



**UTAH VALLEY UNIVERSITY**  
Policies and Procedures

<b>POLICY TITLE</b>	Discrimination, Harassment, and Affirmative Action	<b>Policy Number</b>	165
<b>Section</b>	Governance, Organization, and General Information	<b>Approval Date</b>	June 24, 2021
<b>Subsection</b>	Individual Rights	<b>Effective Date</b>	June 24, 2021
<b>Responsible Office</b>	Office of the Vice President of People and Culture		

**1.0 PURPOSE**

1.1 Utah Valley University is committed to maintaining a respectful and safe environment for its students, faculty, staff, and visitors. This policy defines and prohibits all forms of unlawful discrimination, harassment, and retaliation, with the exception for Title IX sex discrimination, sexual harassment, and retaliation, which is defined and prohibited by UVU Policy 162 *Title IX Sexual Harassment*. Procedures for handling reports and complaints related to Title IX sexual harassment are outlined separately and exclusively in UVU Policy 162 *Title IX Sexual Harassment*. This policy establishes expectations for university community members and campus visitors; details how to report a violation of this policy; and outlines investigation, disciplinary, and due process procedures for addressing reported violations of this policy.

**2.0 REFERENCES**

- 2.1 *Americans with Disabilities Act of 1990*, 42 U.S.C. § 12101 (1990) (as amended by Pub. L. No. 101-336, 104 stat. 327)
- 2.2 Title VII of the *Civil Rights Act of 1964* (Title VII), 42 U.S.C. § 2000e (1964)
- 2.3 Title IV of the *Higher Education Amendments Act of 1972* (Title IV) 20 U.S.C. § 1681 (1972)
- 2.4 Title VI of the *Higher Education Amendments Act of 1972* (Title VI) 20 U.S.C. § 1681 (1972)
- 2.5 *Rehabilitation Act of 1973*, 29 U.S.C. § 504 (1973)
- 2.6 *Government Records Access and Management Act (GRAMA)*, Utah Code § 63G-2-101 (2008)
- 2.7 Utah Board of Higher Education Policy R254 *Secure Area Hearing Rooms*
- 2.8 Utah Board of Higher Education Policy R256 *Student Disciplinary Processes*



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**2.9** Utah Board of Higher Education Policy R842 *Restrictions on Faculty/Staff Relationships with Students*

**2.10** UVU Policy 161 *Freedom of Speech*

**2.11** UVU Policy 162 *Title IX Sexual Harassment*

**2.12** UVU Policy 168 *Whistleblower Anti-Retaliation*

**2.13** UVU Policy 361 *Leave of Absence*

**2.14** UVU Policy 541 *Student Code of Conduct*

**2.15** UVU Policy 601 *Classroom Instruction and Management*

### 3.0 DEFINITIONS

**3.1 Complainant, victim, or alleged victim:** For the purposes of this policy, an individual who has allegedly experienced protected-class discrimination, harassment, or retaliation in violation of university policy. The University may also be a complainant. Use of these terms does not imply that a finding of protected-class discrimination, harassment, or retaliation is assumed or made before an investigation has been completed.

**3.2 Discrimination:** For purposes of this policy, treating someone differently on the basis of their inclusion (or perceived inclusion) in one or more protected classes when (1) that conduct adversely affects a term or condition of employment (e.g., compensation, benefits, duties, position classification, etc.), education, or participation in a UVU program, activity, or service; or (2) a person's membership in a protected class serves as the basis or motivating factor in a decision adversely affecting the terms or conditions of employment, education, or participation in a UVU program, activity, or service.

**3.3 EO/AA Director:** Director of Equal Opportunity and Affirmative Action.

**3.4 Formal complaint:** A document submitted by a complainant (or, in certain circumstances, initiated by the EO/AA Director) alleging protected-class discrimination, harassment, or retaliation against a respondent and requesting that the University investigate the allegation. This document may be a physical document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

**3.5 Good faith:** An honest belief and purpose; absence of fraudulent or deceptive intent.



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**3.6 Harassment:** Any unwelcome verbal, physical, written, electronic, or non-verbal conduct (whether directly, indirectly, or through a third party) based on that person's inclusion in one or more protected classes that is sufficiently severe, persistent, or pervasive to alter the conditions of employment of an employee or to limit, interfere with, or deny educational benefits or opportunities of a student, from both a subjective and objective viewpoint based on a totality of the circumstances. The circumstances establishing potential harassment may include the frequency and severity of the conduct, whether the conduct was physically threatening or humiliating, the effect of the conduct on the individual's mental or emotional state, whether the conduct was directed at more than one person, whether the conduct arose in the context of other discriminatory conduct, and whether the speech or conduct deserves the protections of academic freedom or the First Amendment.

**3.6.1** Consistent with Utah Code section 53B-27-4, this policy does not cover student-on-student nonphysical harassment on the basis of sex. Such harassment is covered exclusively by Policy 162 *Title IX Sexual Harassment*.

**3.7 OEO/AA:** UVU's Office for Equal Opportunity and Affirmative Action.

**3.8 Party:** Complainant or respondent.

**3.9 Preponderance of the evidence:** The evidentiary standard used during a discrimination, harassment, retaliation investigation/review to determine if the allegations occurred and if a university policy violation has occurred. Preponderance of evidence means it is more likely than not, or more than 50 percent in favor, that the alleged policy violation occurred.

**3.10 Protected activity:** Opposing or reporting any violation of this policy, or participating in any manner in an investigation, hearing, or any proceeding under this policy.

**3.11 Protected classes:** Race, color, religion, national origin, sex, sexual orientation, gender identity, gender expression, age (40 and over), disability, veteran status, pregnancy, childbirth, or pregnancy-related conditions, genetic information, or other bases protected by applicable law.

**3.12 Respondent:** For the purposes of this policy, the individual against whom an alleged complaint of protected-class discrimination, harassment, or retaliation in violation of university policy has been made. Use of these terms does not imply that a finding of protected-class discrimination, harassment, or retaliation is assumed or made before an investigation has been completed.

