



|                           |  |                       |                |
|---------------------------|--|-----------------------|----------------|
| <b>POLICY TITLE</b>       | Title IX Sexual Harassment                         | <b>Policy Number</b>  | 162            |
| <b>Section</b>            | Governance, Organization, and General Information  | <b>Approval Date</b>  | March 27, 2025 |
| <b>Subsection</b>         | Individual Rights                                  | <b>Effective Date</b> | March 27, 2025 |
| <b>Responsible Office</b> | Office of the Vice President of People and Culture | <b>Last Review</b>    | March 27, 2025 |

## 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 discrimination on the basis of sex, including sexual harassment, in education programs and activities; details how to report a violation of this policy; describes university resources and supportive measures to protect those involved in the process; and outlines investigation, disciplinary, and due process procedures for addressing reported violations of this policy.

## 2.0 REFERENCES

**2.1** *The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)*, 20 U.S.C. § 1092 (1990)

**2.2** *Family Educational Rights and Privacy Act (FERPA)*, 20 U.S.C. § 1232g (1974)

**2.3** Title IX of the *Higher Education Amendments Act of 1972* (Title IX), 20 U.S.C. § 1681 to 1688 (1972)

**2.4** *Campus Sexual Violence Elimination Act (SaVE)—Reauthorization of the Violence against Women Act of 2013 (VAWA)*, 34 U.S.C. § 12291 (2013)

**2.5** Title VII of the *Civil Rights Act of 1964* (Title VII), 42 U.S.C. § 2000e (1964)

**2.6** *Americans with Disabilities Act of 1990*, 42 U.S.C. § 12101 (1990) (as amended by Pub. L. No. 101–336, 104 stat. 327)

**2.7** “Non-Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 34 C.F.R. § 106.1 (1972)

**2.8** “Grievance Process for Formal Complaints of Sexual Harassment,” 34 C.F.R. § 106.45 (2020)

**2.9** “Retaliation,” 34 C.F.R. § 106.71 (2020)



- 2.10 *Black's Law Dictionary* (11th ed. 2019)
- 2.11 *Health Insurance Portability and Accountability Act (HIPAA)*, Pub. L. No. 104–191, 110 stat. 1936 (1996)
- 2.12 *Campus Individual Rights Act*, Utah Code Ann. §53B-27-601, 1–7 (2024)
- 2.13 *Student Rights and Responsibilities*, Utah Code Ann. § 53B-28-302, -304 (2022)
- 2.14 *Confidential Communications for Institutional Advocacy Services Act*, Utah Code Ann. § 53B-28-201 (2017)
- 2.15 *Child Welfare Services*, Utah Code Ann. § 80-2-602 (2022)
- 2.16 *Government Records Access and Management Act (GRAMA)*, Utah Code Ann. § 63G-2-101 et seq. (2008)
- 2.17 *Governmental Immunity Act of Utah*, Utah Code Ann. § 63G-7-301 (2020)
- 2.18 *Stalking*, Utah Code Ann. § 76-5-106.5 (2020)
- 2.19 *Sexual Offenses*, Utah Code Ann. § 76-5-404 et seq. (2019)
- 2.20 *Offenses Against the Family*, Utah Code Ann. § 76-7-102 (2019)
- 2.21 *Cohabitant Abuse Procedures Act*, Utah Code Ann. § 77-36-1 et seq. (2020)
- 2.22 *Rights of Crime Victims Act*, Utah Code Ann. § 77-38-1 et seq. (1994)
- 2.23 Utah Board of Higher Education Policy R254 *Secure Area Hearing Rooms*
- 2.24 Utah Board of Higher Education Policy R256 *Student Disciplinary Processes*
- 2.25 UVU Policy 165 *Discrimination and Harassment*
- 2.26 UVU Policy 541 *Student Code of Conduct*

### 3.0 DEFINITIONS

**3.1 Complainant, victim, or alleged victim:** For the purposes of this policy, an individual who is alleged to be the victim of conduct that may constitute sexual harassment under this policy.

**3.2 Consent:** An affirmatively communicated willingness through words and/or actions to participate in sexual activity. Consent is active, not passive, and silence, in and of itself, may not be interpreted as consent. Consent must be given by all participating parties; must be clear,



knowing, and voluntary; and can be given only by someone who is 18 years of age or older and is not mentally and/or physically incapacitated.

**3.3 Dating violence:** As defined in 34 U.S.C. § 12291(a)(11), dating violence means violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors: (a) the length of the relationship; (b) the type of relationship; and (c) the frequency of interaction between the persons involved in the relationship.

**3.4 Domestic violence:** As defined in 34 U.S.C. § 12291(a)(12), domestic violence includes felony or misdemeanor crimes of violence committed by (1) a current or former spouse, or intimate partner of the victim; (2) a person with whom the victim shares a child in common; (3) a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (4) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies; or (5) any other person against an adult or youth (ages 11–24) victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

**3.5 Education program or activity:** For the purposes of this policy, all operations of the University, including locations, events, or circumstances over which UVU exercised substantial control over both the respondent and the context in which the sexual harassment occurred.

**3.6 Exculpatory evidence:** Evidence tending to establish a person’s innocence.

**3.7 Formal complaint:** A document submitted by a complainant (or, in certain circumstances, signed by the Title IX Coordinator) alleging sexual harassment against a respondent and requesting that the University investigate an allegation of sexual harassment. This document may be a physical document or an 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.

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

**3.9 Incapacitation:** The physical and/or mental inability to make informed, rational judgments. Factors that could be indications of incapacitation include, but are not limited to, mental or physical disability; lack of sleep; use of alcohol, drugs, or other substances, including illegal or prescription medications; unconsciousness; blackout; or involuntary physical restraint. An individual who is incapacitated cannot give consent to engage in sexual activity, and being intoxicated by drugs or alcohol does not diminish one’s responsibility to obtain consent. The factors to be considered when determining whether consent was given include whether the respondent knew, or whether a reasonable person should have known, that the complainant was incapacitated.



