

Rule R1-012B: Complaint Process Rule

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I. Purpose and Scope

A. Purpose

Rule R1-012B establishes the University’s Complaint procedures to provide for the prompt and equitable resolution of Complaints made by students, faculty members, and employees, or other individuals who are participating or attempting to participate in the University’s Programs or Activities, or made by the Title IX Coordinator or designee. These Complaint procedures address Complaints of Discrimination, including Sex-Based Harassment allegations that involve a student Party.

B. Scope

Allegations of Discrimination raised by patients of University of Utah healthcare providers/facilities (University Hospitals & Clinics) are not governed by this Rule and shall be resolved under the procedures approved for that purpose by the Senior Vice President for Health Sciences (or delegee) [Current version here: <https://healthcare.utah.edu/policies/discrimination>]. All other Complaints of Discrimination, including Sexual Misconduct and Retaliation, shall be governed by this Rule.

II. Definitions

The definitions provided in Rule R1-012A apply for this rule.

III. Rule

A. Complaint Resolution Process.

1. Conflicts of Interest/ Bias.

- a. The University is committed to providing processes for addressing Discrimination, including Sexual Misconduct and Retaliation, in a manner that is fair and impartial to the Parties and does not compromise the integrity of the University. A conflict of interest exists when an individual's personal, professional, or financial relationships, including relationships with family or friends, are such that a reasonable person would view the relationship as likely to result in bias, for or against either Party. Any individual contributing to an OEO/AA Complaint process or Informal Resolution, may not have a bias for or against a Complainant or Respondent generally or any individual Complainant or Respondent.
- b. If the OEO/AA Director determines that a conflict of interest or bias exists for OEO/AA staff to conduct an investigation, the OEO/AA, in consultation with the Office of General Counsel, may appoint an Outside Entity to serve as the investigator and conduct the investigation. All information and reports from an investigation conducted by the Outside Entity as the investigator will be subject to the same confidentiality and privacy requirements as for an investigation conducted by the OEO/AA. Any report issued by the Outside Entity as investigator will be maintained by the OEO/AA.

2. Equitable Treatment. The University must treat the Complainant and the Respondent equitably.

3. Presumption about Respondent's Responsibility. The Respondent is presumed to be not responsible for any alleged violation of University policy until a determination regarding responsibility has been made through the University's Complaint process.

4. Deadlines and Timeframes. The University will endeavor to conclude the evaluation for the acceptance or dismissal of a submitted Complaint in 30 calendar days. Upon acceptance of a Complaint, the University will endeavor to complete the Complaint process within 150 calendar days of the acceptance of the Complaint; this includes completion of the OEO/AA investigation within 60 calendar days, 60 calendar days to conclude any related hearing, and 30 calendar days to conclude any appeal, if applicable.
 - a. If an extension is necessary due to efforts to resolve the matter through Informal Resolution as described in Rule R1-012A, the complexity of the investigation, the severity or extent of the alleged conduct, school breaks such as University closure days, or other good cause, the University will notify the Complainant and Respondent in writing of the status of the process.
 - b. Deadlines and timeframes provided under this rule or associated regulations may be extended on a case-by-case basis for good cause with written notice to the Parties of the revised schedule and the reason for the extension.
 - i. Parties may request extensions for good cause by sending the relevant OEO/AA staff member, such as the OEO/AA investigator or OEO/AA Hearing Coordinator, a written request for an extension and the reason for the request.
 - ii. Good cause may include, but is not limited to, consideration of: the absence of a Party or a Party's Advisor; the absence of a critical witness who could have a major impact on the investigation or hearing; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; the need to seek or obtain legal advice; not having access to a computer or the internet; or other unexpected emergencies such as health or medical reasons involving the Party or close family members.

- iii. The requesting Party's request will be answered in writing. If any extension is granted all Parties will be informed of and be entitled to the same revised timeframes.

B. Eligibility to Submit a Complaint.

1. A person may choose for an investigation to be pursued either through the criminal justice system, through Policy 1-012, or both.
2. While any person may submit a report to OEO/AA, only the following people have the right to make a Complaint of Discrimination, Sexual Misconduct, and/or Retaliation:
 - a. Only the following individuals may make a Complaint of Sexual Misconduct, including Sex-based Harassment:
 - i. A Complainant, which includes:
 - A. A student, staff, or faculty member who is alleged to have been subjected to conduct that could constitute Discrimination, including Sexual Misconduct and Retaliation; or
 - B. A person other than a student, staff, or faculty member who is alleged to have been subjected to conduct that could constitute Discrimination, including Sexual Misconduct and Retaliation, and who was participating or attempting to participate in the University's Programs and Activities at the time of the alleged Discrimination, Sexual Misconduct or Retaliation;
 - ii. a parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or
 - iii. the University's Title IX Coordinator or designee.
3. For all other Complaints of Discrimination or Retaliation, in addition to the people listed above, the following persons also have a right to make a Complaint:

- a. any student, staff, or faculty member of the University; or
 - b. Any person other than a student, staff, or faculty member who was participating or attempting to participate in a University Program or Activity the time of the alleged Discrimination.
4. If a Complaint alleges that a University policy or practice would constitute Discrimination, the University is not considered a Respondent. In these cases, the OEO/AA shall investigate even if there is no individual Complainant or Respondent. The OEO/AA may designate an “Administrative Respondent” to facilitate gathering necessary information sufficient to determine if a University policy or practice is in violation of Policy 1-012. Matters without a Complainant or Respondent will not be subject to a hearing and the OEO Final Report will be the Final Result of whether any University policy or practice violates Policy 1-012.
 5. By submitting a Complaint, the Complainant or person submitting the Complaint is authorizing the collection and examination of all records and other documentation relevant to the allegations and discussion with other persons who may have relevant knowledge of the underlying circumstances of the allegations in the Complaint for the purposes of participating in the investigation, hearing, and appeal process.
- C. Initiation of Complaints and Consolidation of Complaints
1. The University does not require a Complainant to participate in any investigation or disciplinary proceeding; however, failure to participate may limit the University’s ability to respond. The OEO/AA Director or designee, including a Deputy Title IX Coordinator, shall determine whether to initiate a Complaint in the absence of a Complainant or the withdrawal of any or all of the allegations in a Complaint (and in the absence or termination of an Informal Resolution process) by making a fact-specific determination based on the available information, including:

- a. the Complainant's request not to proceed with the initiation of a Complaint;
 - b. the Complainant's reasonable safety concerns regarding initiation of a Complaint;
 - c. the risk that additional acts of Discrimination would occur if a Complaint is not initiated;
 - d. the severity of the alleged Discrimination, including whether the Discrimination, if established, would require the removal of a Respondent from the University or imposition of another disciplinary sanction to end the Discrimination and prevent its recurrence;
 - e. the age and relationship of the Parties, including whether the Respondent is a staff or faculty member of the University;
 - f. the scope of the alleged Discrimination, including information suggesting a pattern, ongoing Discrimination, or Discrimination alleged to have impacted multiple individuals;
 - g. the availability of evidence to assist an investigator or Hearing Committee in determining whether Discrimination occurred; and
 - h. whether the University could end the alleged Discrimination and prevent its reoccurrence without initiating the investigative process.
2. The OEO/AA Director or designee is not required to conduct a review of the above criteria upon being notified of conduct that may constitute Discrimination if the OEO/AA Director or designee reasonably determines that the conduct as alleged could not constitute Discrimination.
 3. If after considering the factors included here and other relevant and available information, the OEO/AA Director or designee determines that the conduct as alleged presents either an imminent and serious threat to the health or safety of the Complainant or another person, or that the conduct as alleged

prevents the University from ensuring equal access to its Programs or Activities, the OEO/AA Director or designee may initiate a Complaint.

4. If the OEO/AA Director or designee initiates a Complaint under the criteria included above, the OEO/AA shall notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing Supportive Measures.
5. Consolidation of Complaints. The OEO/AA may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, when the allegations of Discrimination arise out of the same facts or circumstances. If any of the Complaints allege Sexual Misconduct involving a student Party, then the entirety of the consolidated Complaints shall be managed consistent with the requirements for allegations of Sexual Misconduct with a student Party. When more than one Complainant or more than one Respondent are involved, references to a Party, Complainant, or Respondent refer to all Parties, as applicable.

D. Acceptance or Dismissal of Complaint.

1. Timeliness of Complaint.
 - a. A Complaint of Sex-based Discrimination, including Sex-based Harassment, within the scope of Title IX is timely if at the time of the alleged conduct the Complainant or person submitting a Complaint was participating in or attempting to participate in a University Program or Activity.
 - b. A Complaint alleging any other type of Sex-based Discrimination, Sexual Misconduct, or other type of Discrimination is timely if submitted within 180 calendar days of the last alleged discriminatory act.
 - c. A Complaint of Retaliation is timely if submitted within 180 calendar days of the last alleged act of Retaliation.

- d. The OEO/AA shall dismiss a Complaint not submitted within the appropriate time period as untimely unless at the Director's discretion and for good cause, the Director accepts as if timely a Complaint that is not submitted within the appropriate period.
2. Acceptance or Dismissal. After initial review of a Complaint, the Director or designee shall either accept the Complaint and proceed with the OEO/AA Complaint process, or dismiss the Complaint. Prior to a Final Result, the Director or designee may dismiss a Complaint for any of the following reasons:
 - a. the Complaint was not timely submitted;
 - b. the Complaint was not submitted by a person eligible to make the Complaint;
 - c. the OEO/AA is unable to identify the Respondent after taking reasonable steps to do so;
 - d. the Respondent is not participating in the University's Programs or Activities and is not employed by the University;
 - e. the Complainant voluntarily withdraws any or all of the allegations in the Complaint in writing, the Title IX Coordinator declines to initiate the Complaint, and without the Complainant's withdrawn allegations the conduct that remains alleged in the Complaint, if any, would not constitute Discrimination even if proven;
 - f. the conduct alleged in the Complaint, even if proven, would not constitute Discrimination. The OEO/AA shall make reasonable efforts to clarify the allegations with the Complainant before dismissing under this paragraph;
 - g. specific circumstances prevent the OEO/AA from gathering evidence sufficient to reach a decision as to the allegations in the Complaint; or

- h. the subject of the Complaint has already been investigated and addressed in a previous process, with no new substantial evidence offered to warrant another Complaint.
3. Notification of Dismissal. Upon dismissal of a Complaint the OEO/AA shall promptly notify the Complainant in writing of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the Complaint, then the OEO/AA shall notify Parties simultaneously in writing.
4. The OEO/AA shall notify the Complainant in writing that a dismissal may be appealed and shall provide the Complainant with an opportunity to appeal the dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the Complaint, then the OEO/AA shall also notify the Respondent in writing that the dismissal may be appealed.
5. After a Complaint is dismissed, and the dismissal is not appealed or the decision to dismiss is upheld following an appeal, the OEO/AA shall offer Supportive Measures to the Complainant. If the dismissal occurs after the Respondent has been notified of the Complaint, then the OEO/AA will also offer the Respondent Supportive Measures. The Director will take other appropriate prompt and effective steps to ensure that Discrimination, if Discrimination occurred, does not continue or reoccur within the University's Programs or Activities.

