

Formal Student Conduct Process

Standard Operating Procedures for Prohibited Discrimination or Harassment Allegations

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These procedures implement the [Student Conduct Code](#) (“Code”) as it relates to allegations of Prohibited Discrimination and Harassment, including Sexual Misconduct and Unwanted Contact.

For a glossary of important terms, see [Appendix A](#). In particular, “complainant” is the person who submits a complaint alleging a violation of the Student Conduct Code, and “respondent” is the person against whom the complaint is filed. “Director” refers to the Director of Student Conduct and Community Standards. “Title IX Coordinator” refers to the Chief Civil Rights Officer/Title IX Coordinator or designee. “Administrator” is defined as a trained and impartial person designated by the Director to investigate allegations of Harassment or Prohibited Discrimination.

These procedures apply when the respondent is a University of Oregon student at the time of the alleged conduct, and when parties received a Notice of Allegations on or after September 1,

2019. Cases in which notice was provided prior to this date are subject to the procedures in place at the time of Notice ([available here](#)), unless the Director and Title IX Coordinator determine that there is good cause to use the new procedures and using the new procedures will not result in substantial prejudice to either party. These procedures should be construed as consistent with applicable Code sections. If there is a conflict between the Code and these procedures, the Code controls.

(1) Pre-Conduct Process Considerations

a. Interim and Supportive Measures

Interim and Supportive Measures

All students who have experienced, witnessed, or been accused of Prohibited Discrimination and/or Harassment are entitled to [supportive measures](#), including without limitation counseling and health services, academic arrangements (such as class withdrawals, incomplete grades and alternative course completion), assistance with housing and other support services. Students may access supportive measures and confidential resources regardless of whether or not a formal complaint is made to the university.

Accommodations:

Disability: Students in need of accommodations due to a disability should contact the [Accessible Education Center](#) (AEC). Any accommodations deemed necessary and approved by the AEC will be incorporated into the student conduct process as possible. Employees needing to request accommodations should contact the [ADA Coordinator](#).

Language: Individuals who wish to request language interpretation or translation services should notify the Administrator of the request in writing as soon as possible during the process.

b. Emergency Action Procedures

If the allegations of Prohibited Discrimination or Harassment present an immediate threat to the health or safety of any person(s), the Director, in consultation with the Title IX Coordinator and/or other qualified campus community members, will determine whether emergency action procedures, outlined in Section 6 of the [Student Conduct Code](#), should be implemented. If emergency action will be taken, the following will occur:

- When possible, the complainant will be informed of any emergency action prior to implementation and notified of any subsequent modifications to emergency actions.

- The respondent will receive written notice of the emergency action (which may occur simultaneously with emergency action) and be provided an opportunity to respond, within two business days.
- Both the complainant and respondent have the right to request the Vice President of Student Life to review the emergency action decision.

c. No Contact Directives

Either party may request a mutual No Contact Directive. If a No Contact Directive is issued, it will apply to both the complainant and respondent. If either party has questions regarding whether certain actions would or would not violate a No Contact Directive, the student should contact the Director immediately.

A violation of a No Contact Directive should be reported to the Director or the Title IX Coordinator. A violation of a No Contact Directive may constitute a separate student conduct violation, and may be considered by the university in determining whether to issue an emergency action and/or in determining sanctions.

d. Requests for Confidentiality and Requests for No Action

A complainant may request confidentiality (i.e., that their personal identifying information not be shared), that the accused individual not be informed of the report, or that no investigation be pursued. The Title IX Coordinator will seek to honor the individual's request(s) to the extent possible while also protecting the health and safety of the complainant and the university community. The complainant will be informed in writing of the decision of the Title IX Coordinator. Factors routinely considered by the Director and Title IX Coordinator can be found below at [Appendix D](#).

e. Concurrent Processes

In some instances, conduct may constitute a violation of both criminal law and the [Student Conduct Code](#). Individuals have the right to file a criminal complaint, a student conduct Complaint, both or neither. Under federal law, a Complainant has the right to notify, or decline to notify, law enforcement. In limited circumstances, the University may notify law enforcement where there is a threat to the health or safety of any individual. Initiation of a criminal process, either by a Complainant or the University, does not necessarily mean a University process will also be initiated. However, depending on the nature of the conduct investigated through the criminal process, it may trigger an obligation on the part of the University to respond as appropriate to ensure the safety of students and the campus community.

At the request of law enforcement, including the University of Oregon Police Department, the university may temporarily delay all or part of its own investigation until after the active fact-gathering stage of a law enforcement investigation. The decision to suspend the student conduct process will be made by the Director and Title IX Coordinator in consultation with the relevant law enforcement agency, in consideration for the health and safety of the campus community, and in accordance with state and

federal law. In most instances, the suspended student conduct process will promptly resume once law enforcement's active fact-gathering stage is complete. The Administrator assigned to investigate will notify the complainant, and also the respondent if a conduct action has already been initiated, of any decision to suspend the student conduct process and the resulting timelines.

