Procedure 1-012: Discrimination Hearing Procedure

I. Purpose and Scope

A. Purpose

To describe the procedure for hearings on complaints of prohibited discrimination, including Sexual Misconduct.

B. Scope

This procedure applies to all hearings conducted pursuant to Rules 1-012A and 1-012B, including hearings conducted by the Consolidated Hearing Committee in cases of Sexual Misconduct.

II. Definitions

For purposes of Policy 1-012 and its associated Rules and Procedure, including this Procedure 1-012, the definitions of prohibited discrimination and other words and phrases are provided in Rule 1-012.

III. Procedure

A. Pre-hearing

1. A Hearing Coordinator may facilitate the work of the Committee. Hearing Coordinator responsibilities include:

   a. serve as the Secretary to the Committee;

   b. notify the Complainant, the Respondent, the Committee, and the OEO/AA of the time and place of the hearing;

   c. notify the Complainant and the Respondent of the names of the Committee members and any witnesses requested by the Complainant, the Respondent, or the Committee;
d. distribute the Hearing Procedure and any documentary evidence to the Complainant and the Respondent;

e. make appropriate physical arrangements, and, when requested as outlined below, appropriate technological accommodations;

f. arrange for an electronic audio recording of the hearing; and

g. provide other reasonable support services at the Committee’s request.

2. OEO/AA responsibilities include:

a. provide the Committee with a copy of the OEO Report and a list of the material witnesses identified in the OEO Report;

b. provide the Committee with the Complaint, statement(s) of the Respondent, the written request for the formal hearing, the Initial OEO Draft, the parties’ comments thereto, if any, and the OEO Report;

c. notify persons requested by the Committee to testify at the hearing of the time and place of the hearing;

d. provide other reasonable investigatory and support services at the Committee’s request.

3. At least fourteen (14) calendar days before the hearing, the Hearing Coordinator shall notify the Complainant and Respondent in writing of the time and place of the hearing and the identity of the Committee members, and shall provide the parties with a copy of this Hearing Procedure.

4. The Complainant and the Respondent may each request that a Committee member be disqualified based on bias or conflict of interest. Such request must be made in writing to the Hearing Coordinator at least ten (10) calendar days before the hearing.
5. The Complainant and the Respondent may each request technological accommodations, such as 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 Hearing Coordinator at least ten (10) calendar days before the hearing. The request will be reviewed by the Committee Chair, and at the Chair’s request, the Hearing Coordinator will arrange for appropriate technological accommodations.

6. The Complainant and the Respondent may each be accompanied at the hearing by an advisor of their choice, who may be an attorney and who may participate in the hearing as provided in this Hearing Procedure. The Complainant and the Respondent must notify the Committee of their selected advisors at least five (5) calendar days prior to the date of the hearing. If timely notice is not provided, the advisor may attend but shall not participate in the hearing.

7. The Committee, the Complainant, and the Respondent may request the appearance of witnesses at the hearing. It is the responsibility of the party calling a particular witness to encourage that witness to attend the hearing. The Committee may request documentary evidence, and the Complainant and the Respondent may submit documentary evidence for consideration by the Committee.

8. At least five (5) calendar days before the hearing, each party must submit to the Hearing Coordinator a list of any witnesses they wish to speak on their behalf as well as contact information for each witness. The Committee must do the same for any witnesses it would like to attend the hearing. The Committee, the Hearing Coordinator, the parties, and the OEO/AA have no authority to compel attendance of witnesses.

9. At least five (5) calendar days before the hearing, each party must submit to the Hearing Coordinator any documentary evidence to be submitted to the Committee. Any evidence submitted untimely shall be forwarded to the
Committee Chair. Upon a showing of good cause, the Committee Chair may permit consideration of such evidence as part of the hearing.

10. The Hearing Coordinator shall provide the names of all witnesses requested and copies of all documentary evidence received to the parties at least three (3) calendar days before the hearing.

B. Hearing

1. *Hearings shall be closed to the public.*

2. The Committee will begin the hearing by asking the OEO Consultant to provide information about the investigation process and about the findings and conclusions contained in the OEO Report.