E. Appeal of Dismissal of Complaint

1. Any individual who submitted a Complaint may appeal the Director or designee's dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the Complaint, the Respondent may also appeal the dismissal of the Complaint. Dismissals must be appealed within five (5) calendar days from the date of the dismissal. The Chief Human Resource Officer or their designee shall decide on the appeal.
2. The appealing party must articulate the applicable bases for their appeal, which must include at least one of the following:

- a. a procedural irregularity that would change the outcome;
 - b. new evidence that would change the outcome and that was not reasonably available when the dismissal was made; or
 - c. the Title IX Coordinator, investigator, or other decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.
3. If a dismissal is appealed, the OEO/AA shall:
- a. Notify the Complainant in writing of any appeal. If the dismissal occurs after the Respondent has been notified of the Complaint, the OEO/AA shall notify the Respondent in writing of any appeal. If the Respondent has notice of a Complaint, but has not yet received the Notice of Allegations (such as may be the case when a Respondent is on administrative leave or administrative suspension) the OEO/AA will also provide the Respondent with a summary of the allegations in the Complaint;
 - b. implement any appeal procedures and timeframes equally for all Parties;
 - c. ensure that the Chief Human Resource Officer or their designee for the appeal did not take part in an investigation of the allegations or dismissal of the Complaint;
 - d. ensure that the Chief Human Resource Officer or their designee for the appeal has been trained; and
 - e. notify the Parties in writing that they may provide the Chief Human Resource Officer or their designee a statement in support of, or challenging, the dismissal, and provide the Parties with the necessary information to submit any statement and what timeframes are applicable.
4. Once the Chief Human Resource Officer or designee has decided the appeal, the OEO/AA shall notify the Parties in writing of the result of the

appeal and the rationale for the result. If the written decision concurs with the Director or designee's decision to dismiss the Complaint, the decision made on this appeal is the University's Final Result. If an appeal of a Complaint's dismissal is successful, then the Complaint will be addressed through the Complaint process described in this rule.

F. OEO/AA Investigation of Complaint.

1. Upon acceptance of a Complaint the OEO/AA shall begin an investigation. The OEO/AA shall provide for adequate, reliable, and impartial investigations of Complaints.
2. Standard of Proof. The University uses the Preponderance of the Evidence standard as the standard of proof to determine responsibility for Discrimination, including Sexual Misconduct or Retaliation.
3. Upon acceptance of a Complaint, the OEO/AA shall provide a written notice of allegations to the Complainant and Respondent, whose identities are known, and may provide a copy to an appropriate University administrator with responsibility over the Respondent or others with a legitimate business need. The notice of allegations shall include:
 - a. the applicable policies and rules by which the OEO/AA proceedings will be governed, including any Informal Resolution process;
 - b. sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute Discrimination, and the date(s) and location(s) of the alleged incident(s);
 - c. a statement that Retaliation is prohibited;
 - d. a statement that the Respondent is presumed not responsible for the alleged conduct until a determination is made at the conclusion of the Complaint procedures under this rule and that prior to the determination, the Parties shall have an opportunity to present relevant and not

- otherwise impermissible evidence to a trained and impartial OEO/AA investigator and Hearing Committee, if applicable;
- e. each party may have an Advisor of their choice, who may be, but is not required to be an attorney, and one Support Person of their choice;
 - f. each party shall be provided an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence together with an investigative report; and
 - g. a statement that Policy 1-012 and its Regulations prohibit knowingly providing false or misleading statements or information in the OEO/AA Complaint process.
4. Delays for Safety Concerns. If the OEO/AA has reasonable concerns for the safety of a person as a result of providing a notice of allegations, the OEO/AA may reasonably delay providing the written notice of allegations in order to address the safety concern. Reasonable concerns must be based on individualized safety and risk analysis and not speculation or stereotypes.
 5. Notice of Additional Allegations. If, during the investigation, the OEO/AA decides to investigate additional allegations that were not included in the initial notice of allegations, the OEO/AA shall provide written notice of the additional allegations to both Parties and provide the Respondent with an opportunity to respond.
 6. Opportunity to Respond. The Respondent shall be afforded a full opportunity to respond to the allegations contained in the Complaint. Failure to respond or participate in an interview by the Respondent or a witness does not prevent the completion of the investigation.
 7. No Inference of Responsibility. The OEO/AA may not draw an inference about the determination of responsibility based solely on a Party's or witness's decision not to participate in the investigative or hearing process; however, evidence for review is limited to that provided by Parties and

witnesses who participate in the investigation, and other evidence gathered by the OEO/AA.

8. **Interviewing Parties and Witnesses.** The OEO/AA shall offer interviews to the Complainant and Respondent. The OEO/AA may interview any other person with relevant information. The OEO/AA will objectively review all relevant information, including that which is submitted by the Parties.
9. **Notice of Meetings.** The University shall provide to the Complainant and the Respondent written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings and proceedings with that Party, with sufficient time for the Party to prepare to participate.
10. **Employee Release Time.** The University will provide reasonable time away from regular work duties during scheduled working hours, with pay, to the Parties, or any witnesses called to testify, for time spent participating in the Complaint process.
11. **Advisors and Support Persons.** The Complainant and the Respondent may each be accompanied at any meetings or interviews with the OEO/AA by one Advisor of their choice who may be, but does not have to be, an attorney. During the investigation, the Advisor may only advise the Complainant or Respondent and may not answer questions on behalf of a Party during in an interview but may advise their Party how to respond to questions. Any Advisor is at the Complainant or Respondent's own expense. The Complainant and the Respondent may each be accompanied at any meetings or interviews by one Support Person. The Support Person's role is to provide support to the Complainant or Respondent and may not speak on behalf of the Party. Advisors and Support Persons may not disrupt meetings and/or proceedings.

G. **Acceptance of Responsibility by Respondent.**

1. A Respondent may elect to resolve the allegations in a Complaint by accepting responsibility for a violation of Policy 1-012. By accepting

responsibility, the Respondent is confirming their conduct is a violation of Policy 1-012 and the Respondent is electing to waive any due process rights related to a determination of whether the Respondent violated Policy 1-012.