In cases where there are concurrent criminal and conduct processes, the investigation of both may proceed concurrently and the Administrator may conduct joint interviews with law enforcement as appropriate.

f. Advisors

At all stages of the student conduct process, the complainant and respondent shall have the right to an advisor of their choice. If the complainant or respondent chooses to have an advisor, they must submit an [Advisor Designation Form](#) to the Administrator before the advisor accompanies them to any meeting with the Administrator or the Administrative Conference.

The advisor must comply with all university expectations, set forth in [Section 9](#).

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(2) Initiating Student Conduct Allegations

a. Initial Interview with Complainant

Upon receiving a report of Prohibited Discrimination or Harassment, an investigator with the Office of Investigations and Civil Rights Compliance will, if possible, conduct an initial interview with a complainant in order to gather information relevant to the allegations.

b. Decision Whether to Initiate Conduct Action

After receiving a formal complaint covered by these procedures, the Director in consultation with the Title IX Coordinator will determine:

- Whether the complaint's report contains information that, if proven, would violate the [Student Conduct Code \(which incorporates the university's complaint and response policy\)](#);
- Whether the university has jurisdiction over the underlying allegations; and
- Whether to initiate a conduct action based on the totality of the information obtained, including the complainant's wishes and the initial interview with the complainant.

c. Notice of Allegations or No Action

If the Director decides to initiate a conduct action, the Director will send a Notice of Allegations to the respondent and complainant. This notice will designate an Administrator and will include the formal complaint, applicable university policies, and information about interim measures. If the investigation reveals the existence of additional or different allegations, the University may issue a supplemental Notice of Allegations.

If requested or upon decision by the Director, the notice may also put a No Contact Directive into place between the parties throughout the duration of the student conduct process. The Director may remove this directive by petition from both parties or in extraordinary circumstances.

If the Director decides not to initiate a conduct action, the Director will send a notice to the complainant explaining the reason for that decision. The Director may also notify the respondent in circumstances where the respondent was aware of a potential conduct action.

d. Responding to the Notice of Allegations

If a conduct action is initiated, the respondent has seven calendar days (1 week) from the date of the Notice of Allegations to contact the Administrator to set up a meeting with the Administrator to discuss the investigation process and the allegations in the notice. If the respondent does not respond within seven calendar days, the Administrator may proceed without the respondent's involvement and may take any of the actions specified in the [Student Conduct Code](#) for disposition of the case without consultation or agreement by the respondent.

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(3) Administrative Conference Process

a. Overview of Process

The procedures described in this Section implement Section 3(III) of the [Student Conduct Code](#) and form part of the overall Administrative Conference Process ("process"). The process is not a criminal or civil action. That means that it is not subject to the rules of evidence, the rules of civil procedure or other rules that apply to court and court-like proceedings.

The process is intended to be a fair, neutral, and equitable process for all parties involved. The parties retain all of the equitable rights outlined in Section 2 of the Student Conduct Code, including the presumption of being not responsible.

During an investigation, the Administrator will gather relevant information or evidence, including documents, photographs, communications between the parties, medical records (subject to the consent of the applicable person), and other electronic records as appropriate.

The Administrator may also consider information publicly available from online sources that comes to the attention of Investigator. The Administrator may visit relevant sites or locations and record observations through written, photographic or other means. In some cases, the Administrator may consult with relevant experts when deemed appropriate and necessary by the University.

In general, a person's medical and counseling records are confidential and not accessible to the Administrator unless the person voluntarily chooses to share those records with the Administrator. In those instances, only the relevant information from the records will be shared with the other party.

In most instances, the process will proceed according to the following general timeframes and concludes within 20 weeks (5 months). Specific deadlines/dates calculated according to the below timeframes will be outlined in communications from the Administrator.

Please note that all days are **calendar days** calculated from the date the Notice of Allegations is issued:

- **Fact-gathering investigation:**
 - This concludes 6 weeks from date of the Notice of Allegations;
- **Posting and Review of the Record:**
 - The record is compiled of the information gathered during fact-gathering and is made available to the parties for review 3 weeks after the close of fact-gathering;
- **Administrative Conference:**
 - The conference is held at least 4 weeks after Record is posted;
- **Issuance of the Notice of Findings:**
 - Notice is issued within 3 weeks of the Administrative Conference – a total of 16 weeks from the Notice of Allegation;
- **Impact or Mitigation Statements:**
 - Submission, if applicable within 1 week of the Notice of Findings;
- **Issuance of the Sanctioning Decision, if applicable:**
 - Within 2 weeks of receiving the statements or the deadline for receiving the statements, whichever is earlier.

(For a flow chart [click here](#))

The Administrator may alter these timeframes for good cause, which may include school breaks, holidays, and concurrent law enforcement processes. The complainant and respondent may submit petitions to extend or shorten timeframes to the Administrator. The University will notify the parties in writing of any temporary delay or extension of the timeframes for good cause.

b. Expectations of Participants During Fact-gathering

The Administrator will conduct an investigation of the allegations as described in the Overview of Process section above.

