



## UTAH VALLEY UNIVERSITY

### Policies and Procedures

<b>POLICY TITLE</b>	Discrimination, Harassment, and Affirmative Action (TEMPORARY EMERGENCY)	<b>Policy Number</b>	165
<b>Section</b>	Governance, Organization, and General Information	<b>Approval Date</b>	August 7, 2020
<b>Subsection</b>	Individual Rights	<b>Effective Date</b>	August 7, 2020
<b>Responsible Office</b>	Human Resources, Academic Affairs, Student Affairs, Office of the President		

#### 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)

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

**2.2** Title IV of the *Higher Education Amendments Act of 1972* (Title IV) 20 U.S.C. § 1681 (1972)

**2.3** Title VI of the *Higher Education Amendments Act of 1972* (Title VI) 20 U.S.C. § 1681 (1972)

**2.4** *Rehabilitation Act of 1973*, 29 U.S.C. § 504 (1973)

**2.5** *Government Records Access and Management Act (GRAMA)*, Utah Code § 63G-2-101 (2008)

**2.6** Utah State Board of Regents Policy R256 *Student Disciplinary Processes*



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**2.7** Utah State Board of Regents Policy R842 *Restrictions on Faculty/Staff Relationships with Students*

**2.8** UVU Policy 161 *Freedom of Speech*

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

**2.10** UVU Policy 361 *Leave of Absence*

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

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

### 3.0 DEFINITIONS

**3.1 Complainant, victim, or alleged victim:** An individual who has allegedly experienced protected-class discrimination, harassment, or retaliation in violation of university policy. The University may also be a co 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, adverse action towards university employees or students in the terms or conditions of employment; university admission or education; access to university programs, services, or activities; or other university benefits or services on the basis of inclusion or perceived inclusion in one or more of the protected classes that has the effect of denying or limiting participation in university employment or in a university program or activity.

**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 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



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

**3.7 Party:** Complainant or respondent.

**3.8 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.

**3.9 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.

**3.10 Respondent:** 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.

**3.11 Retaliation:** An action, performed directly or through others, that is aimed to dissuade a reasonable person from engaging in a protected activity or is done in retribution for engaging in a protected activity. Action in response to a protected activity is not retaliatory unless (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 (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.

## 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.



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#### 4.2 Relationship to Policy 162 and Other Policies

**4.2.1** Policy 162 defines and prohibits sex discrimination, sexual harassment, and retaliation, which relate to this policy in the following ways:

**4.2.1.1** *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.

**4.2.1.2** *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 *Title IX Sexual Harassment*. 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 *Title IX Sexual Harassment*.

**4.2.1.3** *Retaliation*—Complaints of retaliation, as described in Policy 162 *Title IX Sexual Harassment*, will be handled in accordance with the procedures in this policy.

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

**4.2.3** 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.

#### 4.3 Policy Statement

**4.3.1** 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.

**4.3.2** 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



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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.

**4.3.3** 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.

**4.3.4** 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.

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

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

#### **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*, or 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.

**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** Individuals who, in bad faith, deliberately make false or malicious accusations of violation of this policy shall be subject to disciplinary action, up to and including termination of employment and/or expulsion from the University. A finding of no violation by the investigator(s) does not in itself constitute proof of a false or malicious accusation.

**4.4.5** 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.



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#### 4.5 Investigations and Disciplinary Proceedings

**4.5.1** 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 and opportunities, as outlined in these procedures.

**4.5.2** The University is committed to ensuring that its resolution process is free from actual or perceived bias or conflicts of interest that would materially impact the outcome. University officials who are designated to conduct and/or participate in discrimination, harassment, or retaliation investigations or proceedings shall be trained on how to conduct these investigations or proceedings in a manner free from bias or intimidation. Officials shall also be trained to recognize and acknowledge any potential conflict of interest. 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 or to the Associate Vice President of Human Resources. The written request should include the specific rationale as to why the requestor believes the bias or conflict could materially impact the outcome.

**4.5.3** Employees and students shall promptly participate in good faith in formal or informal reviews and investigations related to this policy. If either party fails to participate in good faith, the investigator(s) may make findings without the response of that party, potentially leading to an unfavorable outcome for that party.

