other than the respondent(s).

11.8 Notice to Responsible Administrator. The Office of Equal Opportunity shall inform the responsible administrator that an investigation has been initiated in their area of responsibility.

11.9 Standard of Review. The preponderance of the evidence standard will be used for investigating all alleged discrimination and harassment complaints and when making findings related to the allegations.

11.10 Notice of Meetings. The investigator will provide to a party whose participation is expected or invited, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate. The investigator will not require the parties to meet with or confront each other regarding the complaint during the investigation.

11.11 Role of Advisors in Investigation. Generally advisors are not permitted to participate during the investigative process, but may advise the party. If an advisor is disruptive even after warning, the investigator may exclude them from meetings. Any restrictions on the advisors' ability to speak or otherwise participate will be applied equally to all parties.

11.12 Timeframes for Investigations. Investigations, including the opportunities for the parties to supplement the investigation report, as described below, and the decisions of the responsible administrator, shall be completed as promptly as practicable, unless a longer period of time is reasonably required, to provide a thorough and equitable investigation. Reasonable causes for delay include, but are not limited to, temporary delays to avoid interfering with police investigations, the unavailability of key witnesses, the discovery of new evidence requiring further investigation, need for accommodations or language assistance, or ongoing conciliation efforts. The Office of Equal Opportunity shall regularly keep the parties informed of the progress of the investigation throughout its duration.

11.13 Communications of the Parties. The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. This section notwithstanding:

11.13.1 Retaliation is prohibited. Attempts to alter or prevent a witness' or party's testimony are forms of prohibited retaliation.

11.13.2 Parties may be directed to cease communications with one another (i.e., a "no contact order").

11.13.3 Parties' communications remain subject to state laws protecting against defamation and tortious invasions of privacy, such as intrusion upon seclusion, publication of private facts, and false light claims.

11.14 Investigation Report. At the conclusion of the investigation, the Office of Equal Opportunity shall make available to all parties (including the complainant, if they are not a party to the complaint or the next of kin where the complainant is deceased) a written report. The report shall include a review of the complaint, response, a summary of the relevant exculpatory and inculpatory evidence determined from the investigation, findings, conclusions, and recommendations. Conclusions shall indicate whether there is reasonable cause to believe that a violation of policy occurred. If the complaint presented more than a single allegation of misconduct, a decision shall be reached separately as to each allegation of misconduct. The Office of Equal Opportunity shall include recommendations regarding sanctions and remedies, where appropriate, that are reasonably calculated to stop the discrimination or harassment, eliminate any hostile environment, remedy the effects of discrimination and prevent its recurrence. Sanctions for the most serious violations may include suspension, eviction, expulsion, or termination or trespass. Remedies may include, but are not limited to, the supportive measures described above.

11.14.1 Title IX Sexual Harassment complaint investigative reports. Investigative reports of Title IX Sexual Harassment complaints may include non-binding findings, but not conclusions or recommendations. Those elements will be determined only through live hearings, as described below. The investigator will provide the parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including all inculpatory or exculpatory evidence, whether or not relied upon in reaching findings, in order to respond and/or prepare for the hearing.

11.15 Response to Investigative Report. The parties shall then have ten calendar days to provide to the investigator their written responses to the investigation report. These responses can take issue with the evidence considered, offer additional evidence, take issue with the conclusion(s) of the investigation and/or object to any recommended sanctions or other remedies. At the end of that ten-day period, the investigator shall finalize the report and file the report and any written responses received from the parties with the responsible administrator (or the appropriate hearing committee chair in Title IX cases) unless the Office of Equal Opportunity investigates further based on the responses of the parties.

12.0 REMEDIAL ACTIONS, SANCTIONS, AND APPEALS

12.1 Responsible Administrator Review (non-Title IX). For all complaints except Title IX Sexual Harassment complaints, the responsible administrator shall review the investigation report and any submissions by the parties and determine within ten working days whether to close the complaint, investigate further, attempt informal resolution between the parties, or impose disciplinary sanction(s). The responsible administrator will communicate that decision in writing to the parties at the same time. All other steps in this Section 12.0 shall be followed.