All participants are expected to review and comply with the expectations of advisors and parties set forth in detail at [Sections 8](#) and [Section 9](#) below.

c. Pre-Conference Dismissal

The Administrator, in consultation with the Director and Title IX Coordinator, may dismiss the case at any time after the complainant has had the opportunity to speak with the Administrator and before the Administrative Conference, if the Administrator determines that, accepting all of the information presented as proven, there is not enough information to support a finding that more likely than not the respondent violated the [Student Conduct Code](#).

In such instances, the Director will send a Notice of Finding to both parties indicating that the case is being dismissed and stating the basis for the dismissal. The dismissal may be appealed as stated in Section 6.

If the resolution of the issues involves a determination on the credibility or reliability of the information, the case is not appropriate for pre-conference dismissal.

d. The Record and Review of the Record

Content of the Record

The Administrator will compile information gathered during the investigation into a written Record and will provide the parties with access to review the Record. The Record will include summaries of the interviews with Complainant, Respondent and any witnesses, and documents or other evidence submitted by the Parties or gathered by the Administrator.

The Administrator has the sole discretion to determine whether to include or exclude certain information from the Record. The Administrator will generally include information that is useful in determining whether a significant fact is more or less probable (typically referred to as [relevance](#)).

In general, the following types of information are considered irrelevant or unduly prejudicial, and will be excluded from the Record:

- Information about prior bad conduct or sexual activity that is not directly relevant to the disputed facts;
- Personal opinion about a witness or party's general reputation or any character trait;
- Witness statements obtained by someone other than the Administrator (or an agent of the Administrator). If parties believe a witness has relevant information, they should submit that person's name to the Administrator.
- Polygraph examinations and results.

To be included in the Record, the Parties must provide the information to the Administrator during the fact-gathering portion of the investigation.

Information gathered during the investigation but excluded from the Record will be summarized in an index attached to the Record, and will be kept by the Administrator and submitted to the appeals officer or body at the request of either party, and a summary of the information will be made available, by request, to parties in the event of an appeal.

Parties may write to the Administrator and request that the administrator include information in the Record that is not typically included or that was excluded.

Supplementation of Record

The Administrator may supplement the Record with additional information (subject to the limitations described in these procedures) as the process continues. The complainant and respondent will be notified and provided copies of any supplementation of the Record.

In the absence of good cause, information that that was reasonably available, but not provided to the Administrator, will not be considered in the determination of responsibility for a violation of the Code. The complainant and respondent may request an exception to the rule prohibiting the submission of information after the close of fact-gathering by making a written request that the Administrator allow additional information or an additional witness into the Record. In the request, the party must demonstrate good cause for not submitting the information or proposing the witness during fact-gathering.

The Administrator will generally find good cause to add the additional information to the Record when the requested information was not available during fact-gathering, the need for the information/witness was not apparent until the party reviewed the Record, or when the additional information/witness responds to information in the Record.

Requests to add additional information or witnesses should be submitted to the Administrator **as soon as the additional information or witness becomes known.**

Opportunity to Review the Record

The respondent and the complainant will be provided an opportunity to review the information in the Record at least 4 weeks prior to the Administrative Conference. If the Administrator supplements the Record during this time period, such supplements may but do not automatically extend the Record review period.

e. Administrative Conference

The Administrative Conference is an administrative proceeding not comparable to a criminal or civil trial; in connection with the fact-gathering process, it is the mechanism by which the university assesses and, as appropriate, takes formal disciplinary action against a student respondent regarding a violation of university policy.

Notice of the Administrative Conference

The Administrator will provide the complainant and respondent with advance written notice of the date, time, and location of the Administrative Conference. Once the Administrative Conference is scheduled and barring any unforeseen circumstance that would prevent the complainant or respondent from participating in the Administrative Conference, the absence or unavailability of either party, witnesses, or advisors will generally not be considered good cause to cancel, postpone, or reschedule the Administrative Conference.

The Administrator will audio record the Administrative Conference. No other person (including parties, advisors and witnesses) is permitted to audio or video record any part of the Conference.

Participants to the Administrative Conference

The Administrative Conference is a closed proceeding not open to the public. The individuals who may participate in the Administrative Conference are the complainant, respondent, advisors to the complainant and respondent, any individuals appearing as witnesses, and other individuals the Administrator may deem necessary or appropriate such as support for logistics.

The complainant and respondent will participate in the conference from separate rooms. Parties will be able to hear one another during the conference. If both the complainant and respondent request that they participate in the same room, the Administrator, absent extraordinary circumstances, will grant that request. Unless they have previously requested and been granted an exception, if the complainant or respondent choose to attend the Administrative Conference they must do so in person. Exceptions will typically be granted when it would pose an undue hardship to require the Party's participation in person.

New Information or Witnesses at the Administrative Conference

The complainant and respondent may not provide new information or witnesses, not previously disclosed during fact-gathering, at the Administrative Conference unless they first petition to add the new information. Petitions for new information or new witnesses should be made as soon as the information becomes known.

