



## UNIVERSITY OPERATING PROCEDURE

### **Title:** Hearing Procedures for Title IX Offenses Involving Student Respondents

#### Overview

Following initial inquiry by the Office of Affirmative Action and Equal Opportunity (AAEO) and preparation of a Final Record of Investigation, the University of Vermont adjudicates Title IX Offenses involving student Respondents, as defined by the [Discrimination, Harassment, and Sexual Misconduct Policy](#), in accordance with this Operating Procedure.

#### Applicability of the Procedure

This UOP applies to all University of Vermont faculty, staff, students, visitors, and guests.

#### Definitions

- Adjudicator:** The individual assigned to conduct the live hearing, render a determination of responsibility for the alleged policy violation(s), and impose appropriate sanctions.
- Case Coordinator:** A staff member of the Center for Student Conduct whose role is to facilitate the administration of the University's hearing process, including scheduling Initial Meetings with both parties and conducting those meetings; scheduling the Hearing; assisting the Adjudicator with hearing logistics; and operationalizing sanction decisions. The Case Coordinator is not a decision-maker.
- Hearing Advisor:** An individual independently retained by either party, or otherwise assigned by the University, to serve as a party's proxy for voicing questions to the other party and witnesses during the Title IX Hearing. Other than those assigned by the University, UVM employees must obtain the approval of their supervisor and the Title IX Coordinator before serving as a Hearing Advisor to ensure no conflict of interest or conflict of commitment exists.

For additional definitions related to these Procedures, please see: [Discrimination, Harassment, and Sexual Misconduct Policy](#).

## Procedures

### A. Assignment of Case Coordinator

Upon receipt of a Final Record of Investigation and any response thereto which is determined to be directly related to the allegations and relevant from AAEO, the Center for Student Conduct (CSC) will assign a staff member to serve as the Case Coordinator for the case at hand. The Case Coordinator shall identify them self to the parties.

### B. Conduct of Initial Meeting

Each party will be offered an Initial Meeting with the Case Coordinator, and may be accompanied by an AAEO Process Advisor and/or a Hearing Advisor. The parties will be notified of the date and time of their respective meetings via their official UVM email accounts. Typically, the Initial Meeting will occur within two weeks of the Final Report of Investigation being issued to CSC.

1. **Purpose:** The purpose of the Initial Meeting is to discuss the University's hearing process and answer any questions related to the process, as described herein, as well as to learn from the parties the identity of their Hearing Advisor. 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 consideration of responsibility for policy violations or any sanctions imposed.
2. **Identification of Title IX Hearing Advisor:** Regardless of participation in the Initial Meeting, parties must submit the name of their Hearing Advisor, or a request that a Hearing Advisor be assigned to them, no later than five business days before the Hearing. If a Hearing Advisor does not appear at the Hearing, the Case Coordinator will assign a Hearing Advisor, in consultation with the Title IX Coordinator. If at all feasible, the Hearing date will not be changed.
3. **Rescheduling Requests:** Either party may submit a written request to the Case Coordinator to reschedule their Initial Meeting no later than 48 hours after receiving notice of the date and time of the meeting scheduled. Requests will only be granted for good cause, in the discretion of the Case Coordinator, in consultation with the Title IX Coordinator, including consideration of whether rescheduling will unduly burden the other party or otherwise unreasonably delay resolution of the matter.

### C. Hearing Process

The Case Coordinator will notify each party of the date and time of their scheduled Hearing within three business days following the completion of both parties' Initial Meetings. Included in that Notice will be the identity of the assigned Adjudicator.

Witnesses who are identified in the Final Report of Investigation will also be notified of the scheduled Hearing by the Case Coordinator and invited to participate. No other witnesses will be permitted to participate in the Hearing.

Hearings will typically be scheduled to occur within two weeks of the Initial Meeting, absent extenuating circumstances. Parties must be accompanied by a Hearing Advisor to conduct appropriate questioning during the hearing. Parties may also be accompanied by an AAEO Process advisor for personal support.

1. **Purpose.** Hearings are for the express purpose of determining whether the Respondent is "responsible" or "not responsible" for the alleged violation(s), and assigning appropriate sanctions where a determination of responsibility is made based on the information contained in the Final Record of Investigation, any response provided by the parties to the Final Record which is deemed directly related and relevant, and on statements made during the Hearing. The

Respondent will be presumed "not responsible" until proven otherwise by a preponderance of the evidence.

