



## UTAH VALLEY UNIVERSITY Policies and Procedures

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|---------------------------|---|-----------------------|---------------|
| <b>POLICY TITLE</b>       | <b>Complaints under the Utah Protection of Public Employees Act (TEMPORARY EMERGENCY)</b> | <b>Policy Number</b>  | 168           |
| <b>Section</b>            | Governance, Organization, and General Information   | <b>Approval Date</b>  | June 25, 2020 |
| <b>Subsection</b>         | Individual Rights   | <b>Effective Date</b> | June 25, 2020 |
| <b>Responsible Office</b> | Office of the Vice President of Planning, Budget, and Human Resources                     |                       |               |

### 1.0 PURPOSE

**1.1** The purpose of this policy is to establish an independent personnel board and related procedures by which the University implements the *Utah Protection of Public Employees Act* for review of certain types of retaliation complaints from university employees.

### 2.0 REFERENCES

**2.1** Utah Code Ann. § 67-21-1 et seq. *Utah Protection of Public Employees Act*

### 3.0 DEFINITIONS

**3.1 Abuse of authority:** An arbitrary or capricious exercise of power that: (1) adversely affects the employment rights of another; or (2) results in personal gain to the person exercising the authority or to another person.

**3.2 Adverse action:** To discharge, threaten, or discriminate against an employee in a manner that affects the employee’s employment, including compensation, terms, conditions, location, rights, immunities, promotions, or privileges.

**3.3 Communicate:** A verbal, written, broadcast, or other communicated report.

**3.4 Complainant:** An employee who alleges that they have experienced adverse action in violation of this policy.

**3.5 Employee:** A person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied. This includes faculty, staff, full-time, part-time, and student employees.

**3.6 Failure to promote:** To fail to promote the employee if the employee would have otherwise been promoted.



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**3.7 Gross mismanagement:** Action or failure to act by a person, with respect to a person's responsibility, that causes significant harm or risk of harm to the mission of the public entity or public body that employs, or is managed or controlled by, the person.

**3.8 Respondent:** An individual against whom an alleged complaint of adverse action in violation of this policy has been made.

**3.9 Substantial evidence:** Substantial evidence is such relevant evidence as a reasonable person might accept as adequate to support a conclusion.

**3.10 Unethical conduct:** Conduct that violates a provision of Title 67, Chapter 16, *Utah Public Officers' and Employees' Ethics Act*.

### 4.0 POLICY

#### 4.1 Policy Statement

**4.1.1** Utah Valley complies with the *Utah Protection of Public Employees Act* and provides procedures to review complaints of retaliation made by university employees who acted in good faith in the course of their duties.

#### 4.2 Scope of this Policy

**4.2.1** This policy applies to Utah Valley University employees, including faculty, staff, full-time, part-time, and student employees.

#### 4.3 Adverse Action Against Employees Prohibited

**4.3.1** An employee may not have an adverse action taken against them because the employee, or a person authorized to act on behalf of the employee, communicates in good faith:

**4.3.1.1** The waste or misuse of public funds, property, or workforce;

**4.3.1.2** A violation or suspected violation of a law, rule, or regulation adopted under the law of Utah, a political subdivision of Utah, or any recognized entity of the United States;

**4.3.1.3** Gross mismanagement;

**4.3.1.4** Abuse of authority; or

**4.3.1.5** Unethical conduct.



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**4.3.2** For purposes of section 4.3, an employee is presumed to have communicated in good faith if the employee gives written notice or otherwise formally communicates the conduct described in section 4.3 to:

**4.3.2.1** A person in authority over the person alleged to have engaged in the conduct described in section 4.3;

**4.3.2.2** The attorney general's office;

**4.3.2.3** Law enforcement, if the conduct is criminal in nature;

**4.3.2.4** The Utah Board of Higher Education or a member of the Utah Board of Higher Education;

**4.3.2.5** The commissioner of higher education;

**4.3.2.6** The President of UVU; or

**4.3.2.7** UVU's Internal Audit Department.

**4.3.3** The presumption described in section 4.3.2 may be rebutted by showing that the employee knew or reasonably ought to have known that the report is malicious, false, or frivolous.

