



## University Operating Procedure

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# Sexual Harassment and Misconduct Sanctioning Procedures for Student Respondents - Interim

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## Overview

The University of Vermont assigns sanctions to students found responsible for violations of the Sexual Harassment & Misconduct Policy ([http://www.uvm.edu/policies/general\\_html/sexharass.pdf](http://www.uvm.edu/policies/general_html/sexharass.pdf)) with the aim of preventing recurrence and remedying discriminatory effects of such violations, as appropriate, in accordance with this Operating Procedure.

## Procedures

### 1. Administration of Sanctioning Process

Upon receipt of a Report of Investigation from the Office of Affirmative Action & Equal Opportunity (AAEO) that a student has violated the University's Sexual Harassment and Misconduct Policy, the Center for Student Conduct will assign a staff member to serve as the Sanctioning Panel Coordinator for the case at hand. The Sanctioning Panel Coordinator's primary purpose is to facilitate the administration of the University's sanctioning process, including scheduling Initial Meetings with both parties, conducting those meetings, assigning Sanctioning Panel Members to the matter, and scheduling the Sanctioning Panel Meeting. The Sanctioning Panel Coordinator shall have no other role in the University's investigation, sanctioning, or appeal process.

The Sanctioning Panel Coordinator is responsible for notifying both parties, to the extent required and permitted by federal law and University policy, of the date and time of both their Initial Meeting and Sanctioning Panel Meeting, which shall be scheduled as expeditiously as possible, taking into account the schedules of the Sanctioning Panel

Members and the parties' academic schedules, if applicable. All notifications will be sent via the parties' official UVM email accounts.<sup>1</sup>

Either party may submit a written request to the Sanctioning Panel Coordinator to reschedule their Initial Meeting or the Sanctioning Panel Meeting no later than 24 hours after receiving notice of the date and time of the meeting at issue. Requests will only be granted for good cause, in the discretion of the Sanctioning Panel Coordinator, including consideration of whether rescheduling will unduly burden the other party or otherwise unreasonably delay resolution of the matter.

### **I. Conduct of Initial Meeting**

Each party will be afforded the opportunity to meet with the Sanctioning Panel Coordinator. The purpose of the Initial Meeting is to discuss the University's sanctioning process and answer any questions related to the process, as described herein. Participation in this meeting is not mandatory, but is strongly encouraged. The decision of a party not to attend this meeting will in no way affect any sanction(s) imposed. Each party will be notified of their scheduled Initial Meeting within three (3) business days from the date the Report of Investigation is received in the Center for Student Conduct. The Initial Meeting will be scheduled within two (2) weeks thereafter, absent extenuating circumstances.

### **II. Conduct of Sanctioning Panel Meeting**

Each party will be notified of their scheduled Sanctioning Panel Meeting within three (3) business days following the completion of both parties' Initial Meetings. Sanctioning Panel Meetings will typically be scheduled to occur within two (2) to three (3) weeks of the Initial Meeting, absent extenuating circumstances.

#### **A. Purpose of Sanctioning Panel Meeting**

The sole purpose of the Sanctioning Panel Meeting ("Panel Meeting") is to determine the appropriate sanction(s) for violations of the University's Sexual Harassment and Misconduct Policy, as well as other violations of University policy arising out of the same incident, found by a preponderance of the evidence and detailed in the Report of Investigation. The Panel Meeting is not the appropriate venue to appeal a finding of responsibility issued by AAEO.

In all cases, the sanctions issued will be commensurate with the nature and severity of violation(s) found to have occurred by a preponderance of the evidence. Sanctioning Panel Members take many factors into account when they consider what sanctions would be the most appropriate, given the facts and circumstances of the violation(s) at issue, keeping in mind that consistency and parity are essential to upholding the integrity of the sanctioning process. While

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<sup>1</sup> In accordance with federal law, in the event a Complainant is deceased as a result of a crime of violence, the University will provide their next of kin with a copy of the communications described in these procedures.

many violations are factually similar, and reasonably call for similar sanctions, Panel Members may also consider whether circumstances particular to each case justify a different outcome. Such circumstances are referred to as “aggravating or mitigating factors.” Examples of aggravating and mitigating factors include, but not limited to:

Aggravating:

- Does the Report of Investigation show the incident was premeditated?
- Was this a repeat violation, and/or does the Respondent have a past student conduct history (maintained by the Center for Student Conduct or AAEO)? Did the Respondent have active sanctions when the incident occurred?
- Did the Respondent commit multiple policy violations during the incident?
- Did the incident result in significant injury or harm to another person, property, or the University community? Does a continued risk of the same exist?
- Did the behavior at issue continue after intervention (e.g. request or demand that the behavior cease) on the part of the Complainant, the University, or law enforcement?
- Did the Respondent seek to threaten or purposefully intimidate the Complainant, witnesses, or others involved in the University’s investigation or sanctioning process? Was the incident motivated by an individual’s involvement in the filing or investigation of a complaint (e.g. retaliation)?
- Was there an active attempt to conceal or hide the incident?
- Was the Complainant under the legal age of consent at the time of the incident?
- Was the Complainant singled out by Respondent based on their actual or perceived membership in a legally protected category as defined in UVM Policy V.7.4.9, Equal Opportunity in Educational Programs and Activities and Non-Harassment (<http://www.uvm.edu/policies/student/equaledu.pdf>), in addition to their gender/sex?
- Were remedial or protective measures instituted by the University or a public body (e.g. law enforcement or the courts) violated?
- Was the Respondent in a position of authority over, or in relation to, the Complainant? A position of authority may include, but is not limited to, a team captain or officer of a club in which the Complainant is a member, or where a Respondent is serving in a supervisory capacity, such as a Resident Advisor.

Mitigating:

- Is there convincing evidence that the Respondent was provoked or pressured into the situation, even though the Respondent made a conscious choice to participate?
- Is there convincing evidence that the Respondent's ability to think rationally at the time of the incident was impaired by serious personal circumstances? *Note:* the consumption of alcohol or other drugs by the Respondent at the time of an incident is not a mitigating circumstance.
- Was the behavior committed in self-defense or in defense of others?
- Does the Respondent demonstrate a clear understanding of the impact that their behavior has had on the Complainant and the community?
- Has the Respondent taken steps to positively address their behavior, or otherwise educate themselves on issues of sexual harassment and misconduct, including consent or other items directly related to the incident(s)? *Note:* The Sanctioning Panel recognizes the parties have a right to appeal the investigation outcome; Respondent's disagreement with a finding of responsibility does not constitute an aggravating circumstance.
- Did the Respondent exhibit a significant amount of cooperation with University and/or public officials responding to the incident? *Note:* The Sanctioning Panel recognizes the parties have the option not to participate in the University process; Respondent's non-participation does not constitute an aggravating circumstance.

**B. Composition of Sanctioning Panel**

Each Sanctioning Panel shall be composed of three (3) members of the University community, who have completed the requisite annual training course on issues of sexual harassment and misconduct, including one (1) eligible staff member of the Center for Student Conduct. The Panel Member who is a Center for Student Conduct staff person shall serve as the Chair of the Panel and shall be charged with facilitating the Sanctioning Panel Meeting.

Both parties will receive written notice of the Sanctioning Panel's composition via their official University e-mail account, to the extent required and permitted by federal law and University policy. Panel members shall remove themselves from resolving a case if they believe that they cannot be impartial. Additionally, either party may seek the removal of a Panel Member who they believe cannot be impartial by submitting a written statement to the Sanctioning Panel Coordinator stating the specific reasons for their belief. This written statement must be submitted to the Sanctioning Panel Coordinator within 24 hours of receipt of the notice of the Panel Members selected to hear the case. If the Sanctioning Panel Coordinator determines that the challenged individual may not be impartial, that individual will be removed from the Panel and a new Panel Member will be

selected. If at all feasible, the Sanctioning Panel Meeting date will not be changed.

### **C. Information Considered by the Sanctioning Panel**

The Sanctioning Panel Coordinator and all Panel Members will review a copy of the AAEO Investigation Report, and any appendices thereto, prior to the Sanctioning Meeting.

In addition to review of the AAEO Investigation Report and findings, the Sanctioning Panel will consider other information presented at the Panel Meeting by the parties relevant to sanctioning. Such information may be presented in the form of personal statement(s) at the Panel Meeting (written or oral). If a party elects not to participate in the Panel Meeting, but would like to submit a written statement, reasonably in advance, to the Panel Coordinator, that statement will be read aloud by the Panel Chair at the Sanctioning Panel.

If the parties wish to have a third party address the Sanctioning Panel, in person or by written statement (which will be read aloud on their behalf by the Panel Chair), for the sole purpose of speaking to the existence of aggravating or mitigating circumstances, a summary of their expected statement(s), and their names, must be provided a minimum of two (2) business days prior to the scheduled Panel Meeting. The Sanctioning Panel Coordinator will review the summary of expected statement(s) by third-parties, and will assess their relevance to consideration of the appropriate sanctions. If the Sanctioning Panel Coordinator determines that the expected statements are not relevant, they will exclude third parties from the Panel Meeting. Third-party character statements are generally not considered relevant.

The Sanctioning Panel Coordinator will inform the other party of the names of all third-parties who will be permitted to address the Panel. Third parties not identified to the Sanctioning Panel Coordinator in accordance with the provisions of this section will not be heard.

