

**PROCEDURAL GUIDELINES FOR
HANDLING AND RESOLVING DISCRIMINATION COMPLAINTS**

Office of Affirmative Action and Equal Opportunity

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I. INTRODUCTION

These Procedural Guidelines apply to investigations of complaints of alleged discrimination and harassment, including conduct that violates the University’s Sexual Harassment and Misconduct Policy, as well as complaints of alleged retaliation against those who have opposed practices forbidden under pertinent University policies, those who have filed complaints or reports under those policies, and those who have testified or otherwise participated in the enforcement of those policies, in a formal or informal investigation conducted by the Office of Affirmative Action and Equal Opportunity (“AAEO”).¹

The University takes all complaints of discrimination and harassment seriously, and will take all necessary steps to prevent its recurrence, and remedy discriminatory effects where appropriate. The University of Vermont’s investigation and disciplinary processes related to discrimination and harassment are designed to:

- Consider the rights of both parties, the safety of the community, and applicable laws and University policies;
- Conduct a timely, fair, impartial, and equitable investigation and disciplinary process with thoroughness and respect for all involved parties;
- Protect the privacy of all parties to the extent practical, while balancing the need to comply with applicable law, maintain campus safety, and provide a safe and non-discriminatory environment for all members of the campus community; and
- Hold all individuals found to have violated the University’s policies accountable for their actions and to address the effects of harassment and discrimination, and related retaliation, on the campus community.

II. JURISDICTION

AAEO’s investigatory jurisdiction under these procedures is limited to reported violations of the University’s harassment and discrimination policies, including, but not limited to discrimination based on race, color, religion, ancestry, national origin, sex, sexual orientation, disability, age, positive HIV-related blood test results, gender identity or expression, status as a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran (collectively “protected veterans”), as these terms are defined under applicable law, or any other factor or characteristic protected by law, that are filed in a timely manner.

If at any point prior to or during an investigation or resulting disciplinary process AAEO becomes aware that other University policies other than harassment and discrimination may have been violated in relation to the matter under investigation, these concerns may also be resolved through

¹ The provisions of collective bargaining agreements governing union-represented employees may modify or supersede these provisions. Unionized employees may direct questions regarding the effect of collective bargaining agreements on these provisions to their union representatives.

the investigation process detailed here, provided doing so does not unduly delay the harassment and/or discrimination investigation. The decision to investigate other alleged policy violations that AAEO becomes aware of during the course of investigating matters under its jurisdiction is within the sole discretion of the Executive Director of Human Resource Services and Affirmative Action (hereinafter the “Executive Director”).²

III. STANDARD OF REVIEW

The purpose of an investigation conducted pursuant to these procedures is to determine whether University policy has been violated as alleged. That determination is made based on a preponderance of the evidence standard which requires that the evidence supporting each finding be more convincing than the evidence in opposition to it; that is, it is more likely than not that the alleged conduct occurred.

IV. RESOLUTION PROCEDURE

Any affiliate or non-affiliate may file a complaint directly with AAEO against a student, staff or faculty member, or affiliate³ who is believed to have engaged in behavior constituting harassment or discrimination as outlined in applicable University policies. Complaints may be filed against individuals or units, departments, organizations recognized or affiliated with the University, or other organizational components of the University.

Individuals may also disclose information that an incident of harassment or discrimination occurred to a Responsible Employee, as defined by University policy, who has reporting obligations to AAEO.

- **Step 1: INITIAL MEETING**

Upon notice that an individual has been the subject of alleged harassment or discrimination and would like to file a complaint, or that an individual disclosed an incident under AAEO’s purview to an individual with required reporting obligations, an AAEO Investigator will be assigned to the matter by the Executive Director. The AAEO Investigator will then schedule a time to meet with the individual (the “Complainant”) and discuss concerns as appropriate, including providing written information about applicable University policy, investigation procedures, remedial and protective measures, and other helpful resources. The Complainant may choose to bring one (1) advisor of their choice, who may not have any other role in the investigation process (including informal resolution, if applicable), when meeting with the assigned AAEO Investigator. (*See* Section VII)

