



UNIVERSITY OPERATING PROCEDURE

Title: Hearing Procedures for Title IX Offenses Involving Employee 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 employee 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.

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. Conduct of Initial Meeting

Each party will be offered an Initial Meeting with Human Resource Services staff, 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.

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, Human Resource Services 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 Title IX 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 Title IX Coordinator, including consideration of whether rescheduling will unduly burden the other party or otherwise unreasonably delay resolution of the matter.

B. Hearing Process

Human Resource Services 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 Human Resource Services 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. One or more members of Human Resource Services may attend the meeting for the purposes of consultation and support for the Adjudicator.

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, Labor Relations and Employment Services 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 Director, Labor Relations and Employment 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 consider all relevant information, and will weigh the reliability and credibility of that information when rendering a determination of responsibility.

- a. **Final Record of Investigation and Reply to Final Record.** 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.
- b. **Responses to Relevant Questions.** 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 history¹; 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.

The Adjudicator may consider evidence with or without the participation of a party or witness during the Hearing. The Adjudicator may not draw an inference about responsibility based solely on a party or witness's absence from the Hearing or refusal to answer questions.

- c. **Written Opening and Closing Statements In Lieu of Participation.** Parties may choose to submit a written opening and/or closing statement to be read by the Adjudicator during the hearing if the party chooses not to participate in the hearing. For any written statement to be considered, it must be submitted to the Case Coordinator no later than 48 hours prior to the hearing. The statement(s) should be clearly labeled as either an opening or closing statement. In the absence of such a label, they will be read as opening statements.

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.

- a. **Introductions.** At the beginning of the Hearing, the Adjudicator introduces themselves, and asks 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.

¹ 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

- 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. If a written opening statement has been submitted in lieu of participation, the Adjudicator will read the statement out loud during the hearing. 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. If a written closing statement has been submitted in lieu of participation, the Adjudicator will read the statement out loud during the hearing. 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. Human Resource Services 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 Human Resource Services.
8. **Mode of Hearing.** Hearings may be conducted with all parties physically present in the same geographic location or, at the discretion of the University, 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 Title IX 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 Title IX

Coordinator, including consideration of whether rescheduling will unduly burden the other party or otherwise unreasonably delay resolution of the matter.

C. 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(ies) 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. Human Resource Services will provide notice of the hearing outcome to the Complainant and the Respondent² 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.

a. Respondents who are members of a bargaining unit

The imposition of sanctions against a Respondent who is a member of a bargaining unit will be via a referral from the Adjudicator to the sanctioning process in the applicable collective bargaining agreement. Any sanction will be based solely on the factual findings and determination of whether a Policy violation occurred in the hearing outcome letter. In any case in which the Collective Bargaining Agreement and this policy are in conflict, the CBA will supersede the process outlined below.

- i. Article 13 of the Agreement Between the University of Vermont and United Academics (AAUP/AFT), May 29, 2018 - June 30, 2020 or any successor agreement;
 - ii. Article 13 of the Agreement Between the University of Vermont and United Academics (AAUP/AFT) (Part-Time Unit), October 2, 2019 - June 30, 2021 or any successor agreement;
 - iii. Article 13 of the Agreement between the University of Vermont and Chauffeurs, Teamsters, Warehousemen and Helpers Union No. 597, August 12, 2019 through June 30, 2022 or any successor agreement;
 - iv. Article 10 of the Agreement between the University of Vermont and United Electrical, Radio and Machine Workers of America, Local 267, July 12, 2017 through June 30, 2020; or any successor agreement.
- b. **Respondents who are not members of a bargaining unit.** When imposing sanctions against an employee who is not a member of a bargaining unit, the Adjudicator must first confer with the assigned Human Resources Services Labor and Employee Relations team representative.
 - c. **Just Cause standard.** Any decision to impose sanctions must consider the following factors, as applicable, to determine whether just cause exists for the proposed sanction.

² To the extent required and permitted by federal law and University policy.

Not all of these factors will be pertinent in every case, and they will not be uniform in the weight which they will be given or consistent in the direction they lead.

- i. The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
 - ii. The employee's job level and type of employment including supervisory or fiduciary role, contacts with the public and prominence in the position;
 - iii. The employee's past disciplinary record;
 - iv. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
 - v. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties;
 - vi. Consistency of the penalty with those imposed upon other employees for the same or similar offense;
 - vii. Consistency of the penalty with any applicable University table of penalties;
 - viii. The notoriety of the offense or its impact upon the reputation of the University;
 - ix. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
 - x. Potential for employee's rehabilitation;
 - xi. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in this matter; and
 - xii. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.
- d. **Sanction Descriptions.** Sanctions that may be imposed include the following (unless sanctioning provisions of an applicable collective bargaining agreement provide otherwise):
- i. Written Letter of Reprimand/Written Warning;
 - ii. Suspension without pay of varying lengths;
 - iii. Termination of Employment;
 - iv. Demotion or reassignment with or without loss of pay;

- v. Faculty additionally may be subject to ineligibility for sabbaticals, ineligibility for professional development funds, and ineligibility for assignments yielding supplemental or additional compensation.

D. Appeal Procedures for decisions of the Investigator or Adjudicator

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 Vice President for Finance and Administration 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 Vice President for Finance and Administration, 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 Vice President for Finance and Administration, 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 Vice President for Finance and Administration or designee.

3. **Written Appeal Decision:** The Vice President for Finance and Administration 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 Vice President for Finance and Administration or designee will promptly notify both parties of the revised (expected) timeframe. The Vice President for Finance and Administration 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 Vice President for Finance and Administration or designee is the final action taken by the University.

- E. Appeal Procedures for decisions made pursuant to a collective bargaining agreement.** If the Adjudicator refers out a sanctioning decision pursuant to a collective bargaining agreement, any appeal of the sanctioning decision will be consistent with the applicable collective bargaining agreement

Contacts

Questions concerning the daily operational interpretation of this UOP should be directed to the following:	
Title(s)/Department(s):	Contact Information:
Human Resource Services	Nicholson House 41 South Prospect Street sconduct@uvm.edu (802) 656-4360
Affirmative Action and Equal Opportunity / Title IX Coordinator	Nick Stanton 428 Waterman Building nstanton@uvm.edu (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:

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

About This Procedure

Responsible Official:	Vice President for Finance and Administration	Approval Authority:	Vice President for Finance and Administration
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