12.2 Review and Decision-Making Process for Title IX Complaints. If a complaint is a Title IX Sexual Harassment complaint, the University will create processes consistent with Title IX and 34 CFR §106, which shall be attached in Appendix A. Where a complaint contains both Title IX Sexual Harassment complaints and complaints of other violation of policy, the responsible administrator and the Office of Equal Opportunity shall determine whether it is appropriate to consolidate processes, in which case processes for Title IX complaint adjudication shall be followed.

12.3 Cross-jurisdiction. Under other circumstances that could otherwise result in multiple hearings, each of which would involve adjudicating complaints arising from the same occurrence(s), these various hearings may be consolidated into one hearing. The responsible administrator shall determine the necessity for such consolidation and the composition of the hearing committee, which shall be consistent with Section 12.5, to the extent practicable.

12.4 Violations of Policy and Sanctions. If the responsible administrator (or hearing committee in Title IX cases), based on a preponderance of the evidence, finds that this policy was violated, the responsible administrator shall implement steps necessary to eliminate the discrimination, including a hostile environment, if necessary, prevent its recurrence, and to remediate the effects of the discrimination or harassment. The responsible administrator (or hearing committee in Title IX cases) may impose disciplinary sanctions as may be appropriate to deter such conduct in the future. Possible sanctions are stated in PPM 6-22, PPM 3-33, PPM 9-14 or PPM 3-67.

12.5 Appeal Process (non-Title IX). These proceedings shall include all appropriate process rights, as provided by the following policies. These policies also indicate the rights of all parties to appeal all decisions regarding the findings of the investigation and/or whether appropriate disciplinary sanctions have been recommended. Complainants and respondents who wish to appeal decisions made by the responsible administrator must follow the procedures that govern the right of the respondents.

12.5.1 Respondents who are non-faculty employees are entitled to due process as set out in PPM 3-31. Completion of actions taken by the responsible administrator will be considered as replacing steps one and two of PPM 3-31.

12.5.2 Respondents who are faculty are entitled to due process as set out in PPMs 9-9 to 9-14. Completion of the investigative procedures of this policy may, at the discretion of the provost, constitute completion of a preliminary investigation as outlined in PPM 9-11.

12.5.3 Respondents who are students are entitled to due process as set out in PPM 6-22. Completion of the investigative procedures of this policy constitute completion of informal resolution procedures outlined in that policy, unless all parties and the Dean of Students agree to use the informal level resolution procedures.

12.5.4 Respondents who are neither students nor employees may ask for a review of such decision by submitting a request with a concise statement of facts and reasons for review to the Vice President for Administrative Affairs within five days of notification of the action.

13.0 TRAINING

In cases involving allegations of sexual harassment or sexual misconduct, those involved in handling such reports and complaints, including, but not limited to the Office of Equal Opportunity, investigator, decision-maker, and any person who facilitates an informal resolution, shall receive training to hearing processes that protect the safety of victims and promote accountability while avoiding approaches that apply sex stereotypes or generalizations on those issues. This training will include, but not be limited to 1) definitions of sexual harassment, domestic violence, dating violence, sexual assault, and stalking, 2) jurisdiction, 3) due process, 4) fairness 5) relevance, 6) application of rape shield protections, 7) evidentiary burdens, 8) how to conduct their part of the process, including creating investigative reports and/or written decisions, or using technology at a live hearing, if applicable; and 9) how to serve impartially, including avoiding prejudgment, conflicts of interest, or bias. Training materials will be posted on the Office of Equal Opportunity website.

14.0 POST COMPLAINT REVIEW

14.1 Post-Process Review. Within 90 days following the resolution of a complaint or the imposition of sanctions resulting from a complaint, the Office of Equal Opportunity shall conduct an informal review as necessary to determine if the hostile environment or discrimination has been eliminated.