**3.10 Inculpatory evidence:** Evidence showing or tending to show one's involvement in a crime or wrong.

**3.11 Party:** Complainant or respondent.

**3.12 Preponderance of the evidence:** The evidentiary standard used under this policy to determine if sexual harassment occurred. Preponderance of the evidence means it is more likely than not, or more than 50 percent in favor, that sexual harassment occurred.

**3.13 Respondent:** For the purposes of this policy, an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under this policy.

**3.14 Retaliation:** For the purposes of this policy, intimidation, threats, coercion, or discrimination, including charges against an individual for policy violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purposes of interfering with any right or privilege secured by Title IX or this policy, or because the individual has made a report or complaint, testified, assisted, or participated (or refused to participate) in any manner in an investigation, proceeding, or hearing under this policy.

**3.15 Sex discrimination:** For purposes of this policy, treating someone differently on the basis of actual or perceived sex, sexual orientation, gender identity, gender expression, pregnancy, or pregnancy-related conditions (collectively "sex") 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 sex 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.

**3.16 Sexual assault:** As defined in 20 U.S.C. § 1092(f)(6)(A)(v) and the uniform crime reporting system of the Federal Bureau of Investigation, sexual assault means any sexual act directed against another person without the consent of the victim, including instances in which the victim is incapable of giving consent; and also unlawful sexual intercourse, including the following:

**3.16.1 Rape**—Any penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

**3.16.2 Sodomy**—Oral or anal sexual intercourse with another person without the consent of the victim.

**3.16.3 Sexual assault with an object**—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person without the consent of the victim.



**3.16.4 Fondling**—The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim.

**3.16.5 Incest**—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Utah law.

**3.16.6 Statutory Rape**—Nonforcible sexual intercourse with a person who is under Utah’s statutory age of consent.

**3.17 Sexual harassment:** Prohibited verbal or nonverbal conduct on the basis of sex (including sex, pregnancy, pregnancy-related conditions, sexual orientation, gender identity, or gender expression). Under Title IX, the following types of conduct constitute sexual harassment and are prohibited under this policy:

**3.17.1** Any instance in which an employee of the University conditions the provision of an aid, benefit, or service of UVU on an individual’s participation in unwelcome sexual conduct;

**3.17.2** Any unwelcome conduct that a reasonable person would determine to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a UVU education program or activity; and

**3.18** Any instance of (1) sexual assault, as defined in 20 U.S.C. § 1092(f)(6)(A)(v) and section 3.16 of this policy; (2) dating violence, as defined in 34 U.S.C. § 12291(a)(11) and section 3.3 of this policy; (3) domestic violence, as defined in 34 U.S.C. § 12291(a)(12) and section 3.4 of this policy; or (4) stalking, as defined in 34 U.S.C. § 12291(a)(36) and section 3.19 of this policy.

**3.19 Stalking:** As defined in 34 U.S.C. § 12291(a)(36), stalking means engaging in a course of conduct (multiple incidents) directed at a specific person, on the basis of sex, that would cause a reasonable person to (1) fear for their safety or the safety of others; or (2) suffer substantial emotional distress.

**3.20 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.

**3.21 Title IX Coordinator:** The UVU employee designated and authorized by the President of the University to coordinate the University’s compliance with 34 C.F.R. § 106.1.



## 4.0 POLICY

### 4.1 Scope of Policy

**4.1.1** This policy applies to all university community members, including all persons employed by or affiliated with Utah Valley University in any way and persons participating in any UVU education program or activity, including but not limited to trustees, administrators, faculty, staff, students, independent contractors, volunteers, and visitors to any UVU campus or any property owned or leased by the University.

### 4.2 Policy Statement

**4.2.1** Utah Valley University does not discriminate on the basis of sex in its education programs or activities, as required by Title IX and 34 C.F.R. § 106.1. The requirement not to discriminate in education programs or activities extends to admission and employment. Inquiries about the application of Title IX and its regulations to Utah Valley University may be referred to the Title IX Coordinator, to the U.S. Department of Education Office for Civil Rights, or both.

**4.2.2** Utah Valley University prohibits sex discrimination, sexual harassment, and retaliation as defined in this policy.

**4.2.3** This policy establishes processes to facilitate equity and legal compliance.

### 4.3 Relationship to Policy 165 and Other Policies

**4.3.1** This policy defines and prohibits sex discrimination, sexual harassment, and retaliation.

**4.3.1.1** *Sex discrimination*—Complaints of sex discrimination (other than sexual harassment as defined in this policy) will generally be handled in accordance with the procedures in Policy 165 *Discrimination and Harassment*.

**4.3.1.2** *Sexual harassment*—Complaints of sexual harassment as defined in this policy will be handled in accordance with the procedures outlined in this policy. When, in the Title IX Coordinator's judgment, allegations of sexual harassment may also constitute sex-based harassment as defined in Policy 165 *Discrimination and Harassment* the allegations will be consolidated and handled in accordance with the procedures in this policy.

**4.3.1.3** *Retaliation*—Complaints of retaliation will generally be handled in accordance with the procedures in Policy 165 *Discrimination and Harassment*.

**4.3.2** The Title IX Coordinator may consolidate alleged retaliation, sex discrimination, or conduct prohibited by other policies with a formal complaint of sexual harassment under this policy so long as those non-Title IX allegations arise out of the same facts or circumstances as the alleged Title IX sexual harassment.



**4.3.3** To the extent that any other UVU policy addresses sex discrimination, sexual harassment, or retaliation as defined in this policy, this policy and its procedures exclusively govern. All other protected-class discrimination, harassment, and retaliation complaints are subject to the procedures set forth in UVU Policy 165 *Discrimination and Harassment*.

**4.3.4** Nothing in this policy shall be interpreted to alter the status of otherwise at-will employees.

#### **4.4 Consent**

**4.4.1** All participants in the sexual activity are responsible for ensuring that they have the consent of all involved to engage in sexual activity. Any individual who engages in sexual activity without receiving clear, knowing, and voluntary consent, or who forces a party that has withdrawn consent at any point to participate, has violated this policy. Sexual activity with someone deemed unable to grant clear, knowing, and voluntary consent constitutes a violation of this policy. This includes, but is not limited to, individuals who are:

- 1) Mentally or physically incapacitated for any reason;
- 2) Under the age of 18; or
- 3) Forced to give consent in any way, including, but not limited to, by coercion, intimidation, duress, deception, threats, implied threats, and/or physical force.

