

## **Rule 1-012A: Discrimination Complaint Process Rule. Revision 0. Effective Date February 14, 2017**

### **I. Purpose and Scope**

The University of Utah (“University”) is committed to providing and fostering an environment that is safe and free from discrimination and harassment. University policy also prohibits retaliation against individuals for engaging in protected activities, such as filing a discrimination complaint or participating in a discrimination complaint process.

This Rule outlines the process the University will use to resolve complaints of discrimination that do not involve Sexual Misconduct.

[**User note:** As of February 14, 2017, a set of regulations including this Rule (overall including Policy 1-012, Rule 1-012A, 1-012B, and Procedure 1-012) took effect as the primary regulations applicable to complaints of discrimination, replacing other existing regulations addressing discrimination (including former Policy 5-210 and Interim Rule 5-210).]

### **II. Definitions**

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

### **III. Rule**

- A. OEO/AA Investigation. Upon acceptance of a Complaint as described in Rule 1-012 Section III.D, the OEO/AA will begin an investigation.
  - 1. The OEO/AA shall interview the Complainant and the Respondent, and may interview any other person with relevant information. The OEO/AA may also review any relevant evidence, including documentary material.

2. The Complainant and the Respondent may each be accompanied at any meetings or interviews with the OEO/AA or the University by an advisor of their choice, who may be an attorney. During the investigation, the advisor may only advise the Complainant or Respondent and may not actively participate. The Respondent shall be afforded a full opportunity to respond to the allegations contained in the Complaint. Any failure to respond or participate in an interview by the Respondent or a witness will not prevent the completion of the investigation. OEO/AA Consultants receive ongoing and regular training on investigating complaints of discrimination and the University's process for resolving such complaints.
3. The OEO/AA will endeavor to complete the investigation within 60 calendar days of the filing of the Complaint. If an extension is necessary due to the complexity of the investigation, the severity or extent of the alleged conduct, school breaks, or other good cause, the Complainant and Respondent will be notified in writing of the status of the investigation.
4. At the conclusion of the investigation, the OEO/AA shall provide the Complainant and the Respondent with a draft of its findings ("OEO Draft"). Both parties shall have five (5) calendar days after receipt of the OEO Draft to submit written comments and any additional documents to the OEO/AA. If information from either party raises new issues or allegations, the OEO/AA may re-investigate.
5. At the conclusion of the OEO/AA's further investigation, if any, or at the conclusion of the 5-day period described in the paragraph above, the OEO/AA shall issue a final report of its findings ("OEO Report") 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 non-discrimination policy occurred; and (b) any mitigating or aggravating factors. The OEO/AA shall provide a copy of the OEO Report to

the Complainant and the Respondent and notify both parties of their right to request a hearing as outlined in Section III.D of this Rule.

6. To protect the confidentiality of witnesses and all parties involved, and pursuant to the Family Educational Rights and Privacy Act (FERPA) and other state and federal privacy laws, names and other personally identifiable information may be redacted from the copies of the OEO Report that are provided to the Complainant and Respondent at this stage of the process.

B. University Disciplinary Action.

1. The OEO/AA shall also provide a copy of the OEO Report to the appropriate University administrator, which may include the supervisor, Chair, Dean, and cognizant Vice President with responsibility over the Respondent. Upon receipt of an OEO Report that includes a finding that a violation of University non-discrimination policy occurred, the appropriate University administrator will determine sanctions as follows:
  - a. If the Respondent is a student, the Dean of Students will determine the disciplinary sanction. Sanctions in discrimination cases are not subject to Policy 6-400, *Code of Student Rights and Responsibilities* (“*Student Code*”), and may only be reviewed and/or appealed as outlined in Sections III.E–H of this Rule. Possible sanctions include but are not limited to: permanent no-contact directives, educational training, referrals to counseling, suspension from one semester to five years, or dismissal from the University.
  - b. If the Respondent is a staff member, the appropriate University administrator with supervisory responsibility over the Respondent, in consultation with Human Resources, will determine the disciplinary sanction. Sanctions in discrimination cases are not subject to Policy 5-203, *Staff Employee Grievance Procedures*, and may only be reviewed and/or appealed as outlined in Sections III.C–H of this Rule. Possible

sanctions include but are not limited to: Written Warning, Final Written Warning, Suspension Without Pay, Demotion, and Termination.

c. If the Respondent is a faculty member, the appropriate University administrator, such as the faculty member's Department Chair or Dean, in consultation with the cognizant Vice President, will determine the disciplinary sanction. Sanctions against a faculty member may only be imposed by filing a complaint with the Senate Consolidated Hearing Committee (SCHC) pursuant to Policy 6-011, *Function and Procedures of the Senate Consolidated Hearing Committee*. Possible sanctions include but are not limited to: Written Reprimand and Dismissal (Termination). In addition, pending resolution of a complaint filed with the SCHC, the President may impose an interim suspension if the President determines that a suspension is necessary to prevent substantial harm to the University or a member of the University community, pursuant to Policy 6-316, *Code of Faculty Rights and Responsibilities*.