After answering any questions the Complainant has, the AAEO Investigator will ask whether they would like to be an active participant in the University process. Disclosure of allegations may be made verbally or in writing, but will ultimately need to be documented in written form.⁴ Once reduced to writing by the AAEO Investigator, a summary of the Complainant’s

² The University strongly encourages the reporting of prohibited acts and seeks to remove any barriers to an individual or group making a report. The University recognizes that individuals who experience incidents covered by these procedural guidelines may be reluctant to report such conduct to the University because they fear that they themselves may be accused of policy violations, such as underage drinking or drug use at the time of the incident. Accordingly, an individual who reports an incident to AAEO, regardless of whether they themselves have experienced the reported misconduct, will not be subject to disciplinary action by the University for their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk, including where an individual or organization knowingly serves alcohol to minors or administers drugs to another person facilitating such misconduct .

³ For purposes of these Guidelines, the term “affiliate” shall include participants in programs and activities sponsored by the University, or occurring on University premises, including University service providers, vendors, and other contractors.

⁴ For note taking purposes, the AAEO Investigator may make an audio recording of this and any other investigatory interview.

description of the incident(s) or conduct alleged to have violated relevant policies will be provided to them for review.

Following receipt of sufficiently detailed allegations (e.g. a formal complaint), the AAEO Investigator must determine whether the Office has jurisdiction to investigate the matter. If the AAEO Investigator, in consultation with the Executive Director, determines that the Office has no jurisdiction, the AAEO Investigator will make appropriate referrals to campus and off-campus resources. If new information is subsequently provided to the AAEO Investigator, the decision of whether or not the AAEO Office has jurisdiction to investigate may be reevaluated.

- **Step 2: INFORMAL RESOLUTION** (*if applicable*)

In appropriate cases, and upon the agreement of the Complainant and Respondent (collectively, “the parties”), AAEO may attempt to facilitate a resolution to the issue presented without a formal investigation. The informal resolution process is intended to be flexible, and undertaken in the reasonable discretion of the AAEO Office, so as to address an individual's situation in the most effective and expeditious manner possible. Under the informal process, AAEO shall only be required to conduct such fact-finding as is useful to resolve the conflict and as is necessary to protect the interests of the parties, the University, and the community. No disciplinary action can be taken against a Respondent on the basis of a complaint of which the Respondent has not been informed and had an opportunity to respond.

Participation in an informal resolution process (including any specific form thereof) is strictly voluntary. The University will not compel the parties to engage in informal resolution, will not compel a Complainant to directly confront the Respondent, and will allow a Complainant or Respondent to withdraw from the informal resolution process at any time. The University may further decline the request for informal resolution in any particular case and may terminate an ongoing informal resolution process at any time. Pursuing informal resolution does not preclude later use of the formal investigation process if the informal resolution process fails to achieve a resolution acceptable to the parties and the University. Where the Complainant or the Respondent withdraws from the process or the process is otherwise terminated for any reason, any statements or disclosures made by the parties during the course of the informal process may be considered in a subsequent investigation. As is the case with all other steps in the AAEO process, both parties may choose to bring one (1) advisor of their choice, who may not have any other role in the investigation process. (*See Section VII*)

Forms of informal resolution that involve face-to-face meetings between the Complainant and the Respondent, such as mediation, are not available in cases involving Sexual Assault, Sexual Exploitation, Gender-Based Stalking, and Relationship Violence.

Informal Resolution may include:

- Resolution with the Assistance of a Third Party: A Complainant may seek assistance in informally resolving a report of discrimination or harassment from the AAEO, who can arrange to have a trained representative facilitate a meeting or meetings between the parties. The availability of this form of Informal Resolution, and any resolution reached through such form of Informal Resolution, is subject to the agreement of the Executive Director, the Complainant, and the Respondent.

- Interventions and Remedies: Informal Resolution agreements may involve a host of interventions and remedies, such as actions designed to maximize the Complainant's access to educational, extracurricular, and/or University employment activities; increased monitoring, supervision, and/or security at locations or activities where discrimination or harassment occurred or is likely to reoccur; targeted or broad-based educational programming or training for relevant individuals or groups; academic and/or University housing modifications for Student Complainants; workplace modifications for Employee Complainants; and/or any other remedial or protective measures that can be tailored to the involved individuals to achieve the goals of the Policy at issue.