**4.4.2** Consent to any one form of sexual activity does not automatically imply consent to any other forms of sexual activity.

**4.4.3** Past consent to sexual activity does not imply ongoing future consent. The current or past existence of a relationship does not imply consent.

**4.4.4** A respondent's position or use of authority is a factor in determining consent, coercion, or "welcomeness" of conduct.

#### **4.5 Retaliation**

**4.5.1** Neither the University nor any person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the individual has made a report or complaint, testified, assisted, or participated (or refused to participate) in any manner in an investigation, proceeding, or hearing under this policy.

**4.5.2** Allegations of policy violations against an individual for the purpose of interfering with any right or privilege secured by Title IX or this policy constitutes retaliation.

**4.5.3** Any retaliatory threat or act of violence against victims or witnesses of alleged sexual violence is a third-degree felony under Utah Code Ann. § 53B-28-304 and may be subject to criminal prosecution.



**4.5.4** Complaints alleging retaliation may be filed according to the procedures under Policy 165 *Discrimination and Harassment*.

#### **4.6 Title IX Notification**

**4.6.1** The University notifies applicants for admission or employment, students, and employees of the following:

- 1) The name, office address, e-mail address, and telephone number of the Title IX Coordinator; and
- 2) A nondiscrimination policy statement consistent with section 4.2.1 of this policy and the University's procedures for responding to complaints, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the University will respond.

**4.6.2** The University prominently displays the contact information and policy statement described above on its website and in each handbook and catalog that it makes available to students, employees, and applicants for admission and employment.

#### **4.7 Reporting**

##### **4.7.1 Amnesty**

**4.7.1.1** Any student who makes a good faith report of sexual harassment or sexual violence, as defined at Utah Code Ann. § 53B-28-301, that was directed at them or another person will not be sanctioned by the University under Policy 541 *Student Code of Conduct* for a violation related to the use of drugs or alcohol that the University discovers because of the report.

##### **4.7.2 How to Report**

**4.7.2.1** Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), to the Title IX Coordinator using any of the following methods:

- 1) In person at the Browning Administration Building, Suite 203, 800 W. University Parkway, Orem, UT 84058 (M–F, 8 a.m. to 5 p.m.);
- 2) By mail to Utah Valley University, MS 272, 800 W. University Parkway, Orem, UT 84058 (any time);
- 3) By telephone at 801-863-7999 (any time);
- 4) By e-mail at [TitleIX@uvu.edu](mailto:TitleIX@uvu.edu) (any time);





5) Online, anonymously or self-identified, at <https://www.uvu.edu/equityandtitleix/> (any time);  
or

6) By any other means that results in the Title IX Coordinator receiving the person's oral or written report.

#### **4.7.3 Who Must Report**

**4.7.3.1** Employees who receive a complaint of sex discrimination, sexual harassment, or retaliation, or who witness or become aware of such conduct, must promptly report such issues to the Title IX Coordinator within 24 hours of learning of the incident using any of the contact methods listed above in section 4.7.2.

**5.1** Consistent with Utah Code Ann. § 80-2-602, anyone who reasonably suspects any incident of sexual harassment or abuse involving a minor shall immediately report it to campus police or the local police department. Employees who become aware of allegations involving a minor shall notify the Title IX Coordinator and their supervisor that they have reported the allegation to the police.

#### **4.7.4 Who Must Not Report**

**4.7.4.1** Licensed mental health counselors and medical professionals working within the scope of their license, or designated advocates authorized by the Title IX Coordinator, generally may not report incidents of sexual harassment, except with written consent from the client or patient, in instances of imminent danger, or when the victim is a minor or vulnerable adult.

#### **4.8 Confidentiality**

**4.8.1** 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.

**4.8.2** 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 sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment; (2) any complainant; (3) any individual who has been reported to be the perpetrator of sex discrimination; (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 to carry out the purposes of Title IX, including the conduct of any investigation, hearing, or judicial proceeding arising under Title IX.



**4.8.3** Records created or maintained pursuant to this process are classified as protected under *GRAMA*.

**4.8.4** Any evidence presented in a proceeding is confidential and may not be

**4.8.4.1** used as evidence in a subsequent proceeding, or

**4.8.4.2** used or disclosed to a third party for any other purpose other than for the proceeding.

**4.9** The University will protect confidential communications to designated UVU advocates authorized by the Title IX Coordinator, protected under the *Utah Confidential Communications for Institutional Advocacy Services Act* (Utah Code Ann. § 53B-28-201), where disclosure is not required by applicable federal law, including Title IX of the *Higher Education Amendments Act of 1972*, Title VII of the *Civil Rights Act of 1964*, or the *Clery Act*, or consented in writing.

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

a) 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.

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

c) 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.

#### **4.10 Referrals**

**4.10.1** The Title IX Coordinator may refer reports or complaints that are outside the scope of this policy, but may implicate another policy, to the organizational unit (such as Student Conduct or People and Culture) implementing the relevant policy.

**4.10.2** Information gathered in the investigative process under this policy, but which is relevant to potential non-Title IX policy violations, may be shared with the organizational unit implementing the relevant policy.

**4.10.3** The University complies with all applicable reporting requirements and reserves the right to report findings of criminal misconduct to the police as required by law.

#### **4.11 Training**

**4.11.1** The University trains Title IX Coordinators, investigators, sanctioning officials, hearing panelists, and any person who facilitates an informal resolution process on the definition of



sexual harassment, the scope of the University's education programs and activities, 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). The University will also train adjudicators, hearing officers, and appellate hearing officers on relevant evidence and nonrelevant, nonprobative evidence.

**4.11.2** The University trains hearing panelists to determine issues of relevance for questions and evidence (including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant), on evidentiary standards, and on live hearing procedures.