**3.13 Retaliation:** For the purposes of this policy, 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 (1) it has a materially adverse effect on the working, academic, or other university-related environment of an individual; and (2) it would not have occurred in the absence of (but for) the protected activity. Examples of protected activities include reporting



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(internally or externally) a complaint of protected-class discrimination or 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 protected-class discrimination or harassment.

**3.14 Sexual conduct:** As defined in Utah Board of Higher Education Policy R842 *Restrictions on Faculty/Staff Relationships with Students*, any sexual relationship or the sharing of any sexually explicit or lewd communication, image, or photograph. Sharing sexually explicit or lewd communication, image, or photograph does not include any communication, image, or photograph that a faculty member shares with students as part of a legitimate academic exercise.

**3.15 Sincerely held religious beliefs and practices:** Sincerely held religious beliefs and practices include not only traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, and Buddhism, but also religious beliefs that are new, uncommon, not part of a formal church or sect, or only subscribed to by a small number of people. Religious beliefs include theistic beliefs (i.e., those that include a belief in God) as well as non-theistic moral or ethical beliefs as to what is right and wrong that are sincerely held with the strength of traditional religious views. Beliefs are not “sincerely held religious beliefs” merely because they are strongly held. Rather, religious beliefs typically concern “ultimate ideas” about life, purpose, and death. Social, political, or economic philosophies, as well as mere personal preferences, are not “religious” beliefs. Religious practices include, for example, attending worship services, praying, wearing religious garb or symbols, displaying religious objects, adhering to certain dietary rules, proselytizing, or other forms of religious expression, or refraining from certain activities. Whether a practice is religious depends on the individual’s motivation. The same practice might be engaged in by one person for religious reasons and by another person for purely secular reasons (e.g., dietary restrictions, tattoos, etc.). Social, political, or economic philosophies, or personal preferences, are not “religious” beliefs.

**3.16 Supportive measures:** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge, to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to UVU’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University’s educational environment, or deter harassment. Supportive measures may include counseling; extensions of deadlines or other course-related adjustments; modifications of work or class schedules; campus escort services; mutual restrictions on contact between the parties; changes in work or housing locations; leaves of absence; increased security and monitoring of certain areas of the campus; and other similar measures.



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#### 4.0 POLICY

##### 4.1 Scope of Policy

**4.1.1** This policy applies to all persons employed by or affiliated with Utah Valley University in any way and persons participating in any university program or activity, including but not limited to trustees, administrators, faculty, staff, students, independent contractors, volunteers, and guests or visitors (sometimes referred to as “third parties”) to a university campus or any property owned or leased by the University.

##### 4.2 Policy Statement

**4.2.1** The University prohibits all forms of protected-class discrimination, harassment, and retaliation that violate Title VII of the *Civil Rights Act of 1964* (Title VII), Title IV of the *Higher Education Amendments Act of 1972* (Title IV), Title VI of the *Higher Education Amendments Act of 1972* (Title VI), or related applicable laws. The University shall respond promptly and effectively to reports of protected-class discrimination, harassment, and retaliation and shall take appropriate action to stop and prevent the recurrence of such conduct on the complainant and/or the university community.

**4.2.2** The University affirmatively endeavors to provide equal opportunity consistent with applicable law in all recruitment, admissions, and employment-related activities, procedures, and decisions. Administrators, faculty, staff, or students exercising recruitment, admissions, or employment-related management responsibilities are required to take vigorous and appropriate action to ensure that all university practices and decisions for which they are responsible are made without prohibited discrimination, harassment, or retaliation.

**4.2.3** All employment-related practices and decisions shall be instituted and administered in a fair and equitable manner, using only legally valid, job-related criteria and standards, including but not limited to experience, training, education, skills, and potential for successful job performance.

**4.2.4** The University endeavors to provide reasonable accommodations and to ensure equal access to qualified university job applicants, employees, or students with disabilities, to those with sincerely held religious beliefs, and to those who are pregnant or who have pregnancy-related conditions, who are requesting accommodations, unless doing so would create an undue hardship on the University and/or compromise legitimate academic or technical standards, course objectives, or educational goals. The University also complies with applicable law in providing military leave and other exceptions to qualifying employees and students.

**4.2.5** Nothing in the policy shall be construed in a manner that impinges on the rights or privileges of individuals protected by the U.S. Constitution, including their protected free speech rights, as set forth in UVU Policy 161 *Freedom of Speech*.



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**4.2.6** Nothing in this policy shall be interpreted to alter the status of employees who are otherwise at will.

### **4.3 Relationship to Policy 162 and Other Policies**

**4.3.1** Policy 162 *Title IX Sexual Harassment* defines and prohibits sex discrimination, sexual harassment, and retaliation, which relate to this policy in the following ways:

**4.3.1.1** *Sex discrimination*—Complaints of sex discrimination (other than sexual harassment as defined by Policy 162 *Title IX Sexual Harassment*) will be handled in accordance with the procedures outlined in this policy.

**4.3.1.2** *Sexual harassment*—Complaints of sexual harassment as defined in Policy 162 *Title IX Sexual Harassment* will be handled in accordance with and exclusively governed by the procedures outlined in Policy 162. When, in the Title IX Coordinator's judgment, allegations of sexual harassment may also constitute sex-based harassment as defined in this policy, the complaint will be handled in accordance with the procedures in Policy 162.

**4.3.1.3** *Retaliation*—Complaints of retaliation, as described in Policy 162 *Title IX Sexual Harassment* or Policy 168 *Whistleblower Anti-Retaliation*, will be handled in accordance with the procedures in this policy.

**4.3.2** With the exception of sexual harassment as defined in Policy 162, to the extent that any other university policies address protected-class discrimination, harassment, or retaliation, this policy and its procedures govern.

**4.3.3** The President of the University, or designee, shall appoint a Director of Equal Opportunity and Affirmative Action (EO/AA Director). The EO/AA Director oversees the Office for Equal Opportunity and Affirmative Action (OEO/AA) and also serves as the Title IX Coordinator to provide training and education about discrimination and harassment to the university community. The EO/AA Director or designee is responsible for overseeing the receipt and investigation of reports and complaints of discrimination, harassment, and retaliation in accordance with this policy and applicable laws.