#### 5.0 PROCEDURES

##### 5.1 Scope and Applicability of These Procedures

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

##### 5.2 General Principles

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



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

**5.2.3** Respondents, complainants, 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.

**5.2.4** 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.

**5.2.5** 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.

### **5.3 Requesting Disability, Religious, and/or Pregnancy Accommodations, or Military Service or Leave Exceptions**

**5.3.1** Job applicants or employees with qualifying disabilities who are seeking accommodations to help them perform the essential functions of their jobs should contact the Accommodations Coordinator in Human Resources. Supervisors who receive disability accommodation requests from university employees must promptly report such requests to the Accommodations Coordinator in Human Resources. Students shall make requests for disability accommodations related to academics or other university services (except employment) through the Office of Accessibility Services.

**5.3.2** Employees who are seeking accommodations for their sincerely held religious beliefs should contact the Office for Equal Opportunity and Affirmative Action. Supervisors who receive religious accommodation requests from university employees must promptly report such requests to the OEO/AA, who shall manage the accommodations process with the employee. Students who are seeking accommodations for their sincerely held religious beliefs should contact their professor(s) and follow the procedures in Policy 601 *Classroom Instruction and Management*, including but not limited to consulting with the EO/AA Director before the professor denies an accommodation. If students believe a religious accommodation request has been wrongfully denied, they may contact the OEO/AA for assistance.

**5.3.3** Employees who are seeking accommodations due to pregnancy and/or pregnancy-related conditions should contact the Accommodations Coordinator in Human Resources. Supervisors who receive pregnancy and/or pregnancy-related accommodation requests from university employees must promptly report such requests to the Accommodations Coordinator in Human Resources. Students who are seeking accommodations due to pregnancy and/or pregnancy-related conditions should contact Accessibility Services, which shall gather any necessary



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medical documentation. If accommodations for disability are not warranted, students shall be referred to the OEO/AA for a determination of appropriate accommodations, including options to withdraw if that is the student's preference.

**5.3.4** Employees requesting military service leave should contact Benefits in Human Resources. Supervisors who receive military service leave requests from university employees must promptly report such requests to Benefits in Human Resources. Students who are seeking military service leave requests should contact the UVU Veteran Success Center and/or the OEO/AA for assistance. Employees who believe a military service leave request has been wrongfully denied may contact the OEO/AA for assistance.

### **5.4 Affirmative Action Program**

**5.4.1** The EO/AA Director, in coordination with Human Resources, 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 to President's Council.

### **5.5 Reporting**

#### **5.5.1 How to Report**

**5.5.1.1** 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 EO/AA Director 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 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.

#### **5.5.2 Who Must Report**

**5.5.2.1** Employees who receive a complaint of any kind 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 5.5.1.1.

#### **5.5.3 Who Must Not Report**

**5.5.3.1** Licensed mental health counselors 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.

#### **5.6 Support Persons/Advisors**

**5.6.1** In matters of nonacademic misconduct, including when students are respondents in protected-class discrimination, harassment, or retaliation complaints, and where the University believes in good faith, based on facts known by the University at the time or when additional facts are discovered later, that the matter may result in expulsion or a minimum 10-day suspension, the following additional protections will apply. Students may waive any rights described in this section. This section does not apply to UVU Police Department law enforcement activities.

**5.6.1.1** Before interviewing the student, the investigator or representative of the OEO/AA shall notify the student of the allegations made against them and of the student's right to have a support person/advisor throughout the process who may be, but need not be, an attorney. This notice may be verbal and may be given immediately before a student is interviewed in regards to the issue described in the notice. If a student wishes to seek counsel from a support person/advisor, the University shall reschedule the interview, giving the student reasonable time to obtain a support person/advisor. In meetings or interviews with the OEO/AA or the University, student complainants and student respondents each may be accompanied by their support person/advisor, if any. During such meetings or interviews, the support person/advisor may only advise the student and may not speak on behalf of the party or otherwise participate in, or in any manner disrupt the investigation, meetings, or informal process. If a support person/advisor is disruptive, the investigator or OEO/AA may exclude them from meetings or other related processes and proceed without the presence of the support person/advisor.

**5.6.2** During any review hearings under section 5.11 of this policy, complainants and respondents (whether students or employees of the University) may each have a support person/advisor of their choice, who may be an attorney, advocate for them. 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.