14.2 Closure if No Further Concerns. If the review indicates that the hostile environment or discrimination has been eliminated, the Office of Equal Opportunity shall terminate the matter and close the case file.

14.3 Further Action. If the follow-up review indicates that the hostile environment or discrimination has not been eliminated, the Office of Equal Opportunity shall refer the case back to the responsible administrator for consideration of additional action(s), including possible disciplinary action against violators and their supervisors who knew that the resolution was not being followed, or who knew that the unacceptable behavior continued to occur, and failed to take corrective action(s).

15.0 RECORDS

15.1 Classification of Records. All information contained in the complaint file is governed by the Family Educational Rights and Privacy Act where student education records are involved and classified as "Protected" with a secondary classification as "Private" under the Government Records Access and Management Act for all other records. Notwithstanding anything herein, disclosure will be only as permitted by law and University policy.

15.2 Maintenance of Records. The following records shall be maintained and stored for a minimum of seven years in the Office of Equal Opportunity, including the following:

15.2.1 Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required by this policy, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the University's education program or activity;

15.2.2 Any appeal and the result;

15.2.3 Any informal resolution and the result; and

15.2.4 All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. For each report of Title IX Sexual Harassment to the Office of Equal Opportunity, the Office of Equal Opportunity must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the Office of Equal Opportunity must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's education program or activity. If the University does not provide a complainant with supportive measures, then the Office of Equal Opportunity must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the University in the future from providing additional explanations or detailing additional measures taken.

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Appendix A HEARINGS AND APPEALS FOR TITLE IX SEXUAL HARASSMENT COMPLAINTS

The following govern hearing and appeals for Title IX Sexual Harassment complaints under PPM 3-32.

1.0 HEARING

Questions?

1.1 The final investigative report and written responses from the parties under PPM 3-32, Section 11.15 shall be forwarded to the chair of the appropriate hearing committee, which shall be based on the status of the respondent as follows:

1.1.1 Where the respondent is a non-faculty employee, the chair shall be the chair of the Personnel Relations Committee, as established in PPM 3-31.

1.1.2 Where the respondent is a faculty employee, the chair shall be the chair of the Faculty Board of Review, as established in PPM 1-13.

1.1.3 Where the respondent is a student, the chair shall be the chair of the Student Code Review Committee, as established under PPM 6-22.

1.2 A hearing chair may delegate any procedural duties and decision-making with regard to admission of evidence to the hearing officer, an individual appointed by the Office of Equal Opportunity, who cannot be the same person as the investigator. The hearing officer does not vote as a member of the hearing committee.

1.3 The chair shall schedule a live hearing to be held within a reasonable period of time, no later than 45 calendar days after receipt of the final investigative report by the chair, with exceptions made by the chair of the hearing committee for good cause.

1.4 A three member panel (including the chair) composed of members of the appropriate committee described in Section 1.1 may be selected to hear the case. In the event a respondent is a faculty member, the hearing committee shall be the Faculty Board of Review, with members and attendance of the hearing committee as described in PPM 9-12, III.B.

1.5 The chair shall issue to the parties and the parties' advisors a notice containing the dates, deadlines, and/or requirements appropriate for the orderly administration of the hearing as determined by the chair. The notice must contain a statement informing the parties that upon the request of either party, the University must provide for a live hearing where the parties are located in separate rooms with technology enabling the hearing committee and the parties to simultaneously see and hear the party or witnesses answering questions. The notice must also contain the names of the members of the hearing committee.

1.6 Pre-hearing Conference and Required Disclosures

1.6.1 At least ten working days before the hearing date, a pre-hearing conference shall be held, time frames excepted upon good cause shown by any of the participating parties. The purpose of the pre-hearing conference is to facilitate and expedite the formal hearing process. The following people may be in attendance: the chair of the hearing committee, the hearing officer, the parties, advisors or representatives of the parties, where the hearing committee is the Faculty Board of Review, the administrative officer described in PPM 9-9. Others may attend upon approval of the chair. The university will facilitate separate rooms for the parties, if requested.