2. If a Respondent accepts responsibility, the OEO/AA will convene a Hearing Committee. In these matters the Hearing Committee will not be the decision-maker as to whether University policy 1-012 has been violated (which has been determined by Respondent's acceptance of responsibility). The Hearing Committee will be charged with determining only the appropriate sanctions for the Respondent and remedies for the Complainant.
3. Any Hearing convened under this section will otherwise be managed in the same manner as the other hearings under this Rule, including the provisions of this Rule that apply to any failure of Party to appear or participate in a hearing and to the participation of Advisors and Support Persons, and with the same due process afforded to each Party. Parties shall have the ability to address, challenge, or support any recommended sanctions or remedies.
4. The sections of this Rule that apply to University Disciplinary Action and Remedies apply in these instances. For these matters the appropriate University administrator will provide a recommended sanction to the Hearing Committee. The OEO/AA Director or designee will provide a recommended remedy to the Hearing Committee.
5. When a faculty member is a Respondent and accepts responsibility the matter will not be referred to the Senate Consolidated Hearing Committee ("SCHC"), per Policy 6- 011.

H. Evidence.

1. Production and Treatment of Evidence. The OEO/AA is responsible for gathering evidence sufficient to reach a determination of whether Discrimination occurred. The OEO/AA will objectively evaluate all evidence that is relevant consistent with Rule R1-012A and not otherwise impermissible – including both inculpatory and exculpatory evidence. The

OEO/AA or other decisionmaker may not base a credibility determination on a person's status as a Complainant, Respondent, or witness.

2. The University must provide the Complainant and the Respondent with an equal opportunity to present witnesses, including fact and expert witnesses, as well as inculpatory and exculpatory evidence. The OEO/AA shall review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.
 - a. Impermissible Evidence. The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, may not be accessed or considered except by the OEO/AA to determine whether one of the exceptions listed below applies; will not be disclosed; and will not be otherwise used), regardless of whether they are relevant:
 - i. Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a Confidential Employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
 - ii. Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless the OEO/AA obtains that Party's or witness's voluntary, written consent for use in these Complaint procedures; and
 - iii. Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove:
 1. that someone other than the Respondent committed the alleged conduct; or
 2. is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove

Consent to the alleged Sexual Misconduct. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged Sexual Misconduct or preclude determination that Sexual Misconduct occurred.

3. Right to Gather and Produce Evidence. The University may not restrict the ability of the Complainant or the Respondent to discuss the allegations under investigation or gather and present relevant evidence in a manner consistent with other provisions of Policy 1-012 and its associated Regulations, other University Policies, and state and federal law.
4. Non-Disclosure of Information. Parties shall be provided evidence obtained by the OEO/AA as part of the investigation that is relevant to the allegations raised in the Complaint; the Parties and Party Advisors must keep all evidence strictly confidential and use such evidence solely for the purposes of participating in the investigation and Complaint process. Parties who disseminate or use evidence for any other purpose may be subject to discipline. The University shall take reasonable steps to protect the privacy of the Parties and witnesses during its Complaint procedures. These steps will not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or Advisors; or otherwise prepare for or participate in the Complaint process. The Parties may not engage in Retaliation, including against witnesses or other participants.

I. False Statements.

The Complainant, the Respondent, and any witness may not knowingly make any materially false or misleading statement or knowingly submit any materially false information during the Complaint process. Knowingly proffering a material falsehood during the Complaint process is a violation of University Policy 1-012 and its associated Regulations, and may result in the individual being subject to discipline. However, a determination regarding the Respondent's responsibility

for the underlying alleged Discrimination, Sexual Misconduct or Retaliation, alone, is not a sufficient basis to conclude that any individual proffered a material falsehood during the process.

J. Conclusion of Investigation and Draft Report.

1. At the conclusion of the investigation, the OEO/AA shall issue the draft of its investigative report (“OEO Draft Report”) simultaneously to the Parties and their Advisors, if any, in an electronic or hard copy format. The OEO Draft Report shall include:
 - a. a description of the alleged Discrimination;
 - b. information about the policies, rules, and procedures that the University used to evaluate the allegations;
 - c. a summary and evaluation of the relevant and not otherwise impermissible evidence;
 - d. an analysis of whether the evidence, evaluated under a Preponderance of the Evidence standard, supports a finding or recommendation that Discrimination or Sexual Misconduct occurred; and
 - e. any relevant and not impermissible evidence obtained as part of the investigation related to the allegations raised in the Complaint.
2. Privacy. To protect the privacy of witnesses and all Parties involved, and pursuant to 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 Draft Report and the OEO Final Report that are provided to the Complainant and Respondent.
3. Each Party shall have five (5) calendar days after receipt of the OEO Draft Report to submit written comments and any additional documents and/or evidence to the OEO/AA. If information from either Party raises new issues or allegations, the OEO/AA may conduct additional investigation.

K. OEO/AA Final Investigative Report

1. After reviewing any submitted comments or additional documentation by the Parties regarding the OEO Draft Report, and following any subsequent investigation if applicable, the OEO/AA shall issue a final investigative report (“OEO Final Report”) simultaneously to the Parties and their advisors, if any, and the appropriate administrator with responsibility over the Respondent in an electronic or hard copy format. The OEO Final Report shall include:
 - a. a description of the alleged Discrimination;
 - b. information about the policies and procedures that the University used to evaluate the allegations;
 - c. a summary and evaluation of the relevant and not otherwise impermissible evidence;
 - d. an analysis of whether the evidence, evaluated under a Preponderance of the Evidence standard, supports a finding or recommendation that Discrimination or Sexual Misconduct occurred; and
 - e. any relevant and not impermissible evidence obtained as part of the investigation related to the allegations raised in the Complaint.
2. The OEO Final Report is the University’s decision, except in the following cases, for which the OEO Final Report is a recommendation to a Hearing Committee:
 - a. any allegation of Sexual Misconduct involving one or more students as a Party; or
 - b. any allegation of Discrimination involving a student Respondent that may result in suspension from the University for 10 calendar days or more or dismissal from the University.