### **4.4 Prohibited Conduct**

**4.4.1** Violations of this policy include acts of protected-class discrimination, harassment, and retaliation within the meaning of Title VII of the *Civil Rights Act of 1964*, Title IV and Title VI of the *Higher Education Amendments Act of 1972*, and related applicable laws.

**4.4.2** The University shall respond promptly and effectively to reports of protected-class discrimination, harassment, and retaliation and shall take appropriate action to stop and prevent the recurrence of such conduct on the complainant and/or the university community.



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**4.4.3** The University shall take steps to prevent retaliation and shall take strong, responsive action to threats or acts of retaliation.

**4.4.4** The University may discipline any person who is found to have violated this policy, up to and including termination of employment and/or expulsion from the University.

#### **4.5 Sexual Conduct with Subordinate Employees or Students**

**4.5.1** UVU prohibits employees from engaging in sexual conduct with subordinate employees or subordinate students amid the potential for the abuse of power. Reports of such conduct will be handled in accordance with the procedures under this policy.

**4.5.2** A subordinate student is an applicant for admission or currently enrolled student whose access to education programs and activities could be impacted or influenced by the employee.

#### **4.6 Training**

**4.6.1** The University trains the EO/AA Director, investigators, hearing panelists, and any person who facilitates an informal resolution process on the relevant policy definitions, how to conduct the procedures outlined in this policy (including live hearings, appeals, and informal resolution processes), and how to serve impartially (including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias).

**4.6.2** The University trains hearing panelists on evidentiary standards, hearing procedures, and how to determine issues of relevance for questions and evidence.

**4.6.3** The University trains investigators on issues of relevance and bias to ensure investigative reports fairly summarize relevant evidence.

**4.6.4** The University ensures that training materials do not rely on sex, race, religious, or other stereotypes and will promote impartial investigations and resolutions.

#### **4.7 Fair Investigations and Proceedings**

**4.7.1** The University shall provide prompt, fair, and impartial investigations and disciplinary proceedings. During these proceedings, both the complainant and the respondent shall be provided equitable rights, opportunities, and supports, as outlined in these procedures.

### **5.0 PROCEDURES**

#### **Scope and Applicability of Procedures**

**5.1.1** All complaints of protected-class discrimination, retaliation, and harassment (other than Title IX sexual harassment, which is addressed separately in Policy 162 *Title IX Sexual*



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*Harassment*) are subject to the procedures in this policy. Unless the alleged misconduct also violates additional university policies, other university policies and procedures do not apply to protected-class discrimination, harassment, and retaliation reports, processes, and proceedings. All reported misconduct not involving protected-class discrimination, harassment, and retaliation shall be addressed through the procedures outlined in other university policies.

**5.1.2** Reports of protected-class discrimination, harassment, or retaliation made after the fact are governed by the policy in place at the time of the alleged misconduct.

### **General Principles**

**5.1.3** Complainants, respondents, and witnesses shall be treated equitably and with respect throughout the proceedings.

**5.1.4** The University will evaluate all relevant evidence objectively and determine credibility without respect to a person's status as complainant, respondent, or witness.

**5.1.5** Respondents, complainants, and witnesses shall not knowingly make materially false allegations or statements or knowingly submit materially false information. However, a determination regarding responsibility alone is not sufficient to conclude that any individual proffered a material falsehood.

**5.1.6** Complainants, respondents, and other participants may at any time request accommodations under the *Americans with Disabilities Act (ADA)* through the EO/AA Director, who will refer the request to the appropriate ADA coordinator and then implement approved accommodations.

**5.1.7** The University may proceed with the investigation and review hearing processes in a timely manner without the complainant or respondent if that party fails to respond or declines to participate.

### **Requesting Accommodations**

**5.1.8** Requests for disability accommodations will proceed according to UVU Policy 152 *Accommodations for Individuals with Disabilities*.

**5.1.9** Requests for leave related to military service will proceed according to UVU Policy 361 *Leave of Absence*.

**5.1.10** Student requests for religious accommodations will proceed according to Policy 601 *Classroom Instruction and Management*. Employee requests for religious accommodations should be directed to the Accommodations Coordinator in Human Resources. The University must accommodate sincerely held religious beliefs or practices unless the accommodation would impose an undue hardship (more than a minimal burden on university operations). Supervisors





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who receive religious accommodation requests from their employees must promptly report such requests to Accommodations Coordinator in Human Resources, who shall manage the accommodations process with the employee.

**5.1.11** Student requests for accommodations due to pregnancy, childbirth, or pregnancy-related conditions should be directed to the Office of Accessibility Services. Employee requests for accommodations due to pregnancy, childbirth, or pregnancy-related conditions should be directed to the Accommodations Coordinator in Human Resources. Supervisors who receive such accommodation requests from their employees must promptly report such requests to the Accommodations Coordinator in Human Resources.

### **Affirmative Action Program**

**5.1.12** The EO/AA Director has the responsibility to write, implement, monitor, and update the University's affirmative action program in compliance with law and shall provide an annual program report of these activities.

### **Reporting**

#### **5.1.13 How to Report**

**5.1.13.1** Any person may report protected-class discrimination, harassment, or retaliation (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute protected-class discrimination, harassment, or retaliation) to the OEO/AA using any of the following methods:

- 1) In person at Browning Administration Building, Suite 203, 800 W. University Parkway, Orem, UT 84058 (M–F, 8 a.m. to 5 p.m.);
- 2) By mail Utah Valley University, MS 272, 800 W. University Parkway, Orem, UT 84058 (anytime);
- 3) By telephone at 801-863-7999 (anytime);
- 4) By e-mail at [TitleIX@uvu.edu](mailto:TitleIX@uvu.edu) (anytime);
- 5) Online, anonymously or self-identified, at [www.uvu.edu/equalopportunity](http://www.uvu.edu/equalopportunity) (anytime); or
- 6) By any other means that results in the EO/AA Director receiving the person's oral or written report.