Any form of informal resolution, and any combination of interventions and remedies, may be utilized. If an agreement acceptable to the University, the Complainant, and the Respondent is reached through informal resolution, the terms of the agreement are implemented and the matter is resolved and closed. If an agreement is not reached, and the Executive Director determines that further action is necessary, or if a Respondent fails to comply with the terms of the informal resolution, the matter may be referred for investigation under these Procedures.

- **Step 3: FORMAL INVESTIGATION.**

A formal University investigation begins when AAEO provides written notice to the Complainant and Respondent that an investigation for violation of University policy has been initiated and the general allegations giving rise to that investigation. The AAEO Investigator will then invite the Respondent to be interviewed.⁵ The Respondent may choose to bring one (1) advisor of their choice, who may not have any other role in the investigation, when meeting with the assigned AAEO Investigator. (*See* Section VII)

In addition to participating in a personal interview with the AAEO Investigator, both parties may provide, if they wish, relevant evidence they would like the investigator to review, the names of potential witnesses with factual knowledge relevant to the allegations, as well as a list of relevant factual questions they would like asked of the other party. Before the investigation report is finalized, AAEO will provide both parties a written report of the totality of relevant facts collected ("the Record") for review, and both may elect to meet with the AAEO Investigator to comment on the content thereof. Such meetings will normally be scheduled by AAEO to take place within five (5) to ten (10) business days of access to the Record being provided to the parties. The AAEO Investigator has the sole discretion to direct the parties to focus on relevant issues and/or limit redundancies, and to determine the overall length of this meeting. The Executive Director, or designee, may, in his/her discretion, allow written responses in limited appropriate cases.⁶ Ultimately, the decision to interview particular witnesses, allow or consider evidence offered by the parties, or determine which written questions are appropriate and relevant to the case, and, therefore, which questions will ultimately be asked, is within the sole discretion and professional judgment of the AAEO Investigator.

Should a Respondent who has been notified of an investigation decline to participate, the investigation may proceed, a finding may be reached, and a sanction may be imposed based on

⁵ For note taking purposes, the AAEO Investigator may make an audio recording of this and any other investigatory interview.

⁶ The investigator will pursue additional investigation if s/he determines that any of the content of either party's response warrants further inquiry. If the investigator obtains new information that could be material to the outcome, the investigator will provide both parties with access to the new information and the parties will be invited to respond thereto before AAEO issues the Final Report.

the information available. Similarly, witnesses cannot be compelled to participate in an investigation, and the AAEO Investigator will proceed with otherwise available information if a witness (or witnesses) choose not to be interviewed.

Typically, an investigation will be completed within sixty (60) days from the filing of a formal complaint with AAEO, or the date upon which AAEO decides to pursue an investigation independently, whichever is first. However, in some circumstances, it may be necessary to extend that timeframe due to the complexity of the case, availability of witnesses, the occurrence of a simultaneous criminal investigation and request from law enforcement that AAEO delay its investigation, or other factors which unavoidably delay the investigation, collectively “good cause”. If good cause exists for AAEO to extend the investigation timeframe beyond 60 days, as determined by the Executive Director, or designee, both parties will be promptly notified of the revised (expected) timeframe.

Please note, the University lacks full judicial authority, such as the power to subpoena or place witnesses under oath. An individual’s rights cannot be identical to the rights afforded an accused in a civil or criminal legal proceeding. The University’s investigation and resultant disciplinary processes similarly do not require or permit the subject of alleged harassment or discrimination and the Respondent to interact or communicate directly or indirectly. The parties are therefore not permitted to question or cross-examine each other during the course of the investigation or any resultant disciplinary process. The parties will, however, be provided appropriate procedural rights in accordance with the law and applicable University policy.