L. University Disciplinary Action.

1. The OEO/AA shall provide a copy of the OEO Final Report to the appropriate University administrator to consider appropriate discipline if the OEO Final Report includes a recommendation or finding that the Respondent has violated University Policy 1-012 or if the matter will be submitted to a Hearing Committee.
 - a. For any allegation of Sexual Misconduct involving one or more students as a Party or an allegation of Discrimination for which the Respondent is a student who may face a sanction of suspension of at least 10 days or dismissal, upon receipt of an OEO Final Report that includes a recommendation that a violation of University policy occurred, the appropriate University administrator shall recommend a disciplinary sanction or other corrective measures. The University administrator shall provide written notice of a recommended sanction to the Parties, to the OEO/AA, and the Hearing Coordinator, and to any others with a legitimate business need.
 - b. For allegations of Discrimination, including Sexual Misconduct allegations that do not involve a student as a Party, upon receipt of an OEO Final Report that includes a finding that a violation of University Policy occurred, the appropriate University administrator shall determine a disciplinary sanction or other corrective measures. The University administrator shall provide written notice of their determination to the Parties, to the OEO/AA, and the Hearing Coordinator, and to any others with a legitimate business need.
2. Any University disciplinary action recommendation or decision shall be issued to the Parties at the same time as the OEO/AA Final Report.
3. The appropriate University administrator and range of possible sanctions includes:
 - a. If the Respondent is a student, the Dean of Students shall determine or recommend the disciplinary sanction or other corrective measure.

Sanctions in discrimination cases are not subject to Policy 6-400: Student Rights and Responsibilities (“Student Code”) and may only be reviewed and/or appealed under this Rule. Possible sanctions include, but are not limited to: fines, restitution, warning, withholding diploma, organizational sanction, permanent no-contact directives, educational training, referrals to counseling or behavioral coaching, limitations, restrictions, or exclusion from campus or campus programs or activities, notation on the student's transcript consistent with the Family Educational Rights and Privacy Act suspension for a period of time, dismissal from the University, or revocation of a certificate or degree.

- b. If the Respondent is a staff member, the appropriate University administrator with supervisory responsibility over the Respondent, in consultation with Human Resources, shall determine the disciplinary sanction or other corrective measure. Sanctions in discrimination cases are not subject to Policy 5-203, Staff Employee Grievance Procedures, and may only be reviewed under this Rule. Possible sanctions include, but are not limited to: extension of probationary period, reassignment, transfer, limitations, restrictions, or exclusion from campus or campus programs or activities, reduction in pay, 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 appropriate Academic Affairs office, shall determine the disciplinary sanction or other corrective measure. Possible sanctions include, but are not limited to: limitations, restrictions, or exclusion from campus or campus programs or activities, written reprimand, suspension without pay and dismissal (termination).
- d. If the Respondent is a vendor/contractor/visitor/patient, possible sanctions or other corrective measures include limitations, restrictions, or exclusion

from all or part(s) of campus or campus programs or activities and/or ending business relationships with vendors and contractors.

M. Remedies.

1. If the OEO/AA Final Report includes a recommendation or finding that the Respondent has violated Policy 1-012, the OEO/AA Director or designee shall determine whether remedies in addition to the imposition of disciplinary sanctions will be provided by the University to the Complainant, and, to the extent appropriate, other individuals identified by the OEO/AA to be experiencing the effects of the Discrimination. Remedies may include but are not limited to: reinstatement, transfer or reassignment of employees, Supportive Measures, implementing changes in programs and activities, providing training, separating Parties such as with a No Contact Directive, or other remedies designed to restore equal access to University Programs or Activities.

N. Automatic Hearings and Requested Hearings.

1. Automatic Hearings.

a. The OEO/AA must hold a hearing to decide all:

- i. Investigations of Sexual Misconduct involving one or more students as a Party. Such matters shall be resolved by the determination of a Hearing Committee which acts as the University's decisionmaker regarding potential policy violations.
- ii. Investigations involving a student Respondent that would result in a disciplinary action that includes a suspension from the University of ten (10) calendar days or more or dismissal from the University. Such matters will be automatically referred to a Hearing Committee which would act as the University's decisionmaker regarding potential policy violations.

- b. The Hearing Committee shall consider the following recommendations during its review:
 - i. the OEO Final Report that includes a recommendation to the Hearing Committee on whether the Respondent violated University Policy 1-012;
 - ii. the appropriate University administrator's recommendation of a disciplinary sanction or other corrective measures, if applicable; and
 - iii. the OEO/AA Director's or designee's recommendation of a remedy for the Complainant, if applicable.
2. Student Employees. When a Complainant or Respondent is both a student and an employee, the OEO/AA shall make a fact-specific inquiry to determine whether the matter will be managed as an allegation of Sexual Misconduct involving one or more students as a Party, or an allegation of Discrimination, including Sexual Misconduct that does not involve a student as a Party. In making this determination the OEO/AA shall consider whether the Party's primary relationship with the University is to receive an education and whether the alleged Sexual Misconduct occurred while the Party was performing employment-related work.
3. Requested Hearings.
 - a. In all cases of Discrimination, except those that require an automatic hearing, any Party may request a hearing to appeal the outcome in the OEO Final Report, the Sanctions, or Remedies.
 - i. If the OEO Final Report finds that cause exists to show the Respondent engaged in a violation of University Policy, if any Party requests an appeal, the matter shall be referred to the OEO/AA Hearing Coordinator who shall form a Hearing Committee to hold a Hearing.

ii. If the OEO Final Report finds no violation of University Policy, following a request by any Party for a hearing, the OEO/AA Hearing Coordinator shall form an Initial Hearing Committee to determine, based on the written request for a hearing and the OEO Final Report, whether to hold a Hearing. The Initial Hearing Committee may determine that it is unnecessary to hold a hearing if there is: insufficient evidence to support a claim of discrimination or the issue is no longer relevant or is moot.