Structure of the Administrative Conference

The basic structure of the Administrative Conference follows this format:

1. The Administrator will address the parties and provide information about the proceedings, expectations, roles and rules and will accept petitions;
2. The complainant will be given the opportunity to highlight or respond to any information in the Record and to any questions posed by the Administrator;
3. The respondent will be given the opportunity to highlight or respond to any information in the Record and to any questions posed by the Administrator;
4. Witnesses will be asked to respond to questions posed by the Administrator;
5. The respondent may, depending on the circumstances and at the discretion of the Administrator, be given an opportunity to respond to any new information arising from the questioning of the complainant or witnesses;
6. The complainant may, depending on the circumstances and at the discretion of the Administrator, be given an opportunity to respond to any new information arising from the questioning of respondent or witnesses;
7. The complainant, or complainant's advisor, presents closing statement of 10 minutes or less;
8. The respondent, or respondent's advisor, presents closing statement of 10 minutes or less.

Witnesses at the Administrative Conference

The complainant and respondent have the right to propose witnesses to provide information at the Administrative Conference.

- At least 14 days (2 weeks) before the Conference begins, the complainant and respondent must provide the Administrator with the names and contact information for the witnesses that they propose to have provide information at the Administrative Conference, a brief summary of the information they expect the witness to provide, and any questions they would like posed to that witness.
- The Administrator will determine whether it is appropriate to have the proposed witnesses participate in the Administrative Conference. Witnesses who have not previously been interviewed as part of the fact-gathering will not be permitted to participate in the Administrative Conference.
- For those witnesses that the Administrator determines are appropriate to participate in the Administrative Conference, the Administrator will utilize the provided contact information to contact the witnesses and request that they appear at the conference.

- No later than 7 days (1 week) prior to the Administrative Conference, the Administrator will send each party the full list of witnesses who the Administrator has requested to participate in the Conference, and will request any proposed questions for the witnesses from the party who did not first propose the witness.

Proposed Questions at the Administrative Conference

The complainant and respondent may propose questions to be asked of any party or witness at the Administrative Conference by submitting the questions to the Administrator by the deadlines set forth in the section above. The Administrator will review the proposed questions and will determine whether the questions are relevant and appropriate. Questions may be excluded if they are repetitive, leading, harassing in nature, or seek information that is duplicative, irrelevant or prohibited by policy.

During the Administrative Conference, the Administrator will ask those questions that the Administrator has determined are appropriate to ask. The complainant and respondent may not directly question the other party or witnesses during the Administrative Conference.

Questions proposed by the complainant and respondent but not asked by the Administrator will become part of the file available during appeal, but will not become part of the Record.

f. The Administrator's Notice of Findings

Within 3 weeks after the Administrative Conference, the Administrator will issue a written Notice of Findings based on information contained in the Record. In making these findings, the Administrator will conclude whether it is more likely than not, as demonstrated by factual determinations, that the respondent is responsible for the alleged student conduct violation(s).

The Notice of Findings will include relevant information, factual determinations, a finding of responsibility or no responsibility, and basis for the determination.

The Administrator will issue a Notice of Findings to the complainant and respondent at the same time. To the extent possible, the Administrator will give the parties notification at least 24 hours prior to sending out the Notice of Findings.

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(4) Informal and Alternative Resolutions

a. Informal Resolution (Accepting Responsibility)

If the respondent wishes to accept responsibility for the allegations stated in the Notice of Allegations, the respondent may choose to waive the formal process and Administrative Conference. If the respondent chooses to accept responsibility, the Administrator will gather the statement of the respondent and issue a Notice of Findings within 3 weeks from the date of the waiver of administrative conference process. The Notice of Findings will include a summary of the information gathered, and an analysis of the underlying information. Sanctions will be determined as set forth in Section 5 of these procedures. The Notice of Findings will be provided to both parties at the same time.

If Respondent accepts responsibility under this provision, both parties will retain a limited right of appeal to challenge any sanction issued pursuant to these procedures.

b. Alternative Resolution

Pursuant to the restrictions set forth in Section 5 of the [Student Conduct Code](#), alternative resolutions may be an option to resolve a complaint following the Notice of Allegations. Alternative resolution processes include but are not limited to facilitated dialogue, mediation, and restorative justice.

The decision to pursue Alternative Resolution may be made at any point in the process – at the Initial Assessment, during the fact-gathering investigation, and prior to the Administrative Conference. Petitions for an alternative resolution may be directed to the Administrator or Director. The Director and the Title IX Coordinator will then determine if an alternative approach is consistent with the university's obligations – under the law, institutional policies, and institutional values – to end the harassment, prevent the harassment from happening again, and address or remedy its effects. In all cases, alternative processes may be used only when both the complainant and the respondent voluntarily agree to pursue an alternative resolution. If an alternative resolution is allowed, the administrative conference process will generally be placed on hold for a reasonable period of time to determine whether the alternative resolution will be successful. If the alternative resolution is successful, both parties will be provided with appropriate notification as to the resolution achieved. If parties do not reach an agreement in an alternative resolution, the administrative conference process will resume.