**4.3.4** An employee may not have an adverse action taken against them because the employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review held by UVU.

**4.3.5** An employee may not have an adverse action taken against them because the employee has objected to or refused to carry out a directive that the employee reasonably believes violates federal, state, or local law.

**4.3.6** No UVU employee may implement rules or policies that unreasonably restrict another employee's ability to document:

**4.3.6.1** The waste or misuse of public funds, property, or workforce;

**4.3.6.2** A violation or suspected violation of any law, rule, or regulation;

**4.3.6.3** Gross mismanagement;

**4.3.6.4** Abuse of authority; or

**4.3.6.5** Unethical conduct.



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### 5.0 PROCEDURES

#### 5.1 Filing a Complaint under this Policy

**5.1.1** A complaint alleging a violation of section 4.3 of this policy must be filed in writing with the Associate Vice President for Human Resources (AVPHR) within 45 calendar days after the occurrence of an adverse action prohibited by this policy.

**5.1.2** A complaint filed under this policy should include specific information relevant to the concern, including the time, method, and nature of any underlying reports or activities protected by this policy; the time and nature of any adverse action(s); any individual(s) involved and/or responsible; and desired remedy.

#### 5.2 Appointing an Independent Personnel Board

**5.2.1** The AVPHR or their designee shall endeavor to appoint an independent personnel board within three working days of receiving the complaint.

**5.2.2** The independent personnel board shall not include any individual who:

**5.2.2.1** Is in the same department as the complainant;

**5.2.2.2** Is a supervisor of the complainant; or

**5.2.2.3** Has a conflict of interest in relation to the complainant or an allegation made in the complaint.

**5.2.3** The AVPHR or their designee shall convene a three- or five-person independent personnel board either from the Policy 162/165 review panel pools, from staff nominees provided by the PACE President, or from faculty nominees provided by the Faculty Senate President. A majority of the board shall be faculty members if the complainant is a member of faculty, and staff members if the complainant is a member of staff.

**5.2.4** The AVPHR or their designee will inform the parties (the complainant and the respondent) of the chosen board members and give each party the option to provide any objections to the board members based on bias or conflict of interest within three working days. Consulting with the Office of General Counsel, the AVPHR or their designee will review and decide on any conflict of interest or bias objections raised by the parties.

**5.2.5** The AVPHR or their designee shall arrange for the independent personnel board members to attend a training on these procedures provided by the Office of General Counsel.

**5.2.6** The Office of General Counsel will appoint an impartial attorney from outside the Office of General Counsel to preside over the complaint hearing as hearing officer. This attorney must



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have no prior involvement in either advocacy or investigatory matters related to the complaint. The hearing officer will ensure order, fairness, due process, efficiency, and civility at the hearing, and ensure a relevant and sufficient evidentiary record for the board's consideration. To advance this aim, the hearing officer may set time limits proportionate to the complexity of the case; exclude irrelevant and unduly repetitious exhibits, witnesses, questions, statements, or other information; and exclude material deemed privileged under the law. The Federal and Utah Rules of Evidence do not apply.

### **5.3 Pre-Hearing Matters**

**5.3.1** An independent personnel board that receives a complaint under this policy shall hear the matter, resolve the complaint, and take action under section 5.5 within the later of:

**5.3.1.1** Thirty calendar days after the day on which the complainant files the complaint; or

**5.3.1.2** A longer period of time, not to exceed 30 additional calendar days, if the complainant and the independent personnel board mutually agree on the longer time period.

**5.3.2** The hearing officer may conduct a pre-hearing conference to formulate or simplify the issues; obtain admissions of fact and documents that will avoid unnecessary proof; arrange for the exchange of proposed exhibits; outline expectations for the hearing; or agree to other matters that may expedite the orderly conduct of the hearing.

**5.3.3** The independent personnel board shall consult with the hearing officer during the complaint process about legal, procedural, policy, and other questions as needed. The hearing officer, in consultation with the board, will review and respond to any pre-hearing questions or objections from the parties related to hearing matters.

**5.3.4** The AVPHR or their designee will provide to the parties, board members, and hearing officer:

**5.3.4.1** The written request for hearing by the complainant,

**5.3.4.2** The respondent's written responses (if any), and

**5.3.4.3** Material documents related to the decision(s) being challenged.

**5.3.5** If the materially relevant documents include confidential information, the documents may be provided via a secure cloud-based storage system where documents may be viewed but not printed. The AVPHR or their designee may ask parties and participants in the complaint process to sign a confidentiality agreement before giving them access to the documents.

**5.3.6** At least seven calendar days before the hearing date, the complainant and the respondent shall provide the other party, board members, and hearing officer the following materials:



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**5.3.6.1** A *Statement Document* of no more than five pages that addresses the complainant's issues, concerns, and proposed remedy framed in terms of the scope of the complaint. The *Statement Document(s)* shall be provided in electronic format.

**5.3.6.2** A complete list of all proposed witnesses that each party will call to testify (in person or via two-way video communication) at the hearing and a brief description of the testimony and/or information such witnesses may provide. The witness list shall be provided in an electronic format.

**5.3.6.3** Copies of all documents, exhibits, reports, and any other information (collectively referred to hereinafter as "exhibits") in support of the parties' respective positions on the issues and proposed solution. All exhibits shall be provided in an electronic format to the extent possible; the parties may also submit the documents in hard copy in binders.

**5.3.6.4** Notice of whether the complainant will bring a support person to the hearing, the email address and phone number of the support person, and whether the support person is an attorney. UVU employees who have a conflict of interest may not serve as support persons.

### **5.4 Conducting a Hearing**

**5.4.1** At the hearing, the respondent bears the burden of proof to establish by substantial evidence that their action was justified by reasons unrelated to the employee's good faith actions under section 4.3 of this policy.

**5.4.2** Parties and witnesses must appear in person or remotely via two-way videoconferencing at the hearing. Written statements may not be considered in the decision unless the party/witness appears at the hearing and agrees to answer questions about their statements.

**5.4.3** If the complainant fails to appear at the hearing at the specified time and place without good cause, the complaint will be deemed abandoned and therefore closed. In the event the respondent fails to appear at the hearing at the specified time and place without good cause, the complaint will still be heard by the independent personnel board.

**5.4.4** The hearing officer is charged with conducting the hearing in a thorough, fair, equitable, and impartial manner; the board is charged with addressing and deciding the matter in this manner, as well.

**5.4.5** While the hearing is a closed proceeding, the hearing (except for the board's deliberations) will be recorded by the AVPHR or their designee. The proceedings of the hearing may be transcribed by the University.

**5.4.6** The hearing officer will conduct the hearing and will regulate the introduction of evidence for the board's consideration in accordance with section 5.2.6.



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**5.4.7** The hearing officer will open the hearing by naming the parties and shall state, in a neutral manner, the nature of the actions taken thus far in the complaint process. The hearing officer may also remind the board and parties of this policy and the procedures herein. All participants at the hearing should be identified at the beginning of the hearing.

**5.4.8** Each party has up to 120 minutes to present their portion of the case (testimony of the party and that party's witnesses and questioning of the other party's witnesses). The opening and closing statements and questioning by the hearing officer or board are not included in this 120-minute time limit. The hearing officer or designee will keep track of the amount of time each party takes to present their portion of the case. The hearing officer may extend the amount of time equitably to each of the parties if a party shows the need for such an extension.

**5.4.9** If the complainant has brought a support person, either the complainant or the support person should present the opening statement, testimony, and closing statement. For example, the complainant could present the opening statement, while the support person questions the witnesses and presents the closing statement, but the witnesses may not be questioned by both the complainant and the complainant's support person. A support person may not answer questions on behalf of a party. After issuing a warning, the hearing officer has authority to exclude from the hearing any party, support person, or other participant whose behavior the board finds unduly disruptive.

**5.4.10** The order of the hearing shall be as follows:

- 1) Opening statement by respondent
- 2) Opening statement by complainant
- 3) Testimony of respondent, including presentation of exhibits
- 4) Testimony of respondent's witnesses, including any exhibits
- 5) Testimony of complainant, including presentation of exhibits
- 6) Testimony of complainant's witnesses, including any exhibits
- 7) Closing statement by respondent
- 8) Closing statement by complainant

**5.4.11** The respondent's opening statement should briefly summarize their response to the complainant's concerns and requested remedy. The complainant's opening statement should briefly summarize the nature of the complaint and requested remedy. There should be no cross examination during the opening statements. In most cases, a five-minute opening statement will suffice, though the hearing officer may adjust as appropriate.

**5.4.12** Each party may testify and offer relevant evidence (i.e., exhibits) to all parties and board members in support of their positions. At any time, the independent personnel board members



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may ask questions of either party. At the end of a party's testimony, the other party shall have the opportunity to ask any questions regarding the testimony and exhibits, limited to the scope of testimony provided by the party.

**5.4.13** In addition to their own testimony and submission of exhibits, each party may call witnesses, who shall not be allowed in the hearing room until called to testify. Each witness shall provide their own information and testimony to the board and may be questioned and cross-examined by the board at any time. At the end of each witness's testimony, the other party and board members shall have the opportunity to ask any questions of the witness regarding the witness's testimony, limited to the scope of testimony provided by the witness.

**5.4.14** At the conclusion of a party's presentation, the hearing officer will call for any final questions from the other party or board member regarding the presentation.

**5.4.15** The closing statements of both parties should summarize their positions and set forth proposed remedies. In most cases, a 15-minute closing statement will suffice, though the hearing officer may adjust as appropriate.

### **5.5 Recommendation and Decision**

**5.5.1** The independent personnel board members are prohibited from discussing any matter related to the hearing with the parties, witnesses, and/or others (except the hearing officer) before or after the hearing. Violation of confidentiality may result in dismissal from the board and/or other corrective or disciplinary action. Parties, board members, hearing officers, support persons, and others who attend the hearing may be required to sign confidentiality acknowledgments before participating in the hearing process.

**5.5.2** Independent personnel board deliberations and voting shall occur in closed sessions from which all other persons (except the hearing officer) are excluded. Votes shall be cast by secret ballot. A majority vote by the members of the independent personnel board who attended the hearing shall be required for recommendations. The hearing officer shall be present during the deliberations but shall have no vote.

**5.5.3** At the conclusion of a hearing, the independent personnel board shall prepare a written report and recommendation concerning the complaint. The independent personnel board shall submit the report and recommendation to a final decision-maker, who shall be the vice president of the division in which the complainant is employed. If the relevant vice president has a conflict of interest, the final decision-maker shall be the University President.

**5.5.4** The independent personnel board shall determine whether the respondent established by substantial evidence that the respondent's action was justified by reasons unrelated to the complainant's good faith actions under section 4.3.





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**5.5.5** If the independent personnel board finds that adverse action is taken in violation of section 4.3, the independent personnel board may recommend to the final decision-maker:

**5.5.5.1** Reinstatement of the complainant at the same level as before the adverse action;

**5.5.5.2** The payment of back wages;

**5.5.5.3** Full reinstatement of fringe benefits;

**5.5.5.4** Full reinstatement of seniority rights; and/or

**5.5.5.5** If the adverse action includes failure to promote, a pay raise that results in the complainant receiving the pay that the complainant would have received if the complainant had been promoted.

**5.5.6** The final decision-maker shall render a decision and enter an order within seven calendar days after the day on which the final decision-maker receives the recommendation.

**5.5.7** The Office of General Counsel shall assign an attorney who did not serve as the hearing officer or previously advise the respondent on the complaint to provide legal counsel to the final decision-maker.

### **5.6 Notices**

**5.6.1** Human Resources shall post notices and use other appropriate means to keep employees informed of their protections and obligations under Utah Code § 67-21.

**5.6.2** Human Resources shall provide an employee with a copy of Utah Code § 67-21

**5.6.2.1** Upon hire;

**5.6.2.2** Upon request; and

**5.6.2.3** Upon filing a complaint under this policy.

| <b>POLICY HISTORY</b>      |   |                           |
|----------------------------|---|---------------------------|
| <b>Date of Last Action</b> | <b>Action Taken</b>                           | <b>Authorizing Entity</b> |
| June 25, 2020              | New policy approved as a temporary emergency. | UVU Board of Trustees     |