1.6.2 Challenges to the composition of the hearing committee may be made at the pre-hearing conference. The chair shall rule on any such challenges. In the event the challenge is against the chair, the decision shall be made by the responsible administrator, unless the respondent is a faculty member, in which case the decision shall be made by the Executive Committee of the Faculty Senate.

1.6.3 The institution, complainant, and respondent must provide each other a list of witnesses and documents or other evidence that they will be presenting at the hearing.

1.6.4 Such disclosure shall include the identity of any person who may be used at the hearing to present expert opinion evidence. Unless otherwise stipulated, this disclosure shall be accompanied by a written report prepared and signed by the witness or party. The report shall contain the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; and the expert's qualifications as a witness. The party seeking to present the testimony of an expert witness shall certify that the individual providing the expert testimony is qualified to offer the opinions. The chair may exclude expert testimony that is not relevant.

1.7 Advisors

1.7.1 Parties may be accompanied to the hearing by the advisor, who may be, but is not required to be, an attorney.

1.7.2 The chair will not limit the choice or presence of a party's advisor, but may limit an advisor's participation if the advisor becomes unreasonably disruptive to the proceedings.

1.7.3 If an attorney appears on behalf of a party, notice served on the attorney is considered notice to the party.

1.7.4 Cross-examination of parties and witnesses at the live hearing must be conducted directly, orally, and in real time by a party's advisor and never by a party personally.

1.7.5 If a party does not have an advisor present at the live hearing, the University must provide a person to conduct cross-examination on the party's behalf. This individual is someone of the University's choice, with no fee or charge to that party. The party may direct all questions to be asked by the University appointed individual and appropriate recesses may be taken to facilitate coordination. Requests by a party for this University appointed individual should be made at or before the pre-hearing conference, except for good cause.

1.8 The Office of Equal Opportunity is not a party to the hearing, but it shall be the Office of Equal Opportunity, not the parties, that bears the burden of producing evidence through the investigative report to the hearing committee. The Office of Equal Opportunity must remain objective and impartial throughout the grievance process, including impartially presenting the investigative report to the hearing committee for determination.

1.9 All Title IX hearings are closed hearings. Attendance is limited to the hearing officer, hearing committee, parties, advisors, the administrative officer (in accordance with PPM 9-12), and administrative or security individuals needed to facilitate the meeting. Witnesses may attend as called. Others may attend upon approval by the chair. This may include a support person for each party, upon request.

1.10 The standard of proof for determining responsibility is a preponderance of the evidence.

1.11 The chair shall regulate the course of the hearing to allow the hearing committee to obtain full disclosure of relevant facts and to afford all parties (or their advisors) reasonable opportunity to present their positions, including the opportunity to make opening and closing statements. The chair shall conduct the procedural elements of the hearing and make determinations regarding admissibility and relevance of evidence.

1.11.1 On the chair's own motion or upon objection by a party's advisor, the chair:

1.11.1.1 May exclude evidence that is irrelevant or unduly repetitious.

1.11.1.2 Shall exclude irrelevant questions directed to a party or witness. Before a party or witness answers a cross-examination or other question, the chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

1.11.1.3 Shall exclude evidence privileged in the courts of Utah, unless the privilege at issue is specifically waived by the parties.

1.11.1.4 Shall exclude questions or evidence about the complainant(s)' sexual predisposition or prior sexual behavior as not relevant unless 1) questions or evidence of the complainant(s)' prior sexual behavior are offered to prove that someone other than respondent(s) committed the conduct alleged by complainant(s), or 2) questions or evidence concern specific incidents of the complainant(s)' prior sexual behavior with respect to respondent(s) and are offered to prove consent.

1.11.1.5 May receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document.

1.11.2 The hearing committee may ask relevant questions of parties and witnesses. Additional relevant evidence may be requested by the hearing committee.

Questions?