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(5) Sanctions

a. Determination of Sanctions

If the respondent is found responsible for a Code violation, the Director, in consultation with the Title IX Coordinator and Administrator, will make a determination as to appropriate sanctions. In making this determination, the Director may consider an impact or mitigation statement, the Guidelines below, and any additional and relevant considerations. The Director will issue a written sanctions decision, which includes information regarding appeals, within 2 weeks after the date of the Notice of Findings.

b. Impact or Mitigation Statement

The complainant may submit an impact statement describing the impact of the incident on the complainant and expressing the complainant's preferences regarding appropriate sanctions or aggravating circumstances the complainant wishes the Director to consider.

The respondent may submit a mitigation statement explaining any factors that the respondent believes should mitigate or otherwise be considered in determining the sanctions imposed.

Impact or Mitigation Statements must be received by the Director no later than 7 days (1 week) after the Notice of Findings is issued. Impact or mitigation statements will be made available to both parties should they wish to view them, and will be reviewed by the Director prior to issuing sanctions.

c. Sanction Guidelines

Generally, students found responsible for unwanted sexual penetration or other acts of physical sexual violence including dating or domestic violence will be sanctioned to a suspension of at least two years or more, or will face expulsion. A list of different factors generally considered by the Director in sanctioning can be found at [Appendix C](#).

A list of available sanctions is provided in Section 1(VI) of the [Student Conduct Code](#).

Before reinstatement to the institution after a suspension, a student is generally required to meet with the Director, and potentially other university staff, to ensure that the student does not present an ongoing safety risk to the campus community.

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(6) Appeals

Either party may appeal within 14 calendar days (2 weeks) of the final decision. The appeal must be in writing and include at least one basis for appeal. Either party may initiate the appeal by completing the [Appeals Form](#).

- If the finding is “Not Responsible,” the final decision is the Notice of Findings and the 14-calendar day timeline starts to run on the date the Notice of Findings is issued.
- If the finding is “Responsible,” the final decision is both the Notice of Findings and the Director’s written Sanction Decision, and the 14-calendar day timeline will start to run on the date the Sanction Decision is issued.
- If the case was dismissed pre-conference, the final decision is the Notice of Dismissal, and the 14-calendar day timeline will start to run on the date the case was dismissed.

To learn more about appeals and the appeals process, please see Section 3(IV) of the [Student Conduct Code](#).

a. Bases for Appeals

Pursuant to Section IV of the [Student Conduct Code](#), parties may appeal a decision only on the below bases:

1. To determine if the administrative conference process was conducted fairly in light of the complaint made and information presented and in conformity with procedures required in this Code, giving the complainant a reasonable opportunity to present information, and giving the accused student (respondent) reasonable notice and an opportunity to prepare and to respond to the allegations. A deviation from procedures required by this Code will not be a basis for sustaining an appeal unless significant prejudice results;
2. To determine whether the decision reached regarding the accused student (respondent) was based on substantial information, that is, whether there were facts that, if believed by the Director or designee (Administrator) were sufficient to establish that a violation of the Code occurred;
3. To determine whether the sanction(s) imposed were commensurate with violation;
4. To consider new information sufficient to alter a decision or other relevant facts not brought out in the original hearing only if such information or facts were not known to the person appealing at the time of the hearing.

b. Notice to the Parties

Within 3 business days of an appeal, the Director will send a Notice of Appeal to both parties that an appeal has been filed, the basis for the appeal, and the identity of the assigned appeals officer or body. All appeals of cases involving Sexual Misconduct will be heard by an appeals officer serving as the Vice President of Student Life's designee. All other appeals will be heard by the university appeals board.

c. Scope of the Appeal

Except as the appeals officer or appeals board determines necessary to explain the basis of new information, an appeal is limited to the verbatim record of the Administrative Conference, the Record including supplements, and any supporting documentation. This means that the appeals officer or board will consider the Record including supplements, the recording from the Administrative Conference and, to the extent at issue in the appeal, information and questions submitted by a party or gathered by the investigator during the process but not considered by the original Administrator.

d. Submitting Information Supporting or Opposing an Appeal

Within a reasonable time, the designated appeals officer or board will send the parties a communication indicating that the parties can submit information supporting or opposing the appeal. This information must be submitted to the officer or body within 2 weeks following the Notice of Appeal.

After reviewing the information submitted by the parties, the appeals officer or board may request additional information from the parties or may ask the parties to respond to the other party's information. If information is provided by a party, the other party will have an opportunity to view and respond to the information.