- **Step 4: ISSUANCE OF INVESTIGATION REPORT**

Following completion of its investigation, the AAEO Office will issue a written report setting forth its findings and the rationale for its conclusions. A copy of this report will be provided concurrently to both parties. As appropriate, a copy of the report will also be forwarded to:

Respondent is an:

Employee

Then to:⁷

- Administrative official immediately responsible for supervision of the Respondent AND
- Appropriate Vice President, Dean, or Director for the Unit in which the Respondent works

Student

- Center for Student Conduct (CSC); OR
- Sexual Misconduct Sanctioning Panel (*if finding*); UVM Dean of Students (*if no finding*)⁸

- **Step 5: DISCIPLINARY ACTION AND APPEALS**

Where an investigation results in a finding of responsibility, the offices identified in Step 4 are responsible for determining appropriate disciplinary and other responsive action, as well as promptly and simultaneously conveying, in writing, their decision as to the same to the parties, in accordance with applicable University policies.

⁷ For cases involving an employee Respondent where violation of the Discrimination and Harassment Policy or the Sexual Harassment and Misconduct Policy is alleged, prior to a copy of the report being forwarded to the individuals and offices named here, both parties have a right of appeal to the Vice President for Human Resources, Diversity & Multicultural Affairs, as detailed therein.

⁸ As detailed in the Discrimination and Harassment Policy, as well as the Sexual Harassment and Misconduct Policy, at the conclusion of the University investigation, sanctioning, and appeals processes, Departments and Units with established professional standards may also, in their discretion, review conduct under those standards to determine whether any additional action is needed.

Appeals of investigatory findings and disciplinary action may be pursued in accordance with applicable University Policy, which shall be specified in the Investigation Report described in Step 4 (where a finding of “not responsible” is made) and/or Notice of Disciplinary Action (where a finding of “responsible” is made), as appropriate.

V. IMPARTIALITY

Either party may seek the removal of an assigned AAEO Investigator if they believe that the Investigator cannot be impartial by submitting a written statement to the Executive Director, or designee, stating the specific reasons why they believe the Investigator cannot be impartial. This written statement must be submitted to the Executive Director, or designee, within 48 hours of receipt of the Notice of Investigation. If the Executive Director, or designee, determines that the assigned investigator may not be impartial, a new Investigator will be selected and both parties will be notified.

VI. RESCHEDULING REQUESTS; MODE OF PARTICIPATION

Requests to reschedule investigatory meetings and/or extend deadlines for response, as applicable, must be submitted to AAEO in writing and will only be granted for good cause, in the discretion of the Executive Director, or designee, including consideration of whether rescheduling will unduly burden the other party or otherwise unreasonably delay resolution of the matter.

Please note, AAEO is able to accommodate requests for individuals to participate in investigatory meetings via remote audio or video device upon a minimum of two (2) business days’ notice.

VII. ROLE OF ADVISORS

In all AAEO proceedings covered by this Guideline, both parties may be accompanied by one (1) advisor of their choice, who may not have any other role in the process, when attending investigatory and other meetings, including informal resolution and those related to disciplinary action (detailed above in Step 5). Oftentimes the Campus Victims Advocate or a Sexual Misconduct Advisor is asked to fill this role for cases of sexual harassment or misconduct, as they have received dedicated training on the University’s policies and procedures in this area. In some cases, individuals wish to be accompanied by an attorney they have privately retained. Regardless of University affiliation, or professional license, Advisors may be present only to provide support to, or otherwise privately consult with, their advisee, but may not speak on behalf of their advisee or otherwise directly participate. If an advisor cannot abide by the rules for participation, the advisor will be asked to leave.

VIII. COORDINATION WITH CRIMINAL PROCESS *(if applicable)*

The University strongly encourages individuals who have experienced sexual assault, relationship violence, stalking, and/or sexual exploitation to consider making a report to police to assure their personal and community safety, and to become informed about their options, including the option of pursuing a criminal investigation. If an individual would like, they can pursue both a criminal and an internal investigation, and the University can assist with making a report to Police.