#### **5.1.14 Who Must Report**

**5.1.14.1** Employees who receive a complaint of any type of protected-class discrimination, harassment, or retaliation, or who otherwise witness or become aware of such conduct, must



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promptly report such issues to the OEO/AA within 24 hours of the incident or learning of the incident using any of the contact methods listed above in section 5.5.1.

#### 5.1.15 Who Must Not Report

**5.1.15.1** Licensed mental health counselors, clergy, and medical professionals working within the scope of their license generally may not report incidents except with written consent from the client or patient, or in instances of imminent danger, or when the victim is a minor or vulnerable adult, or otherwise required by law.

#### 5.2 Confidentiality

**5.2.1** University employees participating in any capacity other than as complainant or respondent in the process described in this policy must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the University's ability to provide the supportive measures.

**5.2.2** University employees participating in any capacity other than as complainant or respondent in the process described in this policy must keep confidential (1) the identity of any individual who has made a report or complaint of a violation of this policy; (2) any complainant; (3) any individual who has been reported to be the perpetrator of a violation of this policy; (4) any respondent; (5) and any witness; except as may be permitted by the federal *Family Educational Rights and Privacy Act (FERPA)*; or as required by the *Utah Government Records and Management Act (GRAMA)*, the federal *Health Information Portability and Accountability Act (HIPAA)*, or other law; or on a need-to-know basis to carry out the purposes of federal civil rights laws or university operations.

**5.2.3** All records created or maintained pursuant to the process described in this policy are classified as protected under *GRAMA*.

**5.2.4** The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. However,

1) Retaliation is prohibited. Attempts to alter or prevent a witness's or party's testimony are forms of prohibited retaliation and potentially criminal conduct under Utah Code section 76-8-508.

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

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.



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### **Support Person/Advisor**

**5.2.5** Each party may choose to be accompanied by an advisor (who may be, but is not required to be, an attorney) to any related meeting or proceeding. During the investigation, the advisor may not disrupt meetings or other proceedings or communicate on behalf of the party. The advisor is limited to listening and quietly conferring with the party. If an advisor is disruptive even after warning, the investigator may exclude the advisor from the meeting or reschedule the meeting. In cases of extreme or repeated disruptions, an advisor may be excluded for the duration of the investigation and hearing and the party may choose an alternate advisor. During hearings, an advisor may exercise a more active role, as described in the procedures below.

**5.2.5.1** Before initially interviewing a respondent, the investigator or representative of the OEO/AA shall notify the respondent of the allegations against them and of their option to have a support person/advisor throughout the process. This notice may be verbal and may be given immediately before the interview. If a respondent wishes to seek counsel from a support person/advisor, the University shall reschedule the interview, giving the respondent reasonable time to obtain a support person/advisor.

**5.2.6** The University may set reasonable deadlines and move forward with processes regardless of whether a party and/or a party's support person/advisor is able to accommodate those deadlines.

**5.2.7** An individual may not serve as a support person/advisor if they are a minor or have a conflict of interest. For purposes of this policy, conflicted individuals include those who are potential witnesses to the events underlying the complaint; subordinate employees or students; supervising employees; or anyone participating in the proceedings in a decision-making or investigative capacity. Parties are cautioned against choosing as a support person/advisor a spouse, parent, or other individual with whom the party would feel reluctant to discuss embarrassing or sensitive matters.

**5.2.8** Support persons/advisors must be willing to agree to maintain confidentiality throughout the investigation and hearing processes.

### **Preliminary Review of Reports**

#### **5.2.9 Response to Reports**

**5.2.9.1** Upon receiving a report of discrimination, harassment, or retaliation, the EO/AA Director or designee shall promptly contact the complainant to (1) discuss the availability of supportive measures; (2) consider the complainant's wishes with respect to supportive measures; (3) inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and (4) explain the appropriate processes for formal complaints.



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### 5.2.10 Clery Reporting

**5.2.10.1** The EO/AA Director or designee shall assess the reported conduct for any Clery obligations in coordination with appropriate personnel, including issuance of a timely warning and reports to campus or local law enforcement when necessary.

### 5.2.11 Safety Removal

**5.2.11.1** The Dean of Students may remove a student respondent from all or part of the University's education programs or activities on an emergency, nondisciplinary basis, provided that the UVU Behavior Assessment Team (1) undertakes an individualized safety and risk analysis; (2) determines an immediate threat to the physical health or safety of any student, employee, or other individual arising from the allegations of sexual harassment justifies removal; and (3) provides the respondent with notice and an opportunity to challenge the determination immediately following the removal.

**5.2.11.2** A supervising executive (such as the President, Provost, Vice President, Dean, or Associate Vice President over the employee's primary university division), in consultation with Human Resources and the Office of General Counsel, may place an employee on nondisciplinary leave or establish restrictions on workplace locations or duties to mitigate identified risks. The restrictions on workplace locations and duties must be as limited in scope (particular buildings, offices, or contact from specific persons) as practicable to sufficiently mitigate the identified risks. Any decision to put an employee on leave or impose restrictions shall be based on an individualized determination in consideration of the best available evidence that the employee (1) poses a credible, substantial risk of harm to individuals within the University or to the university community as a whole; or (2) poses a credible, substantial risk of impeding the lawful activities, the educational processes, or the proper activities or functions of other members of the university community.

### 5.2.12 Dismissal of the Complaint

**5.2.12.1** The EO/AA Director may, at any time, dismiss a report or formal complaint or otherwise decline to informally resolve or start or continue an investigation, if

- 1) The alleged conduct would not constitute a policy violation even if proved;
- 2) The alleged conduct is so implausible or unsupported by fact as to lack reasonable cause to believe a policy violation occurred;
- 3) The alleged conduct did not occur in the University's education programs, activities, or workplace, or does not have discriminatory effects in the University's programs, activities, or workplace;



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- 4) A complainant notifies the EO/AA Director or designee in writing that the complainant wants to withdraw their formal complaint or any allegations therein, or otherwise declines to participate;
- 5) The respondent is no longer enrolled at or employed by the University;
- 6) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to responsibility for the alleged conduct; or
- 7) A report or formal complaint is filed more than 365 calendar days after the last alleged policy violation.

**5.2.12.2** The EO/AA Director or designee shall promptly notify the parties in writing of any dismissal of formal complaints.