A. The Initial Hearing Committee shall issue its written decision whether to hold a hearing within five (5) calendar days of the initial review.

(a) If the Initial Hearing Committee determines that a Hearing should be held, the Initial Hearing Committee shall inform the OEO/AA Hearing Coordinator, who shall notify the Parties concurrently in writing.

(b) If the Initial Hearing Committee determines that a Hearing will not be held, any Party may appeal the decision to deny a hearing within five (5) calendar days by submitting a written request to the cognizant Vice President via the OEO/AA Hearing Coordinator. The decision of the Vice President is final.

b. 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.

O. Hearing Committee Composition.

1. The OEO/AA shall create a standing pool of committee members. The pool of eligible Committee members includes the following:

- a. staff employees of the University nominated by the Chief Human Resource Officer, Staff Council, or other University leaders, and who will serve for a three-year term.
 - b. students (graduate and/or undergraduate) nominated pursuant to procedures of Associated Students of the University of Utah (ASUU), the Office of the Dean of Students, or by other University leaders, who will serve a one- year term; and
 - c. faculty members from the Consolidated Hearing Committee pool.
2. Each Hearing Committee shall be composed of a three-person panel selected from the pool of eligible Committee members.
 - a. The Hearing Committee shall consist of the Committee Chair, and one Committee member of the same status as the Complainant (student, staff, or faculty), and one Committee member of the same status as the Respondent (student, staff, or faculty), subject to the following exceptions. In the interest of prompt resolution, a Committee may be convened without student representation during school breaks or other time periods that present student scheduling difficulties. No more than one student will serve on a Committee.
 - b. The Committee Chair shall be selected from the pool of eligible committee members who have previously served on a Hearing Committee and will receive specific training relevant to their duties as Chair.
3. In order to provide an objective and fair hearing, each Hearing 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. Committee members may not have a bias for or against the Complainant or Respondent generally or any individual

Complainant or Respondent. A Committee member may be disqualified due to bias, conflict of interest, or for other good cause. Alternates will be appointed as needed.

4. If there is a challenge to the participation of any Committee member, the OEO/AA Director shall review for potential conflict of interest or bias by the Committee member and may replace the Committee member. If there is a challenge to the participation of any Committee member during the Hearing, the remaining Committee members shall hear that dispute and make a final decision about the participation of that member in the hearing.

P. General Provisions for Automatic Hearings and Requested Hearings.

1. If a Hearing Committee ("Committee") is formed, it shall serve as the decisionmaker (either as the initial decisionmaker or the decisionmaker for an appeal) with regard to allegations of Discrimination, including Sexual Misconduct and Retaliation, any associated disciplinary sanction or other corrective measures for the Respondent, and any remedies for the Complainant that are brought before it. The Committee shall make an independent judgment in objectively evaluating relevant and not otherwise impermissible evidence to reach a determination regarding responsibility, independent from the OEO Final Report, and if appropriate, a sanction, independent from the appropriate administrator.
2. 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 privacy may result in dismissal from the Committee and/or other corrective action.
3. Hearings should take place as soon as practicable. Although the OEO/AA Hearing Coordinator may try to find a hearing date that will be convenient for all the Parties involved, the Hearing Coordinator and Committee Chair have the final authority for determining the date of the hearing.

Q. Pre-Hearing Process.

1. The Committee, the Complainant, and the Respondent may request the appearance of witnesses at the hearing. It is the responsibility of the Party or the Committee calling a particular witness to encourage that witness to attend the hearing.
2. The Complainant and the Respondent may submit documentary evidence for consideration by the Committee. The Committee may also request additional documentary evidence.
3. At least ten (10) calendar days before the hearing, the Hearing Coordinator shall notify the Complainant and Respondent in writing, in either an electronic or hard copy format, of:
 - a. the date, time, location, participants, and purpose of the hearing;
 - b. the name the Chair and the Committee members;
 - c. the names of all witnesses that the Committee intends to call;
 - d. any additional documentary evidence that was not included in the OEO Final Report that the Committee is requesting from the Parties; and
 - e. of the applicable policies and associated rules and guidelines by which the proceedings will be governed.
4. At least five (5) calendar days before the hearing, the Complainant and the Respondent must notify the Hearing Coordinator in writing and provide to the Hearing Coordinator:
 - a. any request that a Committee member be disqualified based on bias or conflict of interest;
 - b. the name and contact information of their selected Advisor, if any;
 - c. the name and contact information of their selected Support Person, if any;
 - d. a list of any witnesses they wish to speak on their behalf as well as contact information for each witness;

- e. any additional documentary evidence to be submitted to the Committee, including information the Committee has requested from the Parties; and
 - f. any other requests for accommodations, including technological accommodations. Any request will be reviewed by Committee Chair and at the Chair's request, the Hearing Coordinator will make any appropriate accommodations.
5. At least three (3) calendar days before the hearing, the Hearing Coordinator shall:
- a. notify the Complainant and Respondent in writing of the names of all witnesses requested; and
 - b. provide copies of all evidence that has not already been provided to the Parties.
- R. Live Hearing Process.
- 1. Hearings shall be closed to the public.
 - 2. Hearings shall be conducted remotely through electronic means, instead of in-person, when possible. These remote hearings shall include audio and video capabilities which will allow for Parties to simultaneously see, hear, and interact with the Committee, witnesses, and each other in real time as if physically present in the same location.
 - 3. Recording of Hearings. The hearing, except for deliberations by the Committee, shall be recorded and a copy in electronic format shall be made available to either Party upon request at the requesting Party's expense.
 - 4. Rules of Evidence. The Committee shall not be bound by strict rules of legal evidence or procedure and may consider any evidence it deems relevant and not otherwise impermissible.