**4.11.3** The University ensures that investigators receive training on issues of relevance and bias to create investigative reports that fairly summarize relevant evidence.

**4.11.4** The University trains Title IX Coordinators, hearing officers, and other necessary parties on all technology to be used in live hearings.

**4.11.5** The University ensures that training materials do not rely on sex, race, religious, and other stereotypes and will promote impartial investigations and adjudications of formal complaints of sexual harassment.

**4.11.6** All materials used to train Title IX Coordinators, investigators, hearing panelists, and any person who facilitates an informal resolution process are publicly available on the University's website.

## **4.12 Recordkeeping**

**4.12.1** The Equity and Title IX Office maintains the following records for a period of seven years:

- 1) Each sexual harassment investigation, including any determination regarding responsibility, 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;
- 2) Any appeal and the result;
- 3) Any informal resolution and the result; and
- 4) All materials used to train Title IX Coordinators, investigators, hearing panelists, and any person who facilitates an informal resolution process.

**4.12.2** For each report to the Title IX Coordinator of sexual harassment, the Equity and Title IX Office creates and maintains, 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 Equity and Title IX Office documents the basis for its conclusion that its response was not deliberately indifferent and documents 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 or respondent with supportive measures, then the Equity and Title IX Office documents the reasons why the determination to not provide supportive measures 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.

## 5.0 PROCEDURES

### 5.2 Scope and Applicability of Procedures

**5.2.1** All reports and formal complaints of sexual harassment, as defined in this policy, are subject to the procedures set forth in this section. Reports and complaints of other forms of sex discrimination and retaliation prohibited by this policy will follow the procedures in Policy 165 *Discrimination and Harassment*.

### 5.3 General Principles

**5.3.1** Complainants, respondents, and witnesses shall be treated equitably and with respect throughout all proceedings.

**5.3.1.1** Any persons designated as a Title IX Coordinator, investigator, hearing panelist, sanctioning official, or a person designated to facilitate an informal resolution process shall be free of conflict of interest or bias for or against complainants or respondents, generally or individually.

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

**5.3.3** Complainants, respondents, and witnesses shall not knowingly make materially false 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.

**5.3.4** The University shall provide resources and options for supportive measures to both complainants and respondents.

**5.4** Complainants, respondents, and other participants may at any time request accommodations under the *Americans with Disabilities Act (ADA)* through the Title IX Coordinator, who will refer the request to the appropriate ADA Coordinator and implement approved accommodations.

### 5.5 Preliminary Review of Reports of Sexual Harassment



### **5.5.1 Response to Reports**

**5.5.1.1** Upon receiving a report of sexual harassment, the Title IX Coordinator 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 process for filing a formal complaint.

### **5.5.2 Clery Reporting**

**5.5.2.1** The Title IX Coordinator 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.

### **5.5.3 Safety Removal**

**5.5.3.1** The Dean of Students may remove a student respondent from all or part of the University's education programs or activities on an emergency, non-disciplinary 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.

**5.5.3.2** 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 People and Culture and the Office of General Counsel, may place an employee on non-disciplinary 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.

## **5.6 Formal Complaint**

**5.6.1** A complainant may file a formal complaint alleging sexual harassment with the Title IX Coordinator requesting that the University investigate. A formal complaint may be filed only by a complainant who is participating in or attempting to participate in an education program or activity of the University at the time of filing the formal complaint, or, in certain circumstances, the Title IX Coordinator may sign a formal complaint on behalf of a complainant (as outlined in section 5.6.4).



**5.6.2** A complainant may submit a formal complaint to the Title IX Coordinator in person, by mail electronic mail, or online using the complaint form on the Title IX website by using the contact information posted for the Title IX Coordinator in section 4.7.2.

**5.6.3** By filing a formal complaint, the complainant authorizes the Title IX Coordinator and investigators to discuss the information provided by the complainant with other persons who may have relevant factual knowledge of the circumstances of the complaint, and authorizes the collection and examination of all records and other documentation relevant to the complaint.

**5.6.4** The Title IX Coordinator may independently initiate a formal complaint and investigation, if necessary, to provide safe and nondiscriminatory education programs and activities, unless doing so would be clearly unreasonable in light of the known circumstances. The Title IX Coordinator may consider a variety of factors, including a pattern of alleged misconduct by the particular respondent, in deciding whether to sign a formal complaint. When the Title IX Coordinator signs a formal complaint, the Title IX Coordinator 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 their right to not participate is protected.

**5.6.5** The University may consolidate formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. The University may consolidate alleged conduct prohibited by other policies with a formal complaint of sexual harassment so long as those non-Title IX allegations arise out of the same facts or circumstances as the alleged instance of Title IX sexual harassment.

**5.6.6** Deadlines and timeframes in this policy may be extended for good cause by the Title IX Coordinator by providing written notice including the reason(s) for the extension to the parties. Good cause may include but is not limited to considerations such as the absence of a party, a party's advisor, or witness; concurrent law enforcement activity; the need for language assistance; or accommodations under section 5.4.

**5.6.6.1** A party may submit a request for a temporary delay or limited extension to the Title IX Coordinator. Any request for temporary delay or limited extension shall include a good cause statement and the reason(s) for the request. The Title IX Coordinator will consider the request and notify the parties of any approved temporary delay or limited extension. If the Title IX Coordinator determines no good cause exists to grant the temporary delay or limited extension, the Title IX Coordinator will provide a written denial to the requesting party.

### **5.6.7 Notice of Allegations**

**5.6.7.1** Upon receipt of a formal complaint, the Title IX Coordinator 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 constituting sexual harassment as defined in this policy and other alleged policy violations consolidated in the formal complaint and included in the scope of the investigation, including sufficient details known at the time, and allow sufficient time for parties to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the reported incident, if known, the alleged conduct, and the date and location of the alleged incident, if known;

**5.7** A statement that the respondent is presumed not responsible for the alleged violation and that this presumption of innocence remains in effect until either the respondent acknowledges the alleged violation or upon the conclusion of the grievance process, at which time all elements of the alleged violation must be established by the University;

- 1) A notice that each party may choose to be accompanied by an advisor (who may be, but is not required to be, an attorney) at all related meetings, investigative interviews, and/or hearings, and who may inspect and review evidence before the conclusion of the investigation; and
- 2) A statement that knowingly making false statements or knowingly submitting false information is prohibited by this policy.