The appeals officer or body is permitted to set reasonable timelines regarding responses from both parties.

e. Appellate Decision

Absent extenuating circumstances, the appeals officer or board will issue a decision within 4 weeks of the Notice of Appeal. The decision will be delivered to both parties at the same time. To the extent possible, the appeals officer or board will give the parties notification at least 24 hours prior to sending out the decision.

f. Modifying or Changing a Decision

If the appeals officer or board determines that the decision or sanction should be modified in whole or in part, the officer or board will send the matter back to the original Administrator to either proceed with additional investigation or hearings, as necessary, or to issue a new sanction that is consistent with the appeals officer or board's recommendation. If the appeals officer or board grants an appeal on the basis of "new information" (Section 3(IV)(2)(d) of the [Student Conduct Code](#)) the only action the appeals officer or board may take is to remand for further proceeding. In the absence of an appeal of sanction by the complainant, a respondent who appeals a decision to the appeals officer or board, will not be subject to increased sanction by the appeals officer or board.

g. Requesting a Stay of Sanctions While Appeal Is Pending

Sanctions imposed by the Director will remain in effect through the university's appeals process. Exceptions to this rule may be granted if a party demonstrates that they will be irreparably harmed if the sanctions are not stayed pending an appeal.

Parties wishing to make a request to stay the sanctions pending appeal must (i) first submit an appeal as described in these procedures and (ii) submit a petition to stay sanctions to the Director within 2 weeks of the date the appeal is submitted. The complainant will be notified of the respondent's petition to stay the sanctions, and will generally be provided the opportunity to submit a response prior to the Director issuing a decision.

The Director, in consultation with the Title IX Coordinator, will decide whether to stay the sanction pending the appeal upon considering the harm caused to the appealing party as well as the impact on the non-appealing party and larger university community. After the university's appeals process has concluded, any sanctions imposed will take effect. This means that sanctions imposed by the university will remain in effect through any external appeals process, unless the court or other review body issues a stay of the sanctions.

For more information on appeals, please see the frequently asked questions at: <https://dos.uoregon.edu/faq>

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(7) Exceptions to Procedures

a. Petitions by Complainant or Respondent

Either the complainant or respondent may request exceptions to these procedures by submitting a petition to the Administrator. In order to be considered, petitions must provide a brief written statement regarding the reason for the exception, and must be received by the date specified in these procedures and where not specified no later than a date that gives the Administrator a reasonable amount of time to consider the request.

The Administrator has the discretion to grant or deny petitions. Unless the petition involves issues that only impact one party, such as interim supportive measures, The Administrator will notify the other party of a petition and provide the other party with an opportunity to respond to the petition.

b. Exceptions by the Administrator

For good cause, and in consultation with the Director or Title IX Coordinator, an Administrator may also make an exception to these procedures, including but not limited to substituting an alternate method of adjudication such as virtual appearances or bifurcated conferences (on separate dates). If an exception is made by the Administrator which significantly impacts timelines or other aspects of the process, the Administrator will send out notice of the exception within a reasonable time.

c. Petition for Bias or Conflict of Interest

If a party believes that an Administrator, appeals officer, or appeals board member is biased or has a conflict of interest, they may make a request for a new individual to be assigned as set forth in [Student Conduct Code](#) Section 2(5)(g) and Section 3(III)(2)(c). Petitions must be submitted to the Director as soon as the party has reason to believe the designated Administrator, appeals officer, or appeals board member is biased, **and no later than one day prior to the next relevant meeting with the allegedly biased individual.**

The fact that the Administrator investigates the allegations and also makes a final decision in the matter will not be considered as information that the Administrator is biased. The fact that the Administrator has previously or is currently investigating other cases involving the same party will not be considered, by itself, to establish bias. Upon a finding of bias or conflict of interest, the university will designate a new individual to serve in that role.

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(8) Expectations of Advisors

Who Can Be An Advisor: Each party may select **one** person who is not otherwise a party or witness, who agrees to abide by the university's expectations, who signs the Advisor Designation Form, and who undergoes the required informational meeting or training, to be an advisor. This may include but is not limited to:

- Another student not involved in the complaint
- A parent or family member
- A member of the faculty or administration not involved in the complaint
- An attorney, limited to one attorney
- A union representative

Students may be able to obtain no-cost legal assistance at Student Survivor Legal Services (for complainants) or at the Office of Student Advocacy (advises mainly respondents). However, an individual can also choose to hire independent legal counsel to serve as an advisor. In that event, the individual is solely responsible for any fees related to the representation.

An advisor does not have to be an attorney. However, as a reminder, the advisor should not offer legal advice if they are not a trained legal professional. A participant may change advisors at any time by submitting a new Advisor Designation Form.

The Administrator will communicate directly with the complainant or respondent. However, once the Advisor Designation Form is completed by the complainant or respondent requesting that the advisor be copied, the Administrator will also make reasonable efforts to copy advisors on the communications that they send to complainant or respondent.

What is the Role of the Advisor: The advisor's primary role is to provide guidance through the process, including any appeal. An advisor who is unfamiliar with the student conduct process may be required to participate in training regarding the process and the role of the advisor.