5. The Hearing Committee shall use the Preponderance of the Evidence standard as the standard of proof to determine responsibility for Discrimination, including Sexual Misconduct and Retaliation.
6. Failure of Party to Participate.
 - a. For cases for which there is an automatic hearing, in the event either Party does not attend the hearing without prior notice to the Hearing Coordinator and good cause, the Committee may proceed with the hearing. If neither Party attends the hearing, without prior notification and good cause, both Parties waive the right to a hearing and any appeal rights. The OEO Final Report is therefore the Final Result and the recommended sanctions are final.
 - b. For requested hearings, if the Party who requested the hearing does not attend the hearing, without prior notification and good cause, the Party waives the right to a hearing and the right to appeal. The OEO Final Report is the Final Result and any proposed sanctions are final. If the other Party who did not request the hearing does not attend, the Hearing Committee may proceed with the hearing and take testimony and evidence and reach a decision.
 - c. If a Party does not attend a hearing their Advisor and Support Person may not attend the hearing.
7. The Complainant and the Respondent may each be accompanied at the hearing by one Advisor of their choice, who may be, but does not have to be, an attorney and who may participate in the hearing as provided in this Rule. During the hearing, the Advisor may participate in opening and closing statements, and the presentation of evidence. The Advisor may not answer questions behalf of a Party but may advise a Party on how to respond to questions.

8. The Complainant and Respondent may each be accompanied at the hearing by one Support Person of their choice, who may attend but not participate in the hearing.
9. The Committee has authority to exclude from the hearing any Party, Advisor, Support Person, or other participant whose behavior the Committee finds disruptive after having provided a warning.
10. The OEO/AA Investigator who conducted the investigation and authored the OEO Final Report may attend the hearing and be available for questioning.
11. Each Party and their Advisor, if any, shall have up to forty-five (45) minutes for personal and/or opening statements, presentation of evidence and questioning of witnesses, and concluding remarks. The Committee Chair shall have discretion to grant reasonable extensions of time when necessary.
12. The Complainant and the Respondent shall each have an opportunity to make an opening or 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, if any, shall have the opportunity to make an opening statement.
13. The Complainant and the Respondent shall each have any opportunity to present their narrative regarding the allegations of Discrimination. The Parties may also present other evidence. If a Party presents documentary evidence at the hearing that was not previously provided to the other Party and the Committee prior to the hearing, the Committee Chair shall make a determination as to whether to admit such evidence.
14. The Committee, Complainant, and the Respondent shall have the opportunity to call witnesses.

15. Each Party shall have the opportunity to submit questions to the other Party and any witnesses. Parties shall propose such questions to the Committee Chair and have those questions asked by the Committee Chair.
 - a. Parties or their Advisors may submit written questions to the Committee Chair via the Hearing Coordinator before the hearing, and may supplement that submission with additional or revised written questions during the hearing. The Committee Chair and/or the Hearing Coordinator will require that the Hearing be recessed at appropriate intervals so that Parties may submit additional or revised written questions to the Committee Chair via the Hearing Coordinator.
 - b. Any written question proposed by a Party to another Party or witness must be relevant and not otherwise impermissible. The Committee Chair shall determine if a question is relevant and not otherwise impermissible prior to asking the question in the hearing. The Committee Chair shall explain a decision to exclude a question as not relevant or as impermissible.
 - c. If the Committee Chair determines that a question is relevant and not otherwise impermissible, then the Committee Chair shall ask the question of the other Party or witness. However, the Committee Chair must not permit questions that are unclear or harassing of the Party or witness being questioned.
 - d. The Committee Chair shall give a Party an opportunity to clarify or revise a question that the Committee Chair has determined to be unclear or harassing and, if the Party sufficiently clarifies or revises a question so that it is no longer unclear or harassing, then the Committee Chair shall ask the question of the other Party or witness.
16. The Committee may ask relevant and not otherwise impermissible questions of the Complainant, the Respondent, and any witness. The time of Committee questions and answers shall not count against either Party's time.

17. If a Party or witness is asked a relevant and not otherwise impermissible question and refuses to respond, the Hearing Committee may choose to place less weight or no weight upon the statements by that Party or witness. The Hearing Committee must not draw an inference about whether Discrimination, including Sexual Misconduct, occurred based solely on a Party's or witness's refusal to respond to such questions.
18. Following the presentation of evidence and the questioning of Parties and witnesses, the Committee shall then ask the appropriate administrator to speak to the recommended sanction or corrective measures.
19. The Committee shall conclude the hearing by providing an opportunity for the Parties to make concluding remarks. In addition to the concluding remarks by the Parties, each Party's Advisor, if any, shall have the opportunity to make a concluding statement. The Committee Chair shall then adjourn the hearing and begin private Committee deliberations.
20. 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 advising attorney may be present for deliberations but shall have no vote. 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 OEO/AA, including the Director, shall not participate in the Committee's deliberations and shall have no vote.
21. Sanctions. The Committee shall determine the appropriate sanctions for the Respondent, if necessary. The Committee shall ensure that any sanctions are appropriate to end the prohibited conduct, to prevent further violation of policy, and remedy the effects of any violation.
 - a. The Committee shall review the sanction decision or sanction recommendation submitted by the appropriate administrator and may call

that individual during the hearing to speak to the reasoning supporting the recommendation when making their decision.