3. After the testimony of the OEO Consultant, the Complainant and the Respondent shall each have an opportunity to make a personal statement. The statement may describe the events that are the subject of the Complaint, the personal impact of the alleged conduct, the relief sought, and any other relevant information. In addition to the personal statements by the parties, each party’s advisor shall have the opportunity to make an opening statement.

4. The Complainant and the Respondent (or their respective advisors, if any) shall have the opportunity to call witnesses, to question witnesses (including the other party and the OEO Consultant) through the Committee Chair (not directly), to present evidence, and to make concluding remarks.

5. Each party shall have up to forty-five (45) minutes for personal and/or opening statements, presentation of evidence and questioning of witnesses, and concluding remarks.

6. The Committee may ask questions of the OEO Consultant, any witness, or either party. Only the person to whom a question is directed may answer
(i.e., an advisor shall not be permitted to answer the Committee’s questions on a party’s behalf).

7. In the event either party fails to attend the hearing without prior notice to the OEO/AA and good cause, the Committee may proceed with the hearing. Neither party is required to participate in the hearing in order for the hearing to proceed.

8. The Committee shall not be bound by strict rules of legal evidence or procedure and may consider any evidence it deems relevant.

9. The Committee has authority to exclude from the hearing any party, advisor, or other participant whose behavior the Committee finds disruptive after having provided a warning.

10. The Office of General Counsel may provide a staff attorney to be present at hearings in order to provide guidance to the Committee on substantive law and procedural matters.

11. Committee Chairs and other Committee members are prohibited from discussing any matter related to the hearing with the parties or the witnesses, or with others before or after the hearing. Violation of confidentiality may result in dismissal from the Committee and/or other corrective action.

12. The hearing, except for deliberations, shall be recorded and a copy shall be made available to either party upon request at the requesting party’s expense.

13. Committee deliberations and voting shall be closed sessions from which all other persons are excluded, except, at the Committee’s request, an advising attorney from the Office of General Counsel. The Committee in its discretion may take votes openly or by secret written ballot. A majority vote by the members of the Committee who attended the hearing shall be required for decisions. The Committee Chair shall be entitled to vote on all questions.
The OEO/AA shall not participate in the Committee’s deliberations and shall have no vote. If the Committee 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.

C. Post-hearing

Within ten (10) calendar days after the conclusion of the hearing, the Committee shall provide its written recommendation (“Committee Report”) to the cognizant Vice President and the OEO/AA, which shall include: (a) a determination of whether the evidence, evaluated under a Preponderance of the Evidence standard, supports a finding that a violation of University nondiscrimination policy occurred; and if so, (b) a determination of whether the sanctions are reasonable in light of the circumstances.

IV. Rules, Procedures, Guidelines, Forms and other Related Resources

A. Rules

Rule 1-012A

Rule 1-012B

B. Procedures

Procedure 1-012

C. Guidelines

None

D. Forms

None

E. Other related resource materials
V. References

Board of Regents Policy No. R256: Student Disciplinary Processes

Board of Regents Policy No. R831: Minimum Requirements for Non-Faculty Staff Employment Grievances Policy

Board of Regents Policy No. R841: Minimum Requirements for Disciplinary Sanctions and Termination of Staff Personnel

Rule 1-012: Discrimination Complaint Rule

Rule 1-012A: Discrimination Complaint Process Rule

Rule 1-012B: Sexual Misconduct Complaint Process Rule

Policy 5-106: Equal Opportunity and Nondiscrimination Employment

Policy 5-107: Consensual Relationships

Policy 5-117: Americans with Disabilities Act (ADA) Policy

Policy 5-203: Staff Employee Grievances

Policy 6-011: Senate Consolidated Hearing Committee

Policy 6-316: Code of Faculty Rights and Responsibilities

Policy 6-400: Code of Student Rights and Responsibilities

VI. Contacts

The designated contact officials for this Policy are:

A. Policy Owner (primary contact person for questions and advice): Office of Equal Opportunity and Affirmative Action
B. Policy Officer: Vice President and General Counsel

VII. History [reserved]

Renumbering: Not Applicable.

Revision History:


   Editorial revisions to current version: None

   Background information on Revision 1.

B. Earlier versions.

   Revision 0. Effective dates October 1, 2014 to February 14, 2017.