2. **Maintaining Order.** The Adjudicator is responsible for maintaining order during the Hearing and may take all steps reasonably necessary to ensure an orderly hearing up to and including removal of disruptive individuals.
3. **Impartiality.** The Adjudicator shall remove them self from a case if they have an actual conflict of interest or otherwise believe that they cannot be impartial. A Respondent or Complainant may seek the removal of an Adjudicator where either the Respondent or Complainant believes that they have an actual conflict of interest by submitting a written statement to the Director of the Center for Student Conduct stating the specific reasons they believe that the Adjudicator has a conflict of interest. This written statement must be submitted within 48 hours of receipt of the Notice containing the name of the Adjudicator. If the CSC Director or designee, in consultation with the Title IX Coordinator, determines that the Adjudicator has an actual conflict of interest, the Adjudicator will be removed from the case, and a new Adjudicator will be assigned. If at all feasible, the hearing date will not be changed.

4. **Information Considered**

The Adjudicator will permit the parties' Title IX Hearing Advisors to ask relevant questions of the parties and witnesses on matters that are contained within the Final Report of Investigation. The Adjudicator will determine the relevance of questions by applying logic and common sense. Information that is protected by a legally recognized privilege, such as evidence of a party's prior sexual history<sup>1</sup>; or a party's medical, psychological, or similar records, shall not be permitted unless the party gives written, voluntary consent. The Adjudicator will determine whether a question posed by either party's Title IX Hearing Advisor is relevant before the Complainant, Respondent, or witness answers the question. The Adjudicator will explain any decision to exclude a question as not relevant. Disagreements regarding the Adjudicator's determination of relevance shall not be discussed at the Hearing, but may be addressed through the appeals process.

If a party or witness does not submit to questioning at the Hearing, the Adjudicator must not rely on any statement made by that party or witness in reaching a determination regarding responsibility. The Adjudicator may not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the Hearing or refusal to answer questions. Further, if a party or witness does not submit to questioning, the Adjudicator cannot rely on statements of the party contained within witness testimony or evidence (e.g: hearsay, SANE reports, police reports, recorded statements). The Adjudicator may, however, consider non-statement evidence (e.g. video recordings, electronic messages) with or without the participation of a party or witness during the Hearing.

5. **Presentation**

The Adjudicator will be well-versed in the facts of the case based upon the Final Record of Investigation and the parties' responses to the Record, if any. The Hearing is an opportunity for both parties to ask questions of parties and witnesses as they may arise from the Record through their Hearing Advisor. The parties are not permitted to ask questions of the other party or witnesses directly.

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<sup>1</sup> Evidence of a Complainant's prior sexual history is not relevant except as to show: (1) evidence of specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent (2) evidence that someone other than the Respondent committed the conduct alleged by the Complainant

- a. **Introductions.** At the beginning of the Hearing, the Adjudicator and Case Coordinator, who is present solely in a support role, shall introduce themselves, and ask each party and their Advisors to do the same. The Adjudicator shall read the statement of charges as outlined in the AAEO Notice Letter, and shall also confirm that both parties have received and had an opportunity to read and respond to the Final Report of Investigation. Both parties will have the opportunity to ask any initial questions concerning the process at this time.
  - b. **Opening Remarks.** Both parties will be given the opportunity to provide personal statements, if they wish, to introduce themselves and what they hope to demonstrate to the Adjudicator. The order of remarks by the parties will be determined by the Adjudicator.
  - c. **Questioning of Parties.** The Adjudicator may pose questions to the parties prior to any other questioning of that party. The parties' Hearing Advisors may then pose follow-up questions. Hearing Advisors posing questions must pause after asking their question to allow the Adjudicator to rule on whether the question is relevant. If the Adjudicator determines that a question is relevant, the Adjudicator will direct the party to answer the question. If an Adjudicator determines a question is not relevant, the Adjudicator will state the reason for that determination and the party need not answer the question. The order of party questioning will be determined by the Adjudicator, and the Adjudicator may question parties at any point in the proceedings.
  - d. **Questioning of Witnesses.** Witnesses who have agreed to participate may have questions posed to them by the Adjudicator prior to any other questioning of that witness. The parties' Hearing Advisors may then pose follow-up questions. Hearing Advisors posing questions must pause after asking their question to allow the Adjudicator to rule on whether the question is relevant. If the Adjudicator determines that a question is relevant, the Adjudicator will direct the witness to answer the question. If an Adjudicator determines a question is not relevant, the Adjudicator will state the reason for that determination and the witness need not answer the question. The order of appearance by witnesses will be determined by the Adjudicator, and the Adjudicator may question witnesses at any point in the proceedings.
  - e. **Closing Remarks.** Both parties will be given the opportunity to provide closing remarks, including any statement as to the existence of aggravating or mitigating circumstances. The order of remarks by the parties will be determined by the Adjudicator.
6. **Expectation of Truthful Statements.** The Complainant, the Respondent, and all witnesses are expected and presumed to provide truthful information throughout the investigation and hearing process.
  7. **Closed Hearing.** All proceedings are closed. Both parties and their respective Advisors may be present throughout the Hearing. Witnesses, if any, shall be present only during their own statements. The Case Coordinator shall maintain an official record of the hearing and any other recording is prohibited. No camera, television, recording devices, or other electronic equipment, including cellphones, will be permitted in the hearing room except as arranged by the Case Coordinator.
  8. **Mode of Hearing.** Hearings may be conducted with all parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and Advisors