Requests for individuals to participate via remote audio or video device must also be submitted a minimum of two (2) business days prior to the scheduled Panel Meeting to ensure appropriate technology is available. The identity of all individuals who provide statements to the Panel remotely must be made known. The Sanctioning Panel will not accept or hear any information coming from an anonymous source.

### **D. Sanctioning Panel Meeting Procedure**

All proceedings are closed. Both parties and their respective advisors may be present throughout the Panel Meeting. Third party witnesses, if any, shall be present only during their own statements.

The Sanctioning Panel Chair is responsible for maintaining order during the Panel Meeting and may take all steps reasonably necessary to ensure an orderly Meeting up to and including removal of disruptive individuals.

Panel Meetings are not recorded; the Sanctioning Panel's decision letter serves as documentation of the information presented.

At the beginning of the Panel Meeting, the Sanctioning Panel Chair shall introduce the Panel Members, each party, and their advisors. The Sanctioning Panel Chair shall also confirm that both parties have received and had an opportunity to read the AAEO Investigation Report.

Both parties will have the opportunity to ask any initial questions concerning the process at this time.

Both parties will be given the opportunity to provide personal statement(s) to the Sanctioning Panel addressing the existence of aggravating or mitigating circumstances. After each party has had the opportunity to provide a personal statement, the Sanctioning Panel will then hear from third-parties, provided advance notice of their appearance and general content of their statement(s) was provided to the Sanctioning Panel Coordinator in accordance with these Procedures. Please note that a third party who provides a statement to the Panel may not serve in any other capacity during the Panel Meeting (e.g., advisor).

The Sanctioning Panel, in its discretion, may ask questions of any individual making a statement. However, no individual addressing the Sanctioning Panel is required to answer any questions that the Panel poses. Participation in the sanctioning process is strictly voluntary. After the Panel is satisfied with its opportunity to ask questions, the Sanctioning Panel Chair shall invite both parties to make any final statement(s) regarding sanctions, including providing a response, if they would like, to any statement(s) provided to the Panel by others.

At the conclusion of the Panel Meeting, the Sanctioning Panel Chair will advise both parties of the timeframe for issuance of the Panel's decision letter, and will provide information about the University's appeal process. The Panel Meeting will then be considered closed, and further information will not be considered by the Panel in rendering a sanctioning decision.

### **III. Issuance of Sanction(s)**

#### **A. Deliberations and Voting by Panel Members**

The Sanctioning Panel shall deliberate immediately following the Panel Meeting to determine the sanction(s) most appropriate to the matter under consideration. The goal of the Sanctioning Panel is to reach a unanimous decision on the sanction(s) that should be imposed. However, if a unanimous decision cannot be

reached, sanction(s) shall be imposed based on a majority vote of the Panel Members.

### **B. Decision Letter**

After deliberation, the Sanctioning Panel Chair shall compose and send, on behalf of the Sanctioning Panel, the sanctioning decision to both parties' official University email address, to the extent required and permitted by federal law and University policy.\*<sup>2</sup> The decision letter will state what information was considered and a rationale for the decision that was reached. Additionally, the decision letter will reiterate the parties' right to appeal, as detailed in the University's Sexual Harassment and Misconduct Policy. Note that sanctions do not go into effect until the conclusion of the appeal process. The decision letter will be sent to both parties no later than five (5) business days from the date of the Sanctioning Meeting, absent extenuating circumstances.

### **C. Sanction Descriptions**

Sanctions that may be imposed include, but are not limited to, the following:

Probation: An official notice indicating that subsequent violations of University policy will result in a review for suspension or dismissal from the University.

Educational Sanctions: The Sanctioning Panel may require completion of a variety of educational sanctions, examples of which may include (1) a reflective essay or a research paper on a designated topic, (2) creating or attending a program, reading books, watching videos, (3) a formal apology, in writing or in person, (4) a presentation, or (5) alcohol or other drug education or referral.

Fines or Fees: The Respondent must pay all fines or fees associated with required education, consultations, and classes, as well as those for sessions with a Certified Counselor. Such fines may be billed to a student's financial account.

Community Restitution: The Sanctioning Panel may also require performance of a specified number of community restitution hours. This sanction will be fulfilled either on or off campus, as specified. On campus service will take place in a specified department.

Suspension from Residence Halls: This sanction prohibits the student from residing in any University operated residence hall on either a temporary or a permanent basis. The Respondent may reapply for housing after the stated period of suspension. Specific restrictions on access to residence halls during the period

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<sup>2</sup> See FN 1.

of suspension may also be imposed. Suspension usually includes forfeiture of any fee rebate for the remainder of the housing contract.