**5.6.3** University employees may serve as advisors only if they have no conflict of interest.

**5.6.4** Support persons/advisors must be willing to agree to maintain the confidentiality of investigation and review hearing processes.



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#### **5.7 Preliminary Review of Reports of Discrimination, Harassment, or Retaliation**

**5.7.1** After receiving a report of protected-class discrimination, harassment, or retaliation, the EO/AA Director or designee shall promptly conduct a preliminary review to determine (1) if the allegations may constitute sexual harassment under Policy 162 *Title IX Sexual Harassment* and therefore must proceed according to Policy 162; (2) any appropriate interim measures or support services; and (3) whether there is reasonable cause to believe that this policy was violated and/or that an investigation is necessary.

**5.7.2** A complaint is timely if it is filed within 365 calendar days of the last alleged discriminatory act. A complaint that is not timely or that fails to state a claim of discrimination may be dismissed by the EO/AA Director after an initial review. At the Director's discretion and for good cause, a complaint that is not timely may not be accepted.

**5.7.3** The EO/AA Director or designee shall dismiss the complaint if (1) the allegations would not constitute a violation of this policy even if proved, or (2) there is otherwise no reasonable cause to believe that this policy was violated based on information received or discovered during a preliminary review inquiry.

**5.7.4** The EO/AA Director may dismiss the complaint if specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the complaint, or if the respondent is no longer enrolled or employed by the University.

**5.7.5** The EO/AA Director or designee shall promptly notify the parties in writing of the dismissal.

**5.7.6** Such dismissals are final; no further internal reviews, appeals, or grievances are available to the parties.

**5.7.7** At the recommendation of the EO/AA Director or designee, the sanctioning official (as defined in section 5.9.13) may impose an interim suspension of a student, employee, visitor, or organization, or invoke other temporary safety measures pending the outcome of the investigation and subsequent proceedings.

#### **5.8 Informal Resolution**

**5.8.1** 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.

**5.8.2** 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



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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.

**5.8.3** 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.

**5.8.4** After concluding informal resolution of a complaint, the EO/AA Director or designee shall notify the complainant and respondent in writing of the resolution that was agreed upon.

**5.8.5** 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.

## **5.9 Formal Investigation**

**5.9.1** If the EO/AA Director or designee determines an investigation is necessary, the EO/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 establish whether there is a reasonable basis, based on a preponderance of the evidence, for concluding that the alleged violation of this policy has occurred. 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.

**5.9.2** 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, when and where the alleged misconduct occurred, and why the complainant believes it violates university policy, and a proposed resolution. The complainant shall be asked to provide and preserve all corroborating or potentially relevant evidence in any format, list potential witness names, and sign the statement. From this formal complaint, the EO/AA Director or designee shall prepare a summary of allegations and relevant information for the respondent.



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**5.9.3** By requesting an investigation and submitting a formal complaint, the complainant is giving the investigator consent to discuss the information provided with other persons who may have relevant factual knowledge of the circumstances of the complaint and is authorizing the collection and examination of all records and other documentation relevant to the complaint. In cases where a complainant 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.

**5.9.4** Complainants, respondents, and witnesses shall be treated with respect throughout the investigation process, disciplinary process, and other proceedings. The following standards shall apply:

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

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

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.

2) 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.

3) Parties and witnesses shall provide truthful information in connection with any report, investigation, or resolution of protected-class discrimination, harassment, and retaliation under this policy.

4) Parties should have interim measures made available and be given the opportunity to request modifications necessary for safety.

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.



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- 7) Parties shall be given timely notice of meetings where their presence is necessary.
- 8) Parties shall receive notification, in writing, of the results of any proceedings.
- 9) Parties shall have the opportunity to articulate concerns or issues about proceedings under this policy.

#### **5.9.5 Notice of Allegations**

**5.9.5.1** Upon receipt of a formal complaint, the EO/AA Director 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 in the case of sex discrimination and retaliation), including sufficient details known 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 5.6 of this policy, parties may have an advisor of their choice at all related meetings, investigative interviews, and hearings.
- 5) A statement that knowingly making false statements or knowingly submitting false information is prohibited by this policy.

**5.9.5.2** If, during the course of an investigation, the investigator decides to investigate allegations about the complainant or respondent that are not included in the notice of allegations provided pursuant to this section, the EO/AA Director must provide notice of the additional allegations to all known parties.