The advisor may not speak on behalf of the complainant or respondent, communicate in writing directly with the Administrator except regarding scheduling, provide substantive information, ask questions related to the underlying facts, ask questions for their own benefit, participate in the Administrative Conference except as specifically permitted in these SOPs, or in any manner disrupt any meetings or proceedings. The advisor may communicate directly with the Administrator in writing regarding scheduling, ask reasonable clarifying questions about process during meetings and participate in the

Administrative Conference in a manner consistent with these SOPs, as set forth in [Section 3\(e\)](#) of these procedures.

The Administrator may require any advisor to leave a meeting or proceeding, including the Administrative Conference if the advisor distracts, derails, impedes or disrupts any part of the meeting or proceeding. If the Administrator determines that an advisor has engaged in unreasonable, disruptive, harassing or retaliatory behavior, the Administrator may require the party to proceed without an advisor or may require the party to identify a new advisor.

Further information can be found at <https://investigations.uoregon.edu/advisors-and-role-advisors>.

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(9) Expectations of Parties During the Process

a. Preservation of Relevant Material

The complainant and respondent are expected to comply with requests from the Administrator to provide relevant information or material from any source. The complainant and respondent are expected to not delete, destroy or otherwise alter any relevant information or material.

Failure to comply with the expectation to preserve relevant information or material, and/or if the Administrator learns of intentional destruction, may result in a negative inference as to the information or material destroyed or altered. Parties are encouraged to provide all material information as soon as possible to facilitate a prompt resolution.

**The University does not actively monitor online sources, however, and as with all potentially relevant information, the complainant, respondent or witness should bring online information to the attention of the Administrator if they believe it is relevant.

b. Selective Participation

The Administrator will not draw any adverse inference if either the complainant or respondent chooses to remain silent during the investigation. However, if a party or witness chooses to answer some material questions but not others, or chooses to participate in some portions of the process but not others, the Administrator may consider how that

affects the credibility or weight of the information that the party or witness chooses to provide.

A complainant or respondent's decision to propose witnesses and/or questions for witnesses or another party, to attend meetings with an Administrator, to ask procedural questions, or to file or respond to petitions will generally not, by itself, be considered selective participation.

c. Honest Participation

All Participants and witnesses are required to be honest and forthright throughout the process. Any Participant or witness who knowingly makes a false statement in connection with the investigation and resolution of the allegations may be subject to disciplinary action. False statements include statements that omit a material fact as well as statements made that the speaker knows to be untrue.

d. Accommodations

Disability: Students in need of accommodations due to a disability should contact the [Accessible Education Center](#) (AEC). Any accommodations deemed necessary and approved by the AEC will be incorporated into the student conduct process as possible. Employees needing to request accommodations should contact the [ADA Coordinator](#).

Language: Individuals who wish to request language interpretation or translation services should notify the Administrator of the request in writing as soon as possible during the process.

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Appendix A – Glossary of Important Terms

Administrator – A trained and impartial person designated by the Director to investigate allegations of Harassment or Prohibited Discrimination (e.g., gather relevant information and conduct interviews) and make a decision regarding responsibility for a violation based upon a preponderance of the evidence (what more likely occurred based on the information available).

Appeals Officer – A trained and impartial person designated by the Vice President of Student Life to hear appeals in this process. The appeals officer is not otherwise involved in the underlying process as a decision-maker.

Complaint – A written document that describes the alleged misconduct and lists the alleged violations of the [Student Conduct Code](#) and other applicable university policy.

Complainant – Is defined by the [Student Conduct Code](#).

Contact of a sexual nature – Is defined by the [Student Conduct Code](#).

Credibility - Credibility determinations will not be based on a person’s status as a complainant, respondent or witness.

Day - Unless otherwise specified, the word “day” means “calendar day.” When a deadline or due date falls on a weekend or holiday, the deadline or due date will be the following business day.

Director – Director of Student Conduct and Community Standards, or person serving as the Director of Student Conduct and Community Standard’s designee.

Explicit Consent – Is defined by the [Student Conduct Code](#). For elements of the Explicit Consent analysis as analyzed in the formal process, see [Appendix B](#).

Harassment – Is defined by the [Student Conduct Code](#) and the [university’s complaint and response policy](#).

Non-Participating Complainant – The term used for the complainant if it is not possible to honor a complainant’s request for confidentiality or no action and the university moves forward with the process. While a non-participating complainant does not have to participate in the process, a non-participating complainant can still exercise certain rights. For example, a non-participating complainant has the right to access the Notice of Findings and may file an appeal, as provided for in [Section 6](#). The university will not take disciplinary action against a non-participating complainant for refusing to participate in the process.

Notice/Notification – An official correspondence between the university and the parties, for example the Notice of Allegations, Notice of Findings, and Notice of Appeal. Unless otherwise noted in these procedures, the official method of communication with all students, witnesses, and other Participants is by university email. All students and employees of the university are responsible for the understanding the content of those emails. Once a communication has been

sent to a student or employee's university email, then the university considers that person to have received notice of the communication.

**If a Participant does not have a university email, then the individual will receive communications through first-class mail or an identified preferred method. If notice is sent via first-class mail, it will be considered received three days after it was sent.