may appear through remote means with technology enabling participants simultaneously to see and hear each other.

9. **Rescheduling Requests.** Either party may submit a written request to the Case Coordinator to reschedule their Hearing no later than 48 hours after receiving notice of the date and time thereof. Requests will only be granted for good cause, in the discretion of the Case Coordinator, in consultation with the Title IX Coordinator, including consideration of whether rescheduling will unduly burden the other party or otherwise unreasonably delay resolution of the matter.

#### D. Determination of Responsibility and Sanctions

1. **Decision Letter.** Following the Hearing, the Adjudicator will consider all of the evidence and make a determination, by a preponderance of the evidence, of whether the Respondent has violated the Policy named in the AAEO Notice of Investigation letter. The Adjudicator will issue a written notice of the hearing outcome, which will contain their factual findings, determination of whether a Policy violation occurred, the assigned sanctions, if applicable, and the rationale in support thereof. The Adjudicator will strive to complete this notice within fourteen calendar days of the conclusion of the Hearing. The Case Coordinator will provide notice of the hearing outcome to the Complainant and the Respondent<sup>2</sup> simultaneously using their official UVM email addresses. This notice will include information for both parties about their right to appeal, and the method for doing so.
2. **Sanctions.** The Adjudicator will impose sanctions if there is a finding that the Respondent has violated University Policy. When doing so, they may consider mitigating and aggravating circumstances.
  - a. **Aggravating Circumstances<sup>3</sup>**
    - 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?
    - Is there indication that the conduct was premeditated?
    - 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 any investigation or sanctioning process? Was the incident retaliatory or otherwise motivated by an individual's involvement in the filing or investigation of a complaint?
    - Was there an active attempt to conceal or hide the incident?
    - Was the Respondent's conduct motivated by actual or perceived membership in a legally protected category, in addition to sex, as defined in UVM Policy V.7.4.9, Equal Opportunity in Educational Programs and Activities and Non-Harassment?
    - 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

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<sup>2</sup> To the extent required and permitted by federal law and University policy.

<sup>3</sup> The absence of a mitigating factor is expressly precluded from being an aggravating factor.

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.

b. **Mitigating Circumstances<sup>4</sup>**

- 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.
- Does the Respondent demonstrate a clear understanding of the impact that their behavior has had on oneself and the community?
- Has the Respondent taken steps to sincerely address their behavior, or otherwise educate themselves in relation to the behavior of concern?
- Was the behavior committed in self-defense or in defense of others only after all other reasonable attempts at de-escalation were exhausted? (Choosing to respond to violence with violence does not necessarily constitute self-defense.)

c. **Sanction Descriptions.** Sanctions that may be imposed include the following:

- *Disciplinary Warning:* An official written notification that a student's behavior is in violation of University regulations or standards, which clarifies expected behavior in the future. Further misconduct may result in more serious sanctions.
- *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 Adjudicator may require completion of a variety of educational sanctions, examples of which may be found here: [http://www.uvm.edu/sconduct/?Page=code\\_supplemental.html](http://www.uvm.edu/sconduct/?Page=code_supplemental.html)
- *Fines or Fees:* The Respondent must pay all fines or fees associated with alcohol and other drug education consultations and classes, as well as those for sessions with a Certified Drug and Alcohol Counselor. Such fines may be billed to a student's financial account.
- *Community Restitution:* The Adjudicator 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.
- *Financial Restitution:* The Adjudicator may require proof of restitution for damage done or other payment for expenses incurred as a result of the Respondent's actions. Restitution may be required to the University, a specific department, or a specific individual, as designated by the Hearing Officer.
- *Suspension from Residence Halls:* This sanction prohibits the student from residing in any University operated residence hall on either a temporary or a

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<sup>4</sup> The absence of an aggravating factor is expressly precluded from being a mitigating factor.