**5.7.1.2** The Title IX Coordinator or designee must provide each party with written notice of these rights as soon as practicable but no later than seven days before a hearing that pertains to the party.

**5.7.1.3** If, in the course of an investigation, the investigator decides to investigate additional alleged policy violations pursuant to the complaint that are not included in the initial notice of allegations provided, the Title IX Coordinator or designee must provide notice of the additional allegations.

### **5.7.2 Dismissal of the Formal Complaint**

**5.7.2.1** The University must investigate all allegations in a formal complaint according to the procedures outlined in this policy unless the alleged conduct:

- 1) Would not constitute sexual harassment as defined in this policy, even if proved;
- 2) Did not occur in the University's education programs or activities; or
- 3) Did not occur in the United States.

**5.7.2.2** If the alleged conduct falls within the criteria outlined in section 5.7.2.1, the Title IX Coordinator must dismiss the formal complaint with regard to that conduct for the purposes of Title IX and this policy. Such dismissal does not prohibit investigation or action by the University under another provision of UVU policy.



**5.7.2.3** The Title IX Coordinator may dismiss the formal complaint or any allegations if at any time during the investigation or hearing:

- 1) A complainant notifies the Title IX Coordinator in writing that the complainant wants to withdraw the formal complaint or any allegations therein;
- 2) The respondent is no longer enrolled at or employed by the University; or
- 3) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint.

**5.7.2.4** Upon a required or permitted dismissal of the formal complaint, the Title IX Coordinator or designee shall promptly send written notice of the dismissal and the reason(s) to the parties.

**5.7.2.5** Any party may appeal the dismissal of a formal complaint in accordance with section 5.15 of this policy.

## **5.8 Informal Resolution**

**5.8.1** The University may offer an informal resolution process only after a formal complaint is filed. Informal resolution may include a limited inquiry into the facts, but typically does not include an investigation. Informal resolution shall be flexible enough to meet the needs of each case and may include mediating an agreement between the parties, separating the parties, referring the parties to counseling programs, conducting targeted preventive educational and training programs, or providing remedies for the individual harmed by the offense.

**5.8.2** Participation by the parties in the informal resolution process is voluntary. The University may not require either party to engage in informal resolution as a condition of enrollment or employment or enjoyment of any other right, waiver of the right to investigation, or adjudication of formal complaints of sexual harassment.

**5.8.3** The University is not obligated to offer or facilitate informal resolutions. Because each case is different, the Title IX Coordinator shall determine whether a formal complaint of sexual harassment is appropriate for informal resolution.

**5.8.4** The University may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

**5.8.5** At any time before reaching a determination regarding responsibility, the Title IX Coordinator or designee may facilitate an informal resolution process that does not involve a full investigation and adjudication, provided that the Title IX Coordinator or designee obtains the parties' voluntary, written consent to the informal resolution process and provides to the parties a written notice disclosing the following:

- 1) The allegations;





- 2) The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations (provided, however, that at any time before agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the formal process with respect to the formal complaint); and
- 3) Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or may be shared.

**5.8.6** The Title IX Coordinator endeavors to conclude informal resolutions promptly and shall keep a written record of all informal resolution efforts in accordance with section 4.12 of this policy.

**5.8.7** After concluding informal resolution of a formal complaint, the Title IX Coordinator or designee shall provide written notification to the parties of the resolution that was agreed upon.

## **5.9 Formal Investigations**

**5.9.1** If the formal complaint of Title IX sexual harassment is not dismissed or resolved informally, the Title IX Coordinator or designee shall conduct a thorough, impartial investigation by interviewing witnesses, collecting documentary evidence, and preparing a written report of findings. The purpose of the investigation is to establish whether, based on a preponderance of the evidence, the alleged sexual harassment occurred.

**5.9.2** The Title IX Coordinator may refer any non-Title IX allegations in the formal complaint to the appropriate office for resolution. Alternatively, the Title IX Coordinator may investigate any non-Title IX allegations arising out the same facts or circumstances as the complaint of Title IX sexual harassment when consolidated in the formal complaint according to section 5.6.5.

**5.9.3** The Title IX Coordinator shall choose the investigator, except in cases where the Title IX Coordinator or others involved in the investigation have a conflict of interest, in which case the University shall select an impartial internal or external investigator.

**5.9.4** Investigations under this policy shall incorporate the following standards:

- 1) The burden of proof and the burden of gathering evidence sufficient to reach a determination rests on the University and not on the parties.
- 2) 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 their professional 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 for the purposes of this process.



3) The University shall presume the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the process.

4) The University shall provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

5) Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such is presented to prove that someone other than the respondent committed the conduct alleged by the complainant.

**5.9.5** Each party may choose to be accompanied by an advisor of their choice (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. Generally, 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 the party may be asked to procure an alternate advisor.

**5.9.6** At any time before or during the investigation, the investigator may recommend that the University provide support measures for the parties or witnesses. Any individual's intentional interference with support measures may be considered retaliatory and a separate violation of this policy.

**5.9.7** If either party fails or declines to participate in the investigation over a reasonable period of time, the investigator may make findings without the response of that party, or the Title IX Coordinator may dismiss the case according to section 5.7.2.3 of this policy.

**5.9.8** To each party whose participation is expected or invited, the University will provide written notice of the date, time, location, participants, and purpose of investigative interviews or other meetings, with sufficient time for each party to prepare to participate.

**5.9.9** If, at any point during the investigation, the investigator determines a need to investigate allegations not included in the formal complaint, the Title IX Coordinator or designee must provide notice of the additional allegations to the parties.

**5.9.10** Upon conclusion of the investigation, the investigator shall prepare a draft investigative report that includes the following:

- 1) A summary of the complainant's allegations and the respondent's responses;
- 2) The relevant evidence;
- 3) The material witnesses supporting or opposing the allegation(s);
- 4) The preliminary recommended findings; and



5) A description of the procedural steps taken from the receipt of the formal complaint through the recommended findings, including any notifications to the parties, interviews with the parties and witnesses, and methods used to gather other evidence.