1.11.3 The chair shall afford the parties’ advisors the opportunity to ask questions of witnesses or parties. Evidence must be reviewed for relevancy, subject to appropriate considerations regarding trustworthiness of evidence. The hearing committee may not draw an inference about the determination regarding responsibility based solely on a party’s or witness’ absence from the hearing or refusal to answer cross-examination or other questions.

1.11.4 The chair shall ensure the hearing is recorded and provide a copy or transcript of the hearing to the parties for inspection and review.

1.11.5 Nothing in this section precludes the chair from taking appropriate measures necessary to preserve the integrity of the hearing.

1.12 Written Determination. After the close of the hearing, the members of the committee and the chair will deliberate. The hearing officer may participate to assist with questions of procedure or evidence, as deemed appropriate by the hearing committee. Such deliberations are confidential. Upon reaching a decision based on majority vote, the hearing committee will make a determination regarding responsibility and sanctions or remedies, as applicable.

1.12.1 The chair will create the written determination of the hearing committee within ten calendar days after the hearing concludes (extensions allowed based on good cause). The written determination must include:

1.12.1.1 Identification of the allegations potentially constituting Title IX Sexual Harassment as defined in this policy.

1.12.1.2 A description of the procedural steps taken from the receipt of the formal complaint through the determination including any notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held.

1.12.1.3 Findings of fact supporting the determination.

1.12.1.4 Conclusions regarding the application of University policy to the facts.

1.12.1.5 A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, and disciplinary sanctions the University imposes on the respondent, and whether the University shall provide remedies designed to restore and preserve equal access to the University’s education program and activity to the complainant.

1.12.1.6 The University’s procedures and permissible bases for the complainant and respondent to appeal.

1.12.2 The chair shall provide the written determination to the Office of Equal Opportunity, the responsible administrator, the parties and the parties’ advisors simultaneously.

1.12.3 The determination regarding responsibility and sanctions becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

2.0 APPEALS

2.1 Either party may appeal a decision regarding responsibility or from the dismissal of any portion of a formal complaint. A party may appeal for any of the following reasons:

2.1.1 A procedural irregularity that affected the outcome of the hearing.

2.1.2 New evidence that was not reasonably available at the time of the decision or dismissal.

2.1.3 The Executive Director, the investigator, the Title IX hearing officer, or a member of the hearing committee had a conflict of interest or bias that affected the outcome.

2.2 The appeal must be made to the following appeal decision-maker within ten calendar days after the body issues the decision:

2.2.1 Where the respondent is a faculty or staff member, the appeal must be directed in writing to the president.

2.2.2 Where the respondent is a student, the appeal must be directed in writing to the University Due Process officer.

2.3 Upon receiving an appeal, the appeal decision-maker must notify the other party within five working days.

2.4 The appeal decision-maker must be free of conflict of interest or bias for or against complainants or respondents generally or individually. Appeal decision-makers must be trained in accordance with PPM 3-32, Section 13.0.

2.5 The parties may submit a written statement to the appeal decision-maker supporting or challenging the decision of the hearing committee. The appeal decision-maker must receive any written statements within five calendar days of the appeal decision-maker sending the notice to the parties.

2.6 The appeal decision-maker will review all reports, evidence, recordings, and the written statements, and make a decision.

2.7 The appeal decision-maker’s written report may:

2.7.1 affirm the hearing committee’s decision;

2.7.2 offer a substitute action consistent with the applicable sanctioning policy provided the hearing committee is agreeable;

2.7.3 recommend reconsideration by the hearing committee; or

2.7.4 remand the decision to the hearing committee for a specific purpose; and

2.7.5 not alter a recommendation that no disciplinary action should be imposed.

2.8 The appeal decision-maker will simultaneously issue a report to both parties, the responsible administrator, and the Executive Director detailing the decision and the rationale for the decision. The appeal decision-maker’s decision is final, except in cases of tenured faculty, where the decision of the president is made in consultation with the Board of Trustees, consistent with University policy.

Failure to comply with the strict language herein does not negate decisions made, unless departure is prejudicial to the outcome.