**5.9.6** The respondent may prepare and submit a written statement to admit or deny the allegations, provide an explanation why any conduct was not a violation of the policy, provide all corroborating evidence, list potential witnesses, and state whether the complainant's proposed resolution is appropriate.

**5.9.7** Upon receipt of the written response from the respondent, or after the reply period expires without a response, the investigator may request to meet with the respondent and/or complainant to clarify any discrepancies.



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**5.9.8** The EO/AA Director shall choose 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.

**5.9.9** To provide a prompt, thorough, fair, and impartial investigation and resolution, all investigations of reports of protected-class discrimination, harassment, and retaliation shall incorporate the following standards:

- 1) The respondent shall be provided the name of the complainant (if known), a notice of request for investigation, a written statement of the allegations, and a copy of this policy. The respondent shall be given a full opportunity to respond to the allegations.
- 2) The investigator(s) conducting the investigation shall be familiar with this policy, have training or experience in conducting investigations, and shall be familiar with applicable university policies and procedures.
- 3) The investigator shall apply a preponderance of evidence standard to determine whether the conduct occurred as alleged and whether there has been a violation of this policy.
- 4) At any time before or during the investigation, the investigator may recommend that interim protections or remedies for the parties or witnesses be provided by appropriate university administrators. Failure by a party to comply with the terms of interim protections may be considered a separate violation of this policy.
- 5) At any time before or during the investigation, the investigator(s) or the EO/AA Director may recommend that a respondent employee be placed on a paid or unpaid leave. Leave may be unpaid where the employee has failed to participate in the investigation promptly or in good faith or when substantial evidence received before or during the investigation shows that a serious violation of policy has occurred.
- 6) 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 varies based on the circumstances of each case. Additionally, the timeline for a case may be affected by breaks in the academic calendar, availability of the parties and witnesses (including due to leave of absence), scope of the investigation, need for interim actions, and unforeseen or exigent circumstances. The parties and administrators with a need to know will be periodically updated on the status of the case.
- 7) 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, potentially leading to an unfavorable outcome for that party.



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8) Parties shall be informed if there were findings made that the policy was or was not violated. In accordance with university policies protecting individuals' privacy, and applicable laws, the complainant may be generally notified that the matter has been referred for disciplinary action, but shall not be informed of the details of the recommended disciplinary action without the consent of the respondent. The investigator shall also advise the complainant and respondent of additional options outside the University that may be pursued.

**5.9.10** The investigator(s) 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(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.

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

**5.9.12** The final investigative report shall also 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 Associate Provost of Academic Administration)
Staff member	Provost, vice president or designee of the relevant division
Provost, vice president or direct report of the University President	University President or designee
Contractor, vendor, visitor, volunteers, etc.	Vice President of Finance and Administration or designee



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#### 5.10 Sanctions and Remedies

**5.10.1** 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) 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.

**5.10.2** Respondents who are found to have violated this policy may be subject to sanctions, depending on the circumstances and the severity of the violation, as follows:

- 1) *Employees*—Possible sanctions against employees for violations of this policy include, but are not limited to, 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, but are not limited to, those described in UVU Policy 541 *Student Code of Conduct*, such as fines, restitution, interim suspension, 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 include, but are not limited to,



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

**5.10.3** 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.

**5.10.4** After the findings are sent to both parties, the EO/AA Director will promptly forward the written findings to the sanctioning official, who shall send to both the complainant and the respondent a written outcome notice of the investigation, including any sanctions and remedies determined by the sanctioning official and the University's procedures for seeking a review/appeal of the outcome. However, the sanctioning official, in consultation with the EO/AA Director or designee, may choose not to disclose the sanctions to the other parties, and shall not disclose the discipline imposed on a respondent student, except under the following circumstances:

- 1) The discipline directly affects the other party, such as when the respondent student is ordered to stay away from the other party, an employee is transferred to another job site, worksite, class, or is suspended or dismissed from the University; or
- 2) The respondent student gives their written permission to disclose the discipline.

### **5.11 Review Hearing**

**5.11.1** 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.

**5.11.2** 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.

**5.11.3** After submitting the written request identified in section 5.11.1, and before the formation of a review panel under section 5.11.5, the requesting party must meet with the sanctioning official for a pre-review meeting. In this meeting, the sanctioning official will explain the review hearing process and provide access to evidence and records available for the review hearing.