Suspension from the University: This sanction separates the student from the University for a specified period of time, and prohibits attendance at any classes or participation in the University Study Abroad program during the suspension period. The terms of the suspension may restrict access to University grounds or buildings, as well as attendance at University-sponsored social events, or other functions, as deemed appropriate by the Dean of Students. The student may not register or enroll until the stated period of suspension is completed and any requirements for the period of suspension are fulfilled.

Deferred Suspension: This sanction may be offered to students in lieu of suspension from the University when a student has taken responsibility for their actions and/or demonstrates a desire to change behavior. The duration of any deferred suspension period, and the specific restrictions imposed, will be determined by the Sanctioning Panel on a case-by-case basis. During a deferred suspension period, the student may continue to attend classes. However, the underlying suspension will be automatically enforced for failure to complete the program or other imposed sanction by the deadline, or for any subsequent violation of University policy. This deferred suspension program is coordinated through the UVM's Center for Student Conduct requires a student to submit an application. Students meet with a Coach who will work with the student throughout the semester to develop a set of personal development goals, activities, and identify any additional service providers.

Dismissal: This sanction separates the student permanently from the University of Vermont.

In addition to the sanctions listed above, the Center for Student Conduct may place a hold on the student's future registration privileges with the University should there be any incomplete sanctions. Such a hold results in a cancellation of all pre-registered courses. The hold remains in effect until the outstanding student conduct matter and sanctions have been resolved.

Additionally, a student who fails to comply with sanctions imposed will be billed a \$150 noncompliance fee to the student's account, and the Center for Student Conduct may impose additional sanctions on the Respondent, up to and including dismissal from the University.

#### **IV. Role of Advisors in Sanctioning Process**

Each party is entitled to be supported by one (1) advisor of their choice, as defined in the Sexual Harassment and Misconduct Policy, at both the Initial Meeting and Panel Meeting. While bringing an advisor to the Initial Meeting and Panel Meeting is not required, it is strongly encouraged. In the event that a party has not yet identified an



advisor at the time of the Initial Meeting, the Center for Student Conduct will remind the party that the University has trained a number of faculty and staff members to assist UVM affiliates with navigating the investigative and conduct processes related to sexual harassment and sexual misconduct. For contact information, please visit: University's Sexual Misconduct Advisors ([https://www.uvm.edu/aeo/sexual\\_misconduct\\_advisors](https://www.uvm.edu/aeo/sexual_misconduct_advisors)).

Advisors are permitted to speak during the Initial Meeting for the purpose of seeking clarification on these procedures. The Sanctioning Panel Coordinator will not, however, engage in discourse about the AAEO Investigation Report. The role of advisors during the Sanctioning Panel Meeting is restricted to providing support to, or otherwise privately consulting with, their advisee. Advisors may not speak on behalf of their advisee or otherwise directly participate in the Sanctioning Panel Meeting. If an advisor does not abide by the rules for participation in either setting, the advisor will be asked to leave.

#### V. **Confidentiality**

The Center for Student Conduct, to the extent possible, treats all information received in connection with the resolution of matters subject to this procedure as private and will only disclose information as necessary to fully and fairly adjudicate a case. The University may additionally share pertinent information with appropriate administrative officials, law enforcement and government agencies, and as otherwise required in accordance with applicable law and policy.

## **Definitions**

*For definitions related to these Procedures, please see: Sexual Harassment and Misconduct Policy ([http://www.uvm.edu/policies/general\\_html/sexharass.pdf](http://www.uvm.edu/policies/general_html/sexharass.pdf)).*

## **Contacts/Responsible Official**

Questions related to the daily operational interpretation of these procedures and other policies related to sexual harassment and misconduct should be directed to:

Center for Student Conduct  
Nicholson House  
41 South Prospect Street  
[sconduct@uvm.edu](mailto:sconduct@uvm.edu)  
(802) 656-4360

Title IX Coordinator  
Nick Stanton  
Office of Affirmative Action and Equal Opportunity  
428 Waterman Building  
[nstanton@uvm.edu](mailto:nstanton@uvm.edu)  
(802) 656-3368

The Vice Provost for Student Affairs is the official responsible for the interpretation and administration of this policy.

## **Forms**

None

## **Related Documents/Policies**

AAEO Procedural Guidelines for Investigating and Resolving Discrimination Complaints

<http://www.uvm.edu/sites/default/files/discrimination.pdf>

Sexual Harassment and Misconduct Policy

[http://www.uvm.edu/policies/general\\_html/sexharass.pdf](http://www.uvm.edu/policies/general_html/sexharass.pdf)

## **Effective Date**

Approved by the Vice Provost for Student Affairs September 12, 2018