2. The evidentiary standard that will be used during any disciplinary proceeding arising from an allegation of discrimination is Preponderance of the Evidence.

C. Request for Hearing. The Complainant and/or the Respondent may request a hearing on the findings contained in the OEO Report and/or the sanctions by submitting a request in writing to the OEO/AA within five (5) calendar days of receipt of the OEO Report or notice of sanctions, whichever occurs last. Once requested, the hearing will take place as soon as practicable. Failure to file a timely written request for a hearing shall constitute a waiver of the right to a hearing and a waiver of any appeal rights. If there is no request for a hearing, the OEO Report and any sanctions shall become final and binding. If the Respondent is a faculty member, a hearing and any appeals shall proceed pursuant to University Policy 6-011, *Functions and Procedures of the Senate*

*Consolidated Hearing Committee*, and Sections III.D–I of this Rule shall not apply.

D. OEO Hearing Committee.

1. When a timely request for a hearing is filed, the OEO/AA shall convene a hearing committee (“Committee”).
2. The Committee shall be composed of a five-person panel. The panel will consist of the Committee Chair, at least two Committee members of the same status as the Complainant (student, staff, or faculty) and at least two Committee members of the same status as the Respondent (student or staff), subject to the following exceptions. In the interest of prompt resolution, a Committee may be convened as a three-person panel and/or without student representation during school breaks or other time periods that present student scheduling difficulties. No more than two students will serve on a Committee.
3. The pool of eligible Committee members includes the following:
  - a. Staff employees of the University appointed by the Chief Human Resources Officer, from a list of staff members nominated by the University of Utah Staff Council;
  - b. Students nominated by ASUU, from a list of students (graduate and undergraduate) nominated pursuant to procedures of ASUU; and
  - c. Faculty members from the Senate Consolidated Hearing Committee pool.
4. Committee members shall be trained at least annually on how to conduct a hearing process for complaints of discrimination.
5. A Committee member may be disqualified due to bias, conflict of interest, or for other good cause. Alternates will be appointed as needed.

- a. In order to provide an objective and fair hearing, each Committee shall take precautions against real or apparent conflicts of interest on the part of Committee members. Committee members shall recuse themselves in any case in which they have a personal bias or conflict of interest that would preclude their making a fair and objective decision, and shall avoid any individual communication with a party.
- b. If there is a challenge to the participation of any Committee member, the remaining Committee members shall hear that dispute and make a final decision about the participation of that member in the hearing.

E. Initial Committee Review.

1. In cases where the OEO/AA finds no violation of policy occurred, the Committee 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, and the OEO Report. The Committee may determine that it is unnecessary to hold a hearing based on the following factors:
  - a. Insufficient evidence to support a claim of discrimination; or
  - b. The issue is no longer relevant or is moot.
2. If the Committee determines that a hearing will not be held, the OEO/AA will inform the parties concurrently in writing. Either party may appeal the decision to deny a hearing within 10 calendar days by submitting a written request to the cognizant Vice President. The decision of the Vice President is final.
3. The OEO/AA will inform the appropriate University administrator, which may include the supervisor, Chair, Dean, and/or cognizant Vice President with responsibility over the Respondent, of the decision to hold or deny a hearing. If the Respondent is a student, the Vice President for Student Affairs and the Office of Dean of Students will also be notified.

F. Hearing and Recommendation. Hearings will proceed pursuant to the Hearing Procedure outlined in Procedure 1-012. 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 non-discrimination policy occurred; and (b) a determination of whether the sanctions are reasonable in light of the circumstances.

G. Vice Presidential Decision.

1. Within fourteen (14) calendar days after receipt of the Committee Report, the cognizant Vice President will issue a decision 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 non-discrimination policy occurred; and (b) a determination of whether the sanctions are reasonable in light of the circumstances.
2. The Vice President shall have available for review all relevant documentation, including the Committee Report, any other materials presented to the Committee, and if requested by the Vice President, an audio recording of the proceedings. The Vice President 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. The Vice President may seek advice from neutral advisors.
3. Written notification of the Vice President's decision shall be provided concurrently to the parties, to the OEO/AA, and to other cognizant University representatives. The Vice President shall provide written justification for the decision if it is inconsistent with the Committee Report.