**5.2.12.3** Such dismissals are final; no further internal reviews, appeals, or grievances are available to the parties under this policy.

**Informal Resolution**

**5.2.13** Because each case is different, the EO/AA Director or designee shall tailor each resolution to the specific facts of the case, including determining whether reports of protected-class discrimination, harassment, or retaliation are appropriate for informal resolution, mediation, or require an investigation.

**5.2.14** Informal resolution is encouraged to resolve concerns at the earliest stage possible. Participation in the informal resolution process is voluntary; the University shall not compel either party to engage in informal resolution. Informal resolution may be appropriate for responding to anonymous and/or third-party reports, or when the allegations do not rise to the level of a policy violation. Informal resolution may be inappropriate when one or both of the parties are reluctant to participate in good faith.

**5.2.15** Informal resolution may include an inquiry into the facts but typically does not include an investigation. Informal resolution is flexible and includes options such as mediating an agreement between the parties, separating the parties, referring the parties to counseling programs, negotiating an agreement for disciplinary action, conducting targeted preventive educational and training programs, or providing remedies for the individual harmed by the offense. Informal resolution also includes options such as discussions with the parties, making recommendations for resolution, and conducting a follow-up review after a period of time to ensure that the resolution has resolved concerns effectively.

**5.2.16** After concluding informal resolution of a complaint, the EO/AA Director or designee shall notify the parties in writing of the resolution.



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**5.2.17** Participation in informal resolution does not prohibit either party from terminating informal resolution and/or requesting an investigation at any point during the informal resolution process. The determination about whether or not to proceed to formal investigation is at the discretion of the EO/AA Director based on the details of complaint. Where a report was closed after informal resolution, the matter may later be reopened at the discretion of the EO/AA Director or designee when requested by the complainant and/or if the EO/AA Director or designee determines there is good cause to do so.

### **Formal Investigation**

**5.2.18** If the EO/AA Director or designee determines an investigation is necessary, the OEO/AA shall conduct a thorough, reliable, and impartial internal administrative investigation by interviewing witnesses, collecting documentary evidence, and preparing a written report of findings. The purpose of the investigation is to determine whether a preponderance of the evidence supports each alleged violation of this policy. The University reserves the right to engage an outside investigator to conduct the investigation if it is determined there is a conflict of interest or other compelling reason to do so.

**5.2.19** The EO/AA Director shall assign the investigator(s), except in cases where the EO/AA Director or others involved in the investigation have a conflict of interest, in which case a neutral internal or external impartial investigator(s) may be selected to conduct the investigation.

**5.2.20** When proceeding to a formal investigation, the investigator shall ask the complainant to submit a formal complaint by providing written allegations, including a concise statement describing the incident, a request for investigation, and a proposed resolution.

**5.2.21** In cases where a complainant is anonymous or does not want to pursue an investigation, the EO/AA Director or designee shall inform the complainant that the University's ability to investigate and/or remediate may be limited. The EO/AA Director may initiate an investigation without formal request or complaint, if necessary, to ensure a safe and nondiscriminatory education and workplace. The EO/AA Director may consider a variety of factors, including a pattern of alleged misconduct by the particular respondent, in deciding whether to independently initiate an investigation.

### **5.2.22 Notice of Allegations**

**5.2.22.1** Upon a determination to proceed to formal investigation, the EO/AA Director or designee shall provide the following written notice to all known parties:

- 1) The University's procedures as outlined in this policy, including options for informal resolution.
- 2) The allegations potentially violating this policy (or UVU Policy 162 *Title IX Sexual Harassment* in the case of sex discrimination and retaliation), including sufficient details known



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at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the reported incident, if known; the conduct allegedly constituting a policy violation; and the date and location of the alleged incident, if known.

3) A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will not be made until the conclusion of process.

4) A notice that in accordance with section 5.7 of this policy, parties may have an advisor at related meetings, investigative interviews, and hearings.

5) A statement that knowingly making false statements or knowingly submitting false information is prohibited by this policy.

**5.2.22.2** The respondent may prepare and submit a responsive written statement to admit or deny the allegations, provide an explanation why any conduct was not a violation of the policy, provide corroborating evidence, list potential witnesses, and comment on the appropriateness of the complainant's proposed resolution.

**5.2.22.3** If, at any point during the investigation, the investigator determines a need to investigate allegations not included in the notice of allegations provided pursuant to this section, the EO/AA Director or designee must provide notice of the additional allegations to all known parties.

**5.2.22.4** At any point after receiving a report or formal complaint, or upon discovery during the investigation, the EO/AA Director may refer any potential violations of other policies to the appropriate office for resolution.

### **5.2.23 Investigation Standards**

1) Parties can expect respectful treatment and prompt and equitable resolution of allegations of prohibited protected-class discrimination, harassment, and retaliation.

2) The University will not restrict the ability of either party to discuss the allegations under investigation, to gather and present relevant evidence, or to seek support from trusted confidants, family, or mental health or legal professionals. However,

3) Parties and witnesses shall refrain from retaliating against any person for making a good faith report of protected-class discrimination, harassment, and retaliation or participating in any proceeding under this policy.

4) Parties will have reasonable options for supportive measures made available and be given the opportunity to request modifications necessary for safety. Interference with a supportive measure may be considered retaliation and a separate violation of this policy.



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- 5) Parties shall have reasonable time to prepare responses permitted under this policy and shall be given timely and equal access to allegations with the opportunity to respond to information that will be used in any disciplinary proceeding.
- 6) Parties shall have the opportunity to offer information, present evidence, and identify witnesses during an investigation.
- 7) Parties shall be given timely notice of meetings where their presence is necessary.
- 8) Parties and administrators with a need to know shall receive regular updates on the status of any proceedings.
- 9) Parties shall have the opportunity to articulate concerns or issues about proceedings under this policy. Any party who believes there is bias or conflict of interest may submit a written request to remove the person from the process to the EO/AA Director. The written request should include the specific rationale as to why the requestor believes the bias or conflict could materially impact the outcome.
- 10) Parties and witnesses are expected to cooperate with and participate in the University's investigation in good faith. If either party fails to participate in good faith, the investigator(s) may make findings without the response of that party.
- 11) The investigation shall be completed and the final investigation report provided to the sanctioning officials as promptly as possible. Though the University strives to resolve all cases in a prompt and timely manner, the timeline for a case may be affected by breaks in the academic calendar, availability of the parties and witnesses (including due to leaves of absence), scope of the investigation, need for supportive measures, and unforeseen or exigent circumstances.