**5.9.11** Before the draft investigative report is finalized, investigators will give each party and their advisors, if any, an electronic or hard copy of the draft investigative report and any evidence (whether inculpatory or exculpatory) obtained as part of the investigation and directly related to the allegations in the formal complaint, including evidence upon which the University does not intend to rely in reaching a determination of responsibility.

**5.9.12** The parties may submit a written response or additional information to the investigator within 10 business days of the date of the notice of the opportunity to review the draft investigative report and evidence, which the investigator will consider prior to completion of the investigative report. This is the parties' final opportunity to submit any additional information or witnesses. In the absence of good cause, the investigator shall not consider information discoverable through the exercise of due diligence that is not provided to the investigator at this juncture.

**5.9.12.1** The investigator 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.

**5.9.13** The investigator shall prepare a final 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 relied on, and recommended findings and determination.

**5.9.13.1** A recommended determination of "responsible" means that the investigator has found that, based on a preponderance of the evidence, there is sufficient evidence to conclude that the alleged sexual harassment occurred.

**5.9.13.2** A recommended determination of "not responsible" means that the investigator has found that, based on a preponderance of the evidence, there is insufficient evidence to conclude that the alleged sexual harassment occurred.

**5.9.13.3** At this stage, the investigator may recommend that the respondent was not responsible for sexual harassment as defined in this policy, but—as it pertains to the same allegations and evidence—is responsible for non-Title IX policy violations consolidated in the formal complaint and considered under these procedures. In this case, the procedures for addressing such violations will typically continue in accordance with the procedures in this policy.

**5.9.13.4** At any point after receiving a report or formal complaint, or upon discovery during the investigation, the Title IX Coordinator may refer any potential non-Title IX policy violations to the appropriate office for resolution.



**5.9.14** 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               |

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

## **5.10 Sanctions and Remedies**

**5.10.1** Within 10 business days of receiving the final investigation report, the sanctioning official shall recommend the appropriate sanctions and remedies based on the investigative report's recommended findings and determinations. In consultation with the Title IX Coordinator and the Office of General Counsel (and with People and Culture when the respondent is an employee), the sanctioning official shall ensure any proposed sanctions and remedies are appropriate to end the prohibited conduct, prevent further violations of this policy, and remedy the effects of any violation.

**5.10.2** In recommending the appropriate sanction(s), the sanctioning official shall be guided by the following considerations:

- 1) The severity, persistence, or pervasiveness of the policy violations;
- 2) The nature of violence in the sexual harassment and/or use of weapons, drugs, or alcohol (if applicable);
- 3) The impact of the policy violations on the complainant;
- 4) The impact or implications of the policy violations on the university community;



- 5) Established prior misconduct by the respondent, including the respondent's relevant prior disciplinary history;
- 6) Whether the respondent has accepted responsibility for the policy violations;
- 7) The maintenance of a safe, nondiscriminatory, and respectful working and learning environment; and
- 8) Any other mitigating, aggravating, or compelling factors.

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

**5.10.3.1** *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.

**5.10.3.2** *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 certificate or degree, discretionary sanction, organizational sanction, and notation on the student's transcript consistent with the *Family Educational Rights and Privacy Act*.

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

**5.11** 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.

**5.12** Remedies may also be provided to the complainant to restore or preserve equal access to the University's education programs or activities. These remedies may include adjustments to academic or work arrangements or assignments, access to counseling services, academic support, campus restrictions, climate assessments, educational training, or other appropriate measures.

**5.13** The sanctioning official or designee shall provide the respondent and the Title IX Coordinator written notification of any recommended sanctions and remedies.

**5.13.1** The Title IX Coordinator shall send the final investigative report and additional guidance on the next steps of the process to the parties. The final investigative report shall be provided to the parties at least 10 business days before any hearing under this policy.

**5.13.2** Unless the allegations in the formal complaint are dismissed according to section 5.7.2, referred to another process according to section 5.9.2, or informally resolved according to section



5.8, the case will proceed to a live hearing at which parties and witnesses may, but are not required to, participate.

## **5.14 Live Hearings**

### **5.14.1 The Role of the University during Live Hearings**

**5.14.1.1** The University shall remain objective and impartial throughout the hearing process, including impartially presenting the final investigative report to the hearing panel for an independent determination regarding responsibility. The University is not a party to the live hearing, but it shall be the University, not the parties, that bears the burden of producing evidence through the final investigative report to the hearing panel.

**5.14.1.2** 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*.

### **5.14.2 Appointing a Hearing Panel and Hearing Officer**

**5.14.2.1** Upon receipt of the final investigation report and sanction recommendation, the Title IX Coordinator or designee will appoint a hearing officer and hearing panelists. The Title IX Coordinator and investigator(s) may not be the hearing officer or serve on the hearing panel.

**5.14.2.2** The Title IX Coordinator shall appoint a three-member hearing panel selected from a pool of trained panelists. The hearing panel is responsible for objectively evaluating relevant evidence and rendering an independent determination regarding responsibility based on a preponderance of the evidence. The hearing panel shall not defer to the recommendation determination(s) in the investigative report.

**5.14.2.3** Panel members cannot have also served in one of the following roles in the same matter: (1) an advocate or counselor for either party; (2) an investigator; (3) an institutional prosecutor; or (4) an advisor to a person described in (1), (2), or (3). If an individual employed by the University or otherwise representing the University serves as an investigator and an institutional prosecutor for the alleged violation of a policy or rule, the University shall advise the parties before the investigation proceeding. An individual may not serve as an investigator or institutional prosecutor and a party advisor in the same matter.

**5.14.2.4** If a party is a faculty member, and faculty members are available to train and serve on the panel, the panel should comprise at least one faculty member. If a party is a staff member, and staff members are available to train and serve on the panel, the panel should comprise at least one staff member. If the respondent is a student, any combination of available trained faculty and staff members may serve.