H. Appeal to the President.

1. The Complainant and the Respondent may each appeal the decision of the Vice President to the President by submitting a request in writing to the OEO/AA within five (5) calendar days of notice of the Vice President's decision. Failure to file a timely written request for appeal shall constitute a waiver of the right to an appeal under this Section. If there is no timely written request for an appeal, the Vice President's decision shall become the final and binding decision of the University.
2. On appeal, the President shall have available for review all relevant documentation, including the Committee Report, any other materials presented to the Committee, the Vice President's decision, and if requested by the President, an audio recording of the proceedings. The President 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. The President may seek advice from neutral advisors.
3. The President will issue a final and binding decision within fourteen (14) calendar days of the written request for appeal. For good cause, the President may extend the 14-day period. The OEO/AA shall concurrently notify the Complainant, the Respondent, and the supervisor, Dean, Chair, and any other cognizant University representatives of the Final Result.
- I. Acceptance of Responsibility. A Respondent may, at any time, elect to resolve the OEO/AA investigation by accepting responsibility for a violation of University policy, in which case the OEO/AA Director will refer the matter to the appropriate University administrator, described in Sections III.B.1.a–c of this Rule, to determine the appropriate sanctions.

*[Note: Parts IV-VII of this Regulation (and all other University Regulations) are Regulations Resource Information – the contents of which are not approved by the Academic Senate or Board of Trustees, and are to be updated from time to*



*time as determined appropriate by the cognizant Policy Officer and the Institutional Policy Committee, as per [Policy 1-001](#) and [Rule 1-001](#).]*

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#### **IV. Rules, Procedures, Guidelines, Forms, and other related resources.**

##### A. Rules

Rule 1-012 Discrimination Complaint Rule

Rule 1-012B Sexual Misconduct Complaint Rule

##### B. Procedures

Procedure 1-012 Discrimination Hearing Procedure

##### C. Guidelines – None

##### D. Forms – None

##### E. Other related resources - None

#### **V. References**

20 U.S.C. § 1092(f)

20 U.S.C. § 1081 *et seq.*

29 U.S.C. § 794 *et seq.*

42 U.S.C. § 2000d *et seq.*

42 U.S.C. § 2000e *et seq.*

42 U.S.C. § 6101 *et seq.*

42 U.S.C. § 12112

42 U.S.C. § 12132

42 U.S.C. § 18116

34 C.F.R. § 668.46 Institutional Security Policies and Crime Statistics

Utah Code Ann. § 76-5-106.5 Stalking—Definitions—Injunction—Penalties

Utah Code Ann. § 76-5-402 to -405 Sexual Offenses

Utah Code Ann. § 76-5-406 Sexual offense against the victim without consent of victim—Circumstances

Utah Code Ann. § 76-5b Sexual Exploitation Act

Utah Code Ann. § 76-9-702.7 Voyeurism offenses—Penalties

Utah Code Ann. § 77-36-1 Definitions

Utah Code Ann. § 78B-7-402 Definitions

Board of Regents Policy No. R256: Student Disciplinary Process

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

Policy 1-004: Violence in the Workplace and Academic Environment

Policy 1-011: Campus Security

[Policy 5-106](#): Equal Opportunity and Nondiscrimination in Employment

[Policy 5-107](#): Consensual Relationships

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

Policy 5-203: Staff Employee Grievances

Policy 6-011: Functions and Procedures of the Senate Consolidated Hearing Committee

[Policy 6-316](#): Code of Faculty Rights and Responsibilities

[Policy 6-400](#): Code of Student Rights and Responsibilities

Policy 6-401: Undergraduate Admission

## 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

These officials are designated by the University President or delegee, with assistance of the Institutional Policy Committee, to have the following roles and authority, as provided in University Rule 1-001:

"A 'Policy Officer' will be assigned by the President for each University Policy, and will typically be someone at the executive level of the University (i.e., the President and his/her Cabinet Officers). The assigned Policy Officer is authorized to allow exceptions to the Policy in appropriate cases.... "

"The Policy Officer will identify an "Owner" for each Policy. The Policy Owner is an expert on the Policy topic who may respond to questions about, and provide interpretation of the Policy; and will typically be someone reporting to an executive level position (as defined above) but may be any other person to whom the President or a Vice President has delegated such authority for a specified area of University operation. The Owner has primary responsibility for maintaining the relevant portions of the Regulations Library... [and] bears the responsibility for determining which reference materials are helpful in understanding the meaning and requirements of particular Policies... ."

University Rule 1-001 III-B & C

VII. History [reserved]

Renumbering: Not Applicable.

Revision history

A. Current version-- University Rule 1-012A, Revision 0. Approved by the Academic Senate: January 9, 2017. Approved by the Board of Trustees: February 14, 2017, with the designated effective date of February 14, 2017.

Editorial revisions to current version: None

Background information on Revision 0.

B. Earlier versions.

[User note: Some of the contents of the set of non-discrimination regulations which includes this Rule (overall including Policy 1-012, Rule 1-012, Rule 1-012A, Rule 1-012B, and related Procedures) formerly appeared in Policy 5-210 and Interim Rule 5-210, which this set of regulations replaced as of February 14, 2017. For convenient access, historical information about those replaced former regulations is presented here.]

former [Policy 5-210](#), History:

former [Interim Rule 5-210](#), History:

OUTDATED