permanent basis. The Respondent may reapply for housing after the stated period of suspension. Specific restrictions on access to residence halls during the period of suspension may also be imposed. Suspension usually includes forfeiture of any fees paid 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. This sanction prohibits attendance at any classes and 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 DOS or designee. The student may not register or enroll until the stated period of suspension is completed and any requirements for the suspension are fulfilled.
  - *Dismissal:* This sanction separates the student permanently from the University of Vermont.
- d. **Failure to Comply with Sanctions:** If the Respondent fails to comply with the sanctions imposed, additional sanctions may be imposed, up to and including dismissal from the University. A hold may also be placed on the student's future registration privileges with the University. 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 will be billed a \$150 non-compliance fee to the student's account.

#### E. Appeal Procedures

1. **Bases for Appeal.** The hearing decision may be appealed for the following reasons only: (1) a procedural error unfairly and materially affected the outcome of the case, (2) material evidence has been discovered that was not reasonably available at the time of the investigation, or (3) there was a clear abuse of discretion on the part of the Investigator or Adjudicator, including the presence of a conflict of interest or bias against a party that affected the outcome.
2. **Submitting an Appeal.** To appeal, a party must submit a written statement to the Dean of Students or designee within five business days of the date of the hearing decision stating, as precisely as possible, the basis for the appeal.

If sufficient information has been submitted to support an appeal on one of the listed bases, the Dean of Students, or designee, shall then provide a copy of the written appeal and any supporting documentation to the other party. The other party may submit a written response to the appeal to the Dean of Students, or designee, within five business days of the date the appeal was sent to that party. A copy of this response, if any, will be sent to the appealing party from the Dean of Students or designee.

3. **Written Appeal Decision:** The Dean of Students or designee will review all submitted materials, and the pertinent case documents, and render a written decision within ten business days, absent extenuating circumstances. Should additional time be required, the Dean of Students or designee will promptly notify both parties of the revised (expected) timeframe. The Dean of Students or designee will issue a copy of the written appeal decision to parties who are UVM affiliates, in accordance with federal law. The appeal decision may uphold the hearing decision, modify the hearing decision, overturn the hearing decision, or refer the case back to the Adjudicator or Investigator, as warranted. The appeal decision rendered by the Dean of Students or designee is the final action taken by the University.

Additionally, if the Respondent is a student in a program with established professional standards: At the conclusion of the applicable appeal period outlined above, the Title IX Coordinator shall send a copy of the case file, including investigation report, any Sanctioning decision letter, and any appeal/appeal determination to the program's applicable Dean or Director for student services. While the decision of AAEO, the Center for Student Conduct, and the Appellate Official shall be considered final following expiration of the applicable appeal period, the Respondent's program may also, in its discretion, review conduct under the program's established professional standards to determine whether any additional, program-specific disciplinary action is needed.

## Contacts

Questions concerning the daily operational interpretation of this UOP should be directed to the following:	
Title(s)/Department(s):	Contact Information:
Center for Student Conduct	Nicholson House 41 South Prospect Street <a href="mailto:sconduct@uvm.edu">sconduct@uvm.edu</a> (802) 656-4360
Affirmative Action and Equal Opportunity / Title IX Coordinator	Nick Stanton 428 Waterman Building <a href="mailto:nstanton@uvm.edu">nstanton@uvm.edu</a> (802) 656-3368

## Forms/Flowcharts/Diagrams

- None

## Related Documents/Policies

- [Discrimination, Harassment, and Sexual Misconduct](#)
- [Discrimination and Harassment Sanctioning Procedures for Student Respondents](#)
- [Handling and Resolving Discrimination, Harassment, and Sexual Misconduct Complaints](#)

## Training/Education

Training related to this procedure is as follows:

<b>Training Topic:</b>	UVM Resolution of Harassment and Discrimination Incidents		
<b>Training Audience:</b>	UVM Staff and Contractors responsible for execution of procedures under this Policy	<b>Delivered By:</b>	<a href="https://www.uvm.edu/aaeo/title-9-sexual-misconduct">https://www.uvm.edu/aaeo/title-9-sexual-misconduct</a>
<b>Method of Delivery:</b>	On-line Interactive Video or In Person	<b>Frequency:</b>	Annually or as assigned



## About This Procedure

<b>Responsible Official:</b>	Vice Provost for Student Affairs	<b>Approval Authority:</b>	Vice Provost for Student Affairs
<b>Affiliated Policy Number(s):</b>	V. 4.30.1	<b>Effective Date:</b>	August 13, 2020
<b>Revision History:</b>	None		