Participant – Any individual or group identified as a witness or other participant in the formal process, including any advisor.

Party – Any individual or group identified as a complainant, including a non-participating complainant, or respondent.

Penetration – Is defined by the [Student Conduct Code](#).

Petition – A written request submitted to the Administrator, Director, or Title IX Coordinator as provided for in these SOPs.

Prohibited Discrimination – Is defined by the [university's complaint and response policy](#).

Relevant – Evidence that is probative (assists in proving something) and has a tendency to make a fact at issue in the investigation more or less probable than it would be without the evidence. The Administrator objectively evaluates all relevant evidence, including evidence that is both inculpatory (tending to prove the allegations) and exculpatory (tending to disprove the allegations). The Administrator balances relevance with appropriateness under our procedures and whether it would cause undue prejudice. For example, evidence that would typically be excluded may be accepted where it may be of value in determining knowledge, motive, intent, state of mind, preparation, absence of mistake, lack of accident, identity, pattern or another material fact.

Report – Information received officially by the university from a Designated Reporter or Student-Directed Employee (at the request of the student or other individual, or upon assessment that an imminent threat of harm exists), or from a student directly, or from any other source that gives the university actual knowledge that Prohibited Discrimination, Harassment, or related violence may have occurred.

Respondent – The person(s) against whom the complaint is filed. In the [Student Conduct Code](#), students accused of violating the Code are called accused students. In these procedures, an accused student is called the respondent. The university will not take disciplinary action against non-participating respondent for refusing to participate in the process. However, the formal process may continue consistent with the rights outline in the Student Conduct Code.

Retaliation – Retaliation is defined by the [university’s complaint and response policy](#). Retaliation, including obstruction of the process, is not permitted under university policy or law.

Sexual Harassment – Sexual Harassment is defined by the [university’s complaint and response policy](#). Sexual Harassment includes sex and gender-based stalking, sex and gender-based harassment and bullying, dating violence, and domestic violence, as defined by the policy.

Sexual Misconduct – Is defined by the [Student Conduct Code](#).

Student – Any person with student status as defined in the [Student Conduct Code](#).

Title IX Coordinator – The University of Oregon’s Title IX Coordinator, or person serving as their designee.

Unwanted Contact – Is defined by the [Student Conduct Code](#).

Witness - Witnesses are individuals who may have information relevant to the incident, including individuals who may have observed the acts in question, may be able to provide contextual information, or may have other information related to the incident, the disclosure, the parties or related matters.

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Appendix B – Elements of Explicit Consent

The Student Conduct Code prohibits sexual contact where there is no Explicit Consent, including where the respondent knew or should have known the complainant was incapable of explicit consent by reason of mental disorder, incapacitation, or physical helplessness. Explicit Consent is defined in the Student Conduct Code as “voluntary, non-coerced and clear communication indicating a willingness to engage in a particular act.” The university will consider the following definitions of incapacitation, force, and coercion when determining whether there was Explicit Consent.

a. Incapacitation

Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically impaired, either voluntarily or involuntarily, or the individual is unconscious, asleep or otherwise unaware that the sexual activity is

occurring. When alcohol or other drugs are involved, Incapacitation is a state of drunkenness, intoxication or impairment that is so severe that it interferes with a person's capacity to make informed and knowing decisions.

Consumption of alcohol or drugs is not by itself sufficient to establish incapacitation. Alcohol and other drugs impact each individual differently, and determining whether an individual is incapacitated requires an individualized determination. The University does not expect community members to be medical experts in assessing Incapacitation. Individuals should look for the common and obvious warning signs that show that a person may be incapacitated or approaching Incapacitation. A person's level of intoxication is not always demonstrated by objective signs; however, some signs that a person may be incapacitated include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness or emotional volatility.

An individual's level of intoxication may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass and metabolism. It is especially important, therefore, that anyone engaging in sexual activity is aware of both their own and the other person's level of intoxication and capacity to give consent. An individual who is intoxicated may be able to consent to a specific act. However, when an individual passes from intoxication to a state of incapacitation, they no longer have the ability to give Explicit Consent.

Some indications of intoxication include (but are not limited to):

- Slurred speech or difficulty communicating
- Difficulty walking or standing
- Exaggerated emotions

Some indications of incapacity include (but are not limited to):

- Indications of intoxication (as stated above)
- Inability to speak coherently
- Inability to walk unassisted
- Vomiting
- Glassy or bloodshot eyes
- Unable to keep eyes open
- Unusual behavior
- Unconsciousness
- Confusion or lack of understanding of basic facts
- Disorientation to place, time and/or location

These signs alone do not necessarily indicate incapacitation. An individual can be incapacitated without displaying any of these signs.

Engaging in sexual activity with someone the person knew or should have known was incapacitated is a violation of the Code regardless of whether the person appeared to be a willing participant. It is the responsibility of the individual who wants to engage in sexual activity to make sure that the other individual(s) involved is able to consent. Failure to do so could lead to disciplinary and/or legal action.

Being intoxicated or