- b. In determining the appropriate sanction, the Committee shall consider the severity, persistence or pervasiveness of the misconduct; the egregiousness of the misconduct, including the use of weapons, drugs, or alcohol, if applicable; the impact of the misconduct on the Complainant; the impact or implications of the misconduct on the University community, prior misconduct by the Respondent, including the Respondent's relevant prior disciplinary history; whether the Respondent has accepted responsibility for the misconduct; the maintenance of a safe, nondiscriminatory and respectful working and learning environment; and any other mitigating, aggravating or compelling factors.

22. Remedies. The Committee shall make a determination regarding any appropriate remedies for the Complainant, including but not limited to: reinstatement, transfer or reassignment of employees, Supportive Measures, implementing changes in programs and activities, providing training, separating Parties such as with a No Contact Directive, or other remedies designed to restore equal access to University Programs or Activities. The OEO/AA Director is responsible for effective implementation of any remedies.

S. Post-Hearing Determination.

1. Within ten (10) calendar days after the conclusion of the hearing, the Committee shall provide its written determination ("Committee Report") to the OEO/AA Hearing Coordinator who shall send the Committee Report to the Parties simultaneously. The Committee Report or accompanying notice and documentation shall include:
 - a. a description of the alleged Discrimination;
 - b. information about the policies and procedures that the University used to evaluate the allegations;

- c. the Committee's evaluation of the relevant and not otherwise impermissible evidence and determination of whether Discrimination occurred;
- d. if the Committee finds that Discrimination occurred, any disciplinary sanctions the University will imposed on the Respondent;
- e. whether remedies other than the imposition of disciplinary sanctions will be provided by the University to the Complainant, and to the extent appropriate, other individuals identified by the University to be experiencing the effects of Discrimination; and
- f. the OEO/AA procedures for the Complainant or Respondent to appeal.

T. Appeals.

1. Any Party may request an appeal of the Hearing Committee's decision by submitting a request in writing to the Hearing Coordinator within five (5) calendar days of notice of the Hearing Committee's decision.
2. The appealing Party (whether student, staff, or faculty) must articulate the applicable bases for their appeal, which must include at least one of the following:
 - a. a procedural irregularity that would change the outcome;
 - b. new evidence that would change the outcome and that was not reasonably available when the Committee's determination was made; or
 - c. the Title IX Coordinator, investigator, or other decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.
3. If a Party files an appeal:
 - a. The Hearing Coordinator must notify the other Party in writing that an appeal has been filed.

- b. Appeal procedures will be applied equally to both Parties.
 - c. Each Party may provide a written statement in support of, or challenging, the Hearing Committee decision within five (5) days of the notice that an appeal has been filed. Parties are not provided the written statements of the other party supporting or challenging the Hearing Committee Decision.
4. Appeal to the Vice President or their designee.
- a. In cases where either Party is not a faculty member, the Complainant or the Respondent may appeal the decision of the Hearing Committee to the cognizant Vice President or their designee by submitting a request in writing to the Hearing Coordinator consistent with this Rule. Failure to file a timely written request for appeal shall constitute a waiver of the right to an appeal. If there is no timely written request for an appeal, the Hearing Committee's decision becomes the Final Result.
 - b. The Vice President or their designee shall have available for review all relevant documentation, including the Committee Report, any other materials presented to the Committee, the statements of the Parties supporting or opposing the appeal, and if requested by the Vice President or their designee, a recording of the proceedings. The Vice President or their designee 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 or their designee may seek advice from neutral advisors.
 - c. The Vice President or their designee shall issue the Final Result, the final and binding decision, in writing within ten (10) calendar days of their receipt of notice of the appeal. The written decision shall describe the result of the appeal and the rationale for the result. For good cause, the Vice President or their designee may extend the ten-day period. The Vice President or designee shall provide their decision to the Hearing

Coordinator who shall simultaneously notify the Parties and their Advisors, if any, of the Final Result.

5. Appeal to the President or their designee.
 - a. If either Party is a faculty member, the Complainant and the Respondent may each appeal the decision of the Hearing Committee to the President of the University or their designee instead of the Vice President, by submitting a request in writing to the Hearing Coordinator consistent with this Rule. 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 Hearing Committee's decision becomes the Final Result.
 - b. On appeal, the President or their designee shall have available for review all relevant documentation, including the Committee Report, any other materials presented to the Committee, and if requested by the President, a 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.
 - c. The President or their designee shall issue the Final Result, the final and binding decision, in writing within ten (10) calendar days of their receipt of notice of the appeal. For good cause, the President or their designee may extend the ten-day period. The President shall provide their decision to the Hearing Coordinator who shall simultaneously notify the Parties and their Advisors, if any, of the Final Result.

Sections IV- VII are for user information and are not subject to the approval of the Academic Senate or the Board of Trustees. The Institutional Policy Committee, the Policy Owner, or the Policy Officer may update these sections at any time.

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

A. Policies/ Rules.

1. Policy 1-012: University Non-discrimination Policy
2. Rule R1-012A: Non-Discrimination Rule
3. Rule R1-102C: Student Pregnancy or Related Conditions Rule

B. Procedures, Guidelines, and Forms.

1. Guideline 1-012A: Consent
2. Guideline 1-012B: Advisors and Support Persons

C. Other Related Resources.

V. References

- A. Policy 1-012: University Non-discrimination Policy includes the list of references applicable under this rule.

VI. Contacts

The designated contact officials for this regulation are:

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

See Rule 1-001 for information about the roles and authority of policy owners and policy officers.

VII. History

- A. Current version. Revision 4.
 1. Initially approved by President Randall as an interim rule with an effective date of August 1, 2024. Approved by the Academic Senate Executive Committee under summer authority August 12, 2024.

2. Legislative History

3. Editorial Revisions

B. Previous Versions

1. Revision 3. Effective March 16, 2022

2. Revision 2. Effective November 10, 2021

- a. Legislative History Revision 2.

3. Revision 1: Effective August 12, 2020

4. Revision 0: Effective February 14, 2017

C. Renumbering

1. Not applicable.