UVM will not wait for the conclusion of a criminal investigation or proceeding to begin its own investigation and resolve complaints. UVM may, however, in its sole discretion, comply with valid requests from law enforcement for cooperation in a criminal investigation, including temporarily delaying an investigation while law enforcement is in the process of gathering evidence. In assessing whether to temporarily delay an investigation pursuant to a request from law enforcement, the Executive Director will consider such factors as:

- The length of the requested delay;

- The impact that such delay will cause to the involved parties and the campus community; and
- The level of real and harmful impact to the criminal investigation that will occur if the requested delay is not granted.

In the event the requested delay is granted, UVM will promptly resume and complete its investigation once law enforcement has completed gathering evidence, and will keep the Complainant apprised of such requests to the extent permitted by law.

IX. CONFIDENTIALITY

Conversations with AAEO are not privileged, and AAEO cannot guarantee the confidentiality of information disclosed to its staff. However, the AAEO Office, to the extent possible, treats all information received in connection with the filing, investigation, and resolution of complaints as private and will only disclose information as necessary to fully and fairly investigate the allegations. 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.

X. DECISION TO INVESTIGATE WITHOUT COMPLAINANT COOPERATION; REQUESTS FOR ANONYMITY

If the individual subjected to alleged discrimination or harassment does not want to participate in the University process, or expresses a desire to the AAEO Investigator for their identity to be kept confidential, the wishes of that individual will be followed where possible. However, the University reserves the right to investigate and/or take other appropriate action as may be necessary to protect the safety of the campus community. The decision as to whether the University will proceed with an investigation or pursue other appropriate action under these circumstances ultimately rests with the Executive Director, or designee⁹. Requests not to pursue an investigation, as well as requests for confidentiality, are weighed against the University's responsibility to provide a safe and nondiscriminatory environment for all members of the campus community, which necessarily includes consideration of, but is not limited to:

- The seriousness of the alleged conduct, including whether force was used, whether the act was perpetrated with a weapon, or the alleged conduct was committed by multiple individuals;
- The age of the individual allegedly discriminated against or harassed;
- Whether the circumstances suggest there is an increased risk of the Respondent committing additional prohibited acts, which necessarily includes whether there have been other complaints and/or disciplinary outcomes about the same individual and whether the Respondent threatened future acts;
- Whether the circumstances suggest there is an increased risk of future acts under similar circumstances at a given location or by a particular group;
- The ability of the University to respond to the report in another manner;
- Whether the University possesses other means to obtain relevant evidence; and
- The Respondent's rights to receive information about the allegations if the information is maintained by the University as an "education record" under the Family Educational Rights and Privacy Act (FERPA).

⁹ The Executive Director, who serves as the University's Title IX Coordinator, may consult with the University's Institutional Interest Committee (IIC) when the alleged discriminatory behavior, if true, would constitute sexual harassment or misconduct prohibited by UVM policy.

For additional information, please visit:

Equal Opportunity/Affirmative Action Policy
http://www.uvm.edu/policies/general_html/affirm.pdf

Equal Opportunity in Educational Programs and Activities Policy
<http://www.uvm.edu/policies/student/equaledu.pdf>

Discrimination and Harassment Policy
<http://www.uvm.edu/policies/student/studentharas.pdf>

Discrimination and Harassment Sanctioning Procedures for Student Respondents
[forthcoming]

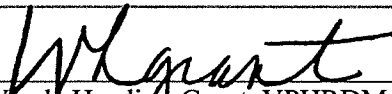
Sexual Conduct Education and Resource Website
<http://www.uvm.edu/~aeo/sexualmisconduct/>

Sexual Harassment and Misconduct Policy
http://www.uvm.edu/policies/general_html/sexassault.pdf

Sexual Harassment and Misconduct Sanctioning Procedures for Student Respondents
<http://www.uvm.edu/sconduct/?Page=SanctioningProcedures.html&SM=menu-student.html>

University Handbooks, Collective Bargaining Agreements, and Grievance Procedures for Employees
<http://www.uvm.edu/hrs/?Page=info/general/handbooksandpolicies.html&SM=info/infomenu.html>

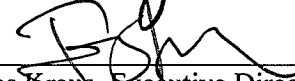
Approved by:



Wanda Heading-Grant, VPHRDMA

9/27/2016
Date

Acknowledged by:



Jes Kraus, Executive Director for HRS & AAEO

9/19/16
Date