#### **5.2.24 Concluding the Investigation**

**5.2.24.1** Upon conclusion of the investigation, the investigator(s) shall prepare a draft investigative report that contains a statement of the allegations, the positions/responses of each party, a summary of relevant evidence and material witnesses that the investigator(s) relied on, factual findings, and a determination of responsibility.

- 1) A determination of “not responsible” means that the investigator has determined that, based on a preponderance of the evidence, there is insufficient evidence to conclude that the alleged policy violation occurred.
- 2) A determination of “responsible” means that the investigator has determined based on a preponderance of the evidence, that the alleged policy violation occurred.

**5.2.24.2** Before the draft investigative report is finalized, the investigator(s) will give each party equal opportunity to review, the report and any evidence (whether inculpatory or exculpatory)





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obtained as part of the investigation and directly related to the allegations, including evidence upon which the University does not intend to rely in reaching a determination of responsibility. Access to the evidence will be provided for a sufficient duration of time to allow each party to meaningfully respond to the evidence before the completion of the final investigative report.

**5.2.24.3** The parties may submit a written response or information to the investigator(s) within 5 business days of the date of the notice of the opportunity to review the draft investigative report and evidence. This is the parties’ final opportunity to submit any additional information or witnesses. In the absence of good cause, the investigator(s) shall not consider information available or discoverable through due diligence that is not provided to the investigator(s) at this juncture.

**5.2.24.4** The investigator(s) shall consider any written response, information, or evidence provided by the parties, and conduct any further fact-finding or revisions to the investigative report deemed necessary by the investigator to reach a thorough and impartial conclusion.

**5.2.24.5** After the findings are sent to both parties, the EO/AA Director will promptly forward the written findings to the sanctioning official.

**5.2.24.6** The final investigative report shall be submitted to the sanctioning official designated below with authority to implement actions and/or discipline necessary to resolve the complaint (unless a conflict of interest exists, in which case the next-level supervisor or their designee will assign an alternate sanctioning official).

<b>Respondent’s Affiliation with the University</b>	<b>Sanctioning Official</b>
Student	Designated Student Conduct administrator within the Dean of Students Office
Faculty member	The dean or dean’s designee of the faculty member’s college (in consultation with the Deputy Provost )
Staff member	Supervising executive
Executive or direct report of the University President	University President or designee
Contractor, vendor, visitor, volunteers, etc.	Supervising executive, or the Vice President of Planning, Budget and Finance or designee

**5.2.24.7** The final investigative report may be used as evidence in other related proceedings, such as subsequent complaints, disciplinary actions, and/or hearings or appeals.



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### Sanctions and Remedies

**5.2.25** Within 10 business days of receiving the final investigation report, the sanctioning official shall determine, based on the investigative findings, the appropriate sanctions and remedies, including offering remedies to the complainant and/or university community, implementing changes in programs and activities, providing training, and the imposition of any disciplinary sanctions. In consultation with the EO/AA Director and the Office of General Counsel, and with Human Resources (when the respondent is an employee), the sanctioning official shall ensure sanctions and remedies are appropriate to end the prohibited conduct and to prevent further violation of this policy. In determining the appropriate sanction(s), the sanctioning official (and the executive university administrator and review panel, should there be a review hearing) shall be guided by the following considerations:

- 1) The severity, persistence, or pervasiveness of the misconduct;
- 2) The impact of the misconduct on the complainant;
- 3) The impact or implications of the misconduct on the university community;
- 4) Established prior misconduct by the respondent, including the respondent's relevant prior disciplinary history;
- 5) Whether the respondent has accepted responsibility for the misconduct;
- 6) The maintenance of a safe, nondiscriminatory, and respectful working and learning environment; and
- 7) Any other mitigating, aggravating, or compelling factors.

**5.2.26** Possible sanctions for being found responsible for conduct adjudicated under this policy include the following:

- 1) *Employees*—Possible sanctions against employees for violations of this policy include verbal counseling, written warning, probation, reassignment, transfer, demotion, reduction in pay, suspension without pay, and termination of employment.
- 2) *Students*—Possible sanctions against students for violations of this policy include those described in UVU Policy 541 *Student Code of Conduct*, such as fines, restitution, suspension, warning, probation, expulsion, withholding diploma, revocation of degree, discretionary sanction, and organizational sanction.
- 3) *Vendors/Contractors/Visitors/Volunteers*—Possible sanctions against vendors or visitors to campus who are neither students nor employees of the University for violations of this policy



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include banning the vendors/visitors from all or part(s) of the University and/or ending business relationships with the vendors.

**5.2.26.1** In addition to the above sanctions, the University may issue an order of no trespassing on campus and/or in UVU programs, services, and activities.

**5.2.27** The sanctioning official shall send to both parties a written notice of the investigation outcome, which shall include the following:

- 1) The final determination of responsibility or non-responsibility for policy violation;
- 2) The procedures for seeking an internal review/appeal of the outcome; and
- 3) Any sanctions and remedies determined by the sanctioning official. However, the sanctioning official, in consultation with the EO/AA Director or designee, may choose not to disclose the sanctions to other parties, and shall not disclose the discipline imposed on a student respondent, except under the following circumstances:
  - a) The discipline directly affects the other party, such as when the student respondent is ordered to stay away from the other party, an employee is transferred to another job site, class, or is suspended or dismissed from the University; or
  - b) The student respondent gives their written permission to disclose the discipline.

### **Review Hearing**

**5.2.28** Any party may request a review hearing on the findings, sanctions, and/or remedies by submitting a request in writing to the EO/AA Director within 5 business days from the date the outcome notice is sent. Failure to file a timely written request for a hearing shall constitute a waiver of the right to a hearing and any appeal rights. If there is no request for a hearing, the investigative findings and any sanctions shall become final and binding. A request for review hearing may be withdrawn by the requester at any time without prejudice.