**5.14.2.5** Upon appointing a hearing officer and hearing panel, the Title IX Coordinator or designee issues a notice of hearing, in either an electronic or hard copy format, to the parties and



the parties' advisors, if any. The notice of hearing shall contain (1) dates, deadlines, and requirements appropriate for the orderly administration of the live hearing, to be held in person or virtually; and (2) a statement informing the parties that the University must, upon either party's request, provide for a live hearing where the parties are located in separate rooms with technology enabling the hearing panel and the parties to simultaneously see and hear the party or witness answering questions.

### **5.14.3 Required Disclosures and Information Access**

**5.14.3.1** Each party shall disclose the identity of any person who will present expert opinion evidence at the live hearing no later than 5 business days before the date of the hearing.

**5.14.3.2** Unless otherwise stipulated, this disclosure shall be accompanied by a written report prepared and signed by the expert witness. The report shall contain (1) the subject matter on which the expert is expected to testify; (2) the substance of the facts and opinions to which the expert is expected to testify; (3) a summary of the grounds for each opinion; (4) and the qualifications of the expert witness.

**5.14.3.3** The hearing officer may exclude expert testimony that they deem as not relevant.

**5.14.3.4** At least 5 business days before the hearing date, each party must provide to the hearing officer any written statement responding to the final investigative report and a list of witnesses and documents that they will be presenting to the hearing panel. At any time, the hearing panel may also submit a list of requested witnesses to the hearing officer. The hearing officer will ensure all parties and hearing panelists gain access to these disclosures no less than 3 business days before the hearing.

**5.14.3.5** The hearing officer shall ensure that all evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint is available at the hearing. The hearing officer shall give each party equal opportunity to refer to this evidence during the hearing, including for purposes of cross-examination. This evidence (1) shall include that upon which the University does not intend to rely in reaching a determination regarding responsibility and (2) shall include inculpatory and exculpatory evidence obtained from a party or other source.

**5.14.3.6** The University will provide access to all material evidence that is in its possession to the parties, including both inculpatory and exculpatory evidence, no later than one week before the day on which a live hearing begins.

### **5.14.4 Advisors' Role During Live Hearings**

**5.14.4.1** Each party may be accompanied to the live hearing by an advisor of their choice. The University will not limit the choice or presence of any party's advisor.

**5.14.4.2** A party's advisor may participate in the live hearing through asking the other party and any witnesses all relevant questions and follow-up questions, including those challenging



credibility. The hearing officer may otherwise establish restrictions regarding an advisor's participation, provided the restrictions apply equally to both parties. The hearing officer shall restrict an advisor's participation in the hearing if the advisor becomes unreasonably disruptive to the proceedings or fails to follow basic rules of decorum established by the hearing officer.

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

**5.14.4.3** Pursuant to Utah Board of Higher Education Policy R256, each party's advisor may also present opening and closing statements.

**5.14.4.4** Each party may have a support person/advisor or legal representative who can have full participation in the live hearing to make opening and closing statements; examine and cross-examine witnesses; introduce relevant evidence; and provide support, guidance, or advice to the party.

**5.14.4.5** If a party does not have an advisor present at the live hearing, the University must provide without fee or charge to that party, an advisor (who need not be an attorney) of the University's choice to conduct cross-examination on behalf of that party.

#### **5.14.5 Hearing Officer and Hearing Panel Responsibilities**

**5.14.5.1** The hearing officer shall conduct the live hearing to obtain full disclosure of relevant facts and to afford all parties reasonable opportunity to present their positions.

**5.14.5.2** The hearing officer shall exclude the following during live hearings:

- 1) Evidence that is irrelevant or unduly repetitious;
- 2) Irrelevant questions directed to a party or witness. Before a party or witness answers a cross-examination or other question, the hearing officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant;
- 3) Evidence privileged in the courts of Utah, unless the privilege at issue is specifically waived by the person holding such privilege; and
- 4) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior, unless such is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

**5.14.5.3** The hearing officer shall not exclude evidence solely because it is hearsay.





**5.14.5.4** The hearing officer shall afford each party's advisor the opportunity to offer opening and closing statements, examine and cross-examine witnesses, and introduce relevant evidence during the proceeding.

**5.14.5.4.1** The hearing panel must consider all relevant evidence, including relevant party or witness statements, even if that party or witness does not appear at the hearing or is not subject to cross-examination. The hearing panel must not draw an inference about responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

**5.14.5.5** The University shall create an audio or audiovisual recording of the hearing and shall make the recording available to the parties for inspection and review upon request.

**5.14.5.6** The hearing may be conducted with parties physically present in the same geographical location or virtually, at the Title IX Coordinator's discretion, provided that participants can simultaneously see and hear each other.

**5.14.5.7** Nothing in this section precludes the hearing officer from taking appropriate measures necessary to preserve basic decorum and the integrity of the hearing.

**5.14.5.8** Following the conclusion of the live hearing, the hearing panel will deliberate to determine if the respondent is responsible and if sanctions, if any, are appropriate. If the hearing panel determines the respondent is responsible, they shall consult with the sanctioning official to obtain updated recommended sanctions. The hearing panel shall defer to the sanctioning official's recommended sanctions unless it is clearly unreasonable in light of the evidence and known circumstances.

#### **5.14.6 Written Determination**

**5.14.6.1** The hearing panel will provide the written determination simultaneously to the Title IX Coordinator, the sanctioning official, and the parties within 20 business days after the live hearing concludes. The written determination must include:

- 1) Identification of the allegations potentially constituting sexual harassment as defined in this policy and other policy violations consolidated in the formal complaint, if applicable;
- 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;
- 3) Findings of fact supporting the determination;
- 4) Conclusions regarding the application of this policy to the facts;
- 5) A statement of, and rationale for, the result as to each allegation, including (a) a determination regarding responsibility based on a preponderance of the evidence; (b) disciplinary sanctions



imposed on the respondent; and (c) whether the University will provide remedies designed to restore or preserve equal access to the University's education program or activity to the complainant; and

6) The University's procedures and permissible bases for the complainant and respondent to appeal.