**5.11.4** While a review is pending, interim sanctions may be imposed by the sanctioning official, but irreversible sanctions shall not be imposed until the review hearing process is complete. For example, if termination from employment has been recommended, a respondent may be suspended from employment (on a paid or unpaid basis) during the review process, but a



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termination of employment shall not be imposed until the review hearing process is complete and the termination recommendation is upheld. Leave may be unpaid where the employee has failed to participate in the investigation promptly or in good faith.

**5.11.5** The EO/AA Director or designee shall promptly convene a three-member review panel from a pool of faculty, staff, and students trained in Title VII of the *Civil Rights Act of 1964* requirements, Title IV and Title VI of the *Higher Education Amendments Act of 1972* requirements, Policy 165 *Discrimination, Harassment, and Affirmative Action*, and related procedures.

**5.11.5.1** 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 President of Faculty Senate. Staff members shall be selected for a term of service by the Vice President of Planning, Budget, and Human Resources or designee and shall be approved by the President of the Professional Association of Campus Employees (PACE). 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) and approved by the UVUSA President.

**5.11.5.2** The selected panel shall choose a panel chair, considering availability and EO/AA training and panel experience. Review panel members must be in good standing with the University and must not have any conflicts of interest with serving on the panel. 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.

**5.11.6** 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 in the letter. 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 and notify the parties.

**5.11.7** 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 committee may determine that it is unnecessary to hold a hearing based on the following factors: (1) insufficient evidence to support a claim of discrimination; 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.



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**5.11.8** Information shared during a review process must remain confidential. The University shall not be responsible for disclosures made by the parties, who shall bear individual liability for their disclosures. All meetings and hearings related to a review process are closed to the public.

**5.11.9** 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.

**5.11.10** The complainant and respondent may each 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.

**5.11.11** Each party may be accompanied at the review hearing by a support person/advisor of their choice, who may 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 prior to the date of the review hearing. If timely notice is not provided, the support person/advisor may attend but shall not participate in the hearing.

**5.11.12** The review panel chair, complainant, and respondent 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.

**5.11.13** 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 shall begin the hearing by asking the investigator(s) to provide a summary of the investigation process and the findings and conclusions contained in the final investigation report or summary. The review panel may also ask the investigator(s) to state the sanction(s) determined by the sanctioning official.

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) The complainant and respondent shall each have an opportunity to make a personal statement relevant to the review panel's determination (see section 5.11.14), 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) The complainant and respondent (or their respective support person/advisor, if any) shall each 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 may question the investigator(s), any witness, or each/either party. 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. If the review panel asks the advising attorney from the Office of the General Counsel to remain for the deliberations, the advising attorney may remain present but shall have no vote.

**5.11.14** 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.

### **5.12 Executive Review, Final Sanction, and Final Outcome Letter**

**5.12.1** 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

**5.12.2** 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 5.10.1 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.

**5.12.3** 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.

**5.12.4** The final outcome notice shall also state that the decision is final and not subject to further university review or grievance and include options for seeking remedies outside of the University, such as with the federal Equal Employment Opportunity Commission (EEOC) and



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the Utah Antidiscrimination and Labor Division (UALD), which investigate complaints of unlawful discrimination and/or harassment in employment, or the US Department of Education Office for Civil Rights (OCR), which investigates complaints of unlawful discrimination and harassment in employment and educational programs or activities.

**5.12.5** Once the final outcome notice is issued to the parties, no further internal reviews, appeals, or grievances are available to the parties. Nothing in this policy abrogates the rights of the parties to seek other remedies under state or federal law, such as with the agencies mentioned in section 5.12.4 above.

**5.12.6** The final outcome letter may be used by the EO/AA Director for data collection and compliance purposes only. The review panel, sanctioning official, and executive university administrator shall provide all documents submitted and reviewed as part of the review process to the EO/AA Director for confidential storage and shall not keep any written or electronic copies of such documents.

**5.12.7** All documents, records, recordings, and information associated with the EO/AA process are designated as protected in accordance with the *Utah Government Records and Management Act (GRAMA)*.

POLICY HISTORY		
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