**5.2.29** Upon receipt of a written request for review hearing, the EO/AA Director or designee shall provide the party not requesting the review hearing a copy of the request and invite that responding party to submit a written response. The EO/AA Director, designee, or investigator may also provide a written response to the written request for review.

**5.2.30** After submitting the written request identified in section 5.12.1, and before the formation of a review panel under section 5.12.4, the requesting party must meet with the EO/AA Director or designee for a pre-review meeting. In this meeting, the EO/AA Director or designee will explain the review hearing process and provide access to evidence and records available for the review hearing.



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**5.2.31** The EO/AA Director or designee shall promptly convene a three-member review panel from a pool of faculty, staff, and students trained in accordance with section 4.6, including relevant legal principles underlying this policy. Review panel members must meet the following qualifications: (1) panel members should not concurrently be a party to any disciplinary proceeding at the University, (2) panel members should not have been subject to recent discipline. (3) faculty panel members may not work in the same department as any party, (4) staff panel members may not work in the same department as any party, (5) panel members must not otherwise have any conflicts of interest with serving on the panel.

**5.2.32** Faculty members shall be selected for a term of service on the review panel pool by the Provost or designee and shall be approved by the Faculty Senate president. Staff members shall be selected for a term of service by the Vice President of People and Culture or designee and shall be approved by the Professional Association of Campus Employees (PACE) president. Student members shall be selected for a term of service by the Dean of Students and should be members of the Utah Valley University Student Association (UVUSA), when practically available, and approved by the UVUSA president.

**5.2.32.1** The selected panel shall choose a panel chair, considering availability and EO/AA training and panel experience. The review panel shall consult with an attorney assigned by the Office of General Counsel to advise the review panel regarding legal, procedural, policy, and other questions as needed during the review process.

**5.2.33** The EO/AA Director or designee shall promptly notify the parties in writing of the names of the review panel members and provide the parties with a copy of the review panel procedures contained in this policy. Within 5 business days of receiving notification of the names of the review panel members, the complainant and respondent may each request in writing to the EO/AA Director that a review panel member be disqualified based on bias or conflict of interest, providing the reasons for this request. If bias or conflict of interest is confirmed by the EO/AA Director, after consultation with an attorney assigned by the Office of General Counsel, then the EO/AA Director or designee shall select a new panel member and notify the parties.

**5.2.34** In cases where the investigation finding is no violation of policy, the panel shall determine whether a hearing should be held based on a review of the complaint, the respondent's response, the written request for a hearing, response(s) to the request, and the investigation report. The panel may determine that it is unnecessary to hold a hearing on any or all of the allegations based on the following factors: (1) insufficient evidence to support the alleged violations of this policy; or (2) the issue is no longer relevant or is moot. The panel's decision to decline a hearing on these bases is final and shall be communicated to the parties concurrently in writing.

**5.2.35** Information shared during a review process must remain confidential. All meetings and hearings related to a review process are closed to the public.



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**5.2.36** Along with the written notification of hearing date, the EO/AA Director or designee shall provide to the review panel, complainant, and respondent copies of the final investigation report or summary and the written review request and opposition statements submitted by the parties. The EO/AA Director or designee may also submit a clarification statement or response. The review hearing is an opportunity for the parties to address the review panel in person about the issues being considered for review, including addressing information in the final investigation report or summary, any supplemental statements or new evidence unavailable during the investigation submitted by the parties, and any written impact or mitigation statements. Each party will have the opportunity to be heard, to identify witnesses for the review panel's consideration, and to respond to any questions from the review panel.

**5.2.37** The University may establish a secure hearing room space and screen for firearms and other dangerous weapons pursuant to Utah Board of Higher Education Policy R254 *Secure Area Hearing Rooms*.

**5.2.38** Parties may request remote video conferencing, so that the parties do not have to be present in the same room at the same time during the hearing. Such requests must be made in writing to the EO/AA Director at least 10 business days before the hearing, and the EO/AA Director or designee shall make the appropriate arrangements.

**5.2.39** Each party may be accompanied at the review hearing by a support person/advisor of their choice, who may be, but is not required to be, an attorney and who may participate in the hearing as provided in these procedures. Parties must notify the EO/AA Director of their selected support person/advisor at least 10 business days before the review hearing. If timely notice is not provided, the support person/advisor may attend but shall not participate in the hearing.

**5.2.40** The review panel chair and parties may each request the appearance of witnesses at the hearing. At least 5 business days before the date of the review hearing, parties may submit to the review panel chair, with copies to the EO/AA Director or designee, their request for witnesses, including names and contact information, and requests for documentary evidence they would like to have reviewed, along with explanations of how each request is relevant to the panel's determination. An attorney from the Office of General Counsel who represents the University during the hearing may also submit a document to the panel and parties addressing the basis for review, relevant evidence, and relevant witnesses, and other issues relevant to the hearing at least 5 business days before the hearing. Only witnesses and other evidence that are relevant to the bases for review may be considered by the review panel. It is the responsibility of the party calling a particular witness to invite that witness to attend the hearing. The OEO/AA investigator(s) may also suggest a witness list to the panel. Witnesses who are UVU employees whom the panel requests to appear have a duty to appear at the review hearing.

**5.2.41** The following procedures apply to the review panel hearing:

1) In the event that either party fails to attend the hearing without prior notice to the EO/AA Director and good cause, the review panel may proceed with the hearing. Neither party is



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required to participate in the hearing for the hearing to proceed. The University reserves the right to modify review hearing procedures to protect the safety of all parties involved.