**5.14.6.2** The hearing panel may determine at this stage that the respondent is not responsible for sexual harassment as defined in this policy, but—as it pertains to the same allegations and evidence—is responsible for other policy violations consolidated in the formal complaint and considered under these procedures. In this case, the procedures will continue according to this policy, and the hearing panel will render a final determination according to this policy.

**5.14.6.3** A determination regarding responsibility and relevant sanctions, if any, becomes final when either (1) the deadline for filing a written notice to appeal the determination, as outlined in section 5.15, has passed without any party filing such notice; or (2) if appealed, on the date that the parties receive the written determination of the result of the appeal following the procedures in section 5.15.

## **5.15 Appeals**

**5.15.1** Within 10 business days of written notification, any party may submit to the Title IX Coordinator a written notice of intent to appeal (1) a hearing panel determination regarding responsibility; or (2) the dismissal of any portion of a formal complaint by the Title IX Coordinator.

**5.15.2** The appeal officer will consider a notice of intent to appeal only if the appeal officer determines one or more of the following conditions are satisfied:

- 1) A procedural irregularity affected the outcome of the hearing;
- 2) New evidence that was not reasonably available at the time of the hearing or dismissal could affect the outcome of the hearing or dismissal; or
- 3) The Title IX Coordinator, the investigators, or the hearing panel had a conflict of interest or bias for or against the parties generally, or an individual complainant or respondent, that affected the outcome.

**5.15.3** Within 5 business days of receiving a party's written notice of intent to appeal, the Title IX Coordinator shall send to both parties (1) the contact information for the appeal officer who will decide the appeal, and (2) instructions on filing written statements with the appeal officer.

**5.15.4** The appeal officer shall be the Provost, appropriate vice president, or their designee. The appeal officer must be free of any bias or conflict of interest with respect to any party and must



not have been the hearing officer, a member of the hearing panel, the Title IX Coordinator, or the investigator under this policy.

**5.15.5** The parties may submit a written statement to the appeal officer supporting or opposing the hearing panel’s written determination of responsibility.

**5.15.5.1** The appeal officer must receive any written statements within 10 business days of the Title IX Coordinator sending the notice to the parties.

**5.15.6** The appeal officer will review all written statements, reports, evidence, and recordings and make a final written determination within 20 business days.

**5.15.7** In cases where a hearing panel’s determination is appealed, the appeal officer’s final written determination may (1) uphold the hearing panel’s written determination(s) of responsibility; (2) modify the hearing panel’s written determination(s) of responsibility; or (3) reverse the hearing panel’s written determination(s) of responsibility.

**5.15.8** In cases where a Title IX Coordinator’s dismissal of a formal complaint is appealed, the appeal officer’s final written determination may (1) uphold the Title IX Coordinator’s dismissal, or (2) reverse the Title IX Coordinator’s dismissal. If the dismissal is reversed, the Title IX Coordinator shall proceed with the process described in this policy, beginning with the filing of a formal complaint.

**5.15.9** The appeal officer will issue the final written determination simultaneously to both parties providing a detailed rationale for the appeal officer’s determination.

**5.15.9.1** The appeal officer’s final written determination is final; no further internal university reviews, appeals, or grievances are available to the parties.

| POLICY HISTORY   |  |                       |
|--|--|-----------------------|
| <b>Date of Last Formal Review:</b> <a href="#">Click here to enter a date.</a> |  |                       |
| <b>Due Date of Next Review:</b> <a href="#">Click here to enter a date.</a>    |  |                       |
| Date of Last Action  | Action Taken   | Authorizing Entity    |
| June 22, 2017  | Limited Scope changes approved.  | UVU Board of Trustees |
| March 2018   | Non-substantive changes: <ul style="list-style-type: none"> <li>• Policy 115 renumbered to 704</li> </ul> Policy 407 renumbered to 710                         | UVU Board of Trustees |
| November 29, 2018  | Non-substantive changes:<br>In sections 2.0 and 5.10.2, updated Policy 541 from <i>Student Rights and Responsibilities</i> to <i>Student Code of Conduct</i> . | UVU Policy Office     |
| June 18, 2019  | Temporary Emergency  | UVU Board of Trustees |



|                   |  |                               |
|-------------------|--|-------------------------------|
| July 31, 2018     | Non-substantive changes: Updated “Senior Vice President of Academic Affairs” to “Provost”  | UVU Policy Office             |
| March 25, 2020    | Under a newly approved section of Policy 101 and due to the COVID-19 situation, all currently established Temporary Emergency policies have been extended six months beyond their original expiration date. This policy will now expire December 18, 2020. | UVU Board of Trustees         |
| August 7, 2020    | Revised, temporary emergency policy approved to address new Title IX regulations.  | UVU Board of Trustees         |
| June 24, 2021     | Revised policy approved through the regular policy process.  | UVU Board of Trustees         |
| July 14, 2022     | Policy revised through compliance change process.  | UVU Office of General Counsel |
| November 14, 2023 | Non-substantive changes: updated references; changed all instances of “human resources” to “People and Culture”  | UVU Policy Office             |
| November 14, 2023 | Non-substantive changes: In section 5.2.3, changed “Respondents, complainants, and witnesses” to “Complainants, respondents, and witnesses”  | UVU Policy Office             |
| November 14, 2023 | In section 5.5.2, changed “and adjudication of formal complaints.” to “or adjudication of formal complaints”   | UVU Policy Office             |
| November 14, 2023 | In section 4.11, changed “Title IX Office” to “Equity and Title IX Office.”  | UVU Policy Office             |
| April 25, 2024    | Compliance change, mandated by HB 414, Utah Legislature. Approved.   | UVU President’s Council       |
| May 6, 2024       | Compliance change ratified.  | UVU Board of Trustees         |
| March 27, 2025    | Compliance change, mandated by Utah HB 261, the revocation of Executive Order 11246.   | UVU President’s Council       |
| July 22, 2025     | Non-substantive change to revise citation in section 5.7.2.2   | UVU Policy Office             |

\*More information on the formal review can be found in Policy 101 section 4.7.3.