- 2) The hearing, except for deliberations, shall be recorded by the review panel chair, who shall give the recording to the OEO/AA. A copy shall be made available to either party upon request at the requesting party's expense. The recording of interviews and other meetings preceding and following the hearing by the participants is prohibited.
- 3) The review panel should begin the hearing with a review of the investigation summary, the investigation process, and the findings and conclusions contained in the final investigation report or summary. This may be provided to the panel in writing and/or in person by the investigator(s) or the EO/AA Director. The review panel may also state the sanction(s) determined by the sanctioning official and the scope of review.
- 4) If the scope of review includes review of the sanction(s), the review panel may ask the sanctioning official to explain the reasons for the sanction(s), including any mitigating or aggravating factors.
- 5) Each party shall have an opportunity to make a personal statement relevant to the review panel's determination, which should include the bases for seeking or opposing the review, the personal impact of the alleged misconduct and/or sanction, the relief sought, and mitigating or aggravating information. In addition to the personal statements by the parties, each party's support person/advisor and the Office of General Counsel attorney representing the University shall have the opportunity to make an opening statement.
- 6) Each party (or their respective support person/advisor, if any) shall have the opportunity to call witnesses that the review panel deems relevant to its determination, to question witnesses (including the other party and the investigator[s]) through the review panel chair (not directly), to present evidence, and to make concluding remarks.
- 7) The review panel shall have the first opportunity to question the investigator(s), any witness, and either party called to testify. The parties may ask questions following the panel. The attorney from the Office of General Counsel representing the University may also question the same persons. Only the person to whom a question is directed may answer (e.g., a support person/advisor shall not be permitted to answer the review panel's questions on a party's behalf). The review panel's questions should be relevant to the scope of review. During questioning, the parties, support persons/advisors, and panel chair/members shall treat all persons with respect.
- 8) The review panel shall not be bound by strict rules of legal evidence or procedure and may consider any evidence it deems relevant to its determination. The review panel chair shall determine the appropriateness and relevancy of any information and questions submitted and may exclude evidence deemed to be outside the scope of review, irrelevant, or duplicative. The panel may exclude evidence that was available to a party but not provided during the investigation.



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- 9) Each party shall have up to a total of 90 minutes for personal and/or opening statements, questioning witnesses, presenting evidence, and concluding remarks.
  - 10) After issuing a warning, the review panel has authority to exclude from the hearing any party, support persons/advisors, or other participant whose behavior the review panel finds disruptive.
  - 11) The Office of General Counsel shall provide an attorney to be present at hearings to provide guidance to the review panel on this policy, substantive law, and procedural matters. An attorney from the Office of General Counsel may also participate in hearings on behalf of the University.
  - 12) The review panel chair and other review panel members are prohibited from discussing any matter related to the hearing with the parties, witnesses, and/or others (except the assigned Office of General Counsel attorney) before or after the hearing. Violation of confidentiality may result in dismissal from the review panel and/or other corrective or disciplinary action.
  - 13) Review panel deliberations and voting shall be closed sessions from which all other persons are excluded, except, at the review panel's request, an advising attorney from the Office of General Counsel. Votes shall be cast by secret ballot. A majority vote by the members of the review panel who attended the hearing shall be required for recommendations. The review panel chair shall be entitled to vote on all questions. The OEO/AA shall not participate in the review panel's deliberations. The advising attorney may remain present for panel deliberations but shall have no vote.
- 5.2.42** Within 5 business days of the review hearing, the review panel shall provide to the executive university administrator and the EO/AA Director a written recommendation, which shall include a determination of (1) whether the evidence, evaluated under a preponderance of the evidence standard, supports a finding that a violation of policy occurred; and, if so, (2) whether the sanctions are reasonably proportionate under the circumstances.

### **Executive Review, Final Sanction, and Final Outcome Notice**

**5.2.43** The executive university administrator, who is responsible for reviewing the recommendations from the review panel and determining next steps, including remand to the OEO/AA for additional investigation and/or imposition of the final sanction(s) and other remedies, if any, is as follows (unless a conflict of interest exists, in which case the Office of General Counsel will recommend to the President a designee to serve as an alternative responsible executive university administrator):



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<b>Respondent’s Affiliation with the University</b>	<b>Executive University Administrator</b>
Student	Dean of Students
Faculty member	Provost
Administration or staff member who is not an executive employee and does not report directly to a vice president or Provost	Provost or vice president of the division in which the respondent is employed (or the Provost or vice president’s designee)
Executive employee or direct report of a vice president or Provost	University President
Vice president, Provost or other direct report of the University President	University President

**5.2.44** Upon receipt of the review panel report, the appropriate executive university administrator shall promptly review all of the information that was available to the review panel and then decide whether to remand the investigation to the OEO/AA for additional investigation, affirm the sanctioning official’s original decision, adopt the sanction and resolution recommendation(s) of the review panel, and/or to determine an alternative outcome. In determining the appropriate sanction(s) and other remedies, the executive university administrator shall be guided by the considerations in section 5.11.1 and consult with other neutral administrators as needed to ensure that any sanctions and/or remedies are appropriate to end the prohibited conduct and prevent further violation of this policy. Remedies may include offering remedies to the complainant and/or university community, implementing changes in programs and activities, providing training, and the imposition of any disciplinary sanctions. The executive university administrator 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.

**5.2.45** Written notification of the executive university administrator’s decision shall be provided concurrently to the parties and to the EO/AA Director. The executive university administrator shall provide written justification for the decision if it is inconsistent with the review panel’s report. If the matter is remanded to the OEO/AA for additional investigation, the OEO/AA shall promptly investigate and provide an investigation summary addendum that includes new evidence considered and changes to findings, if any, to the executive university administrator, who shall then determine sanctions, resolutions, and final outcomes.

**5.2.46** The final outcome notice shall also state that the executive university administrator’s determination is final; no further internal university reviews, appeals, or grievances are available to the parties.





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<b>POLICY HISTORY</b>		
June 22, 2017	Revision (Regular policy replaced temporary emergency policy)	UVU Board of Trustees
November 29, 2018	Non-substantive changes: Sections 2.11 and 5.9.2, Policy 541 title updated from Student Rights and Responsibilities to Student Code of Conduct.	UVU Policy Office
June 18, 2019	Temporary Emergency policy approved.	UVU Board of Trustees
June 25, 2020	Regular policy approved.	UVU Board of Trustees
August 7, 2020	Temporary Emergency policy approved.	UVU Board of Trustees
June 24, 2021	Regular policy approved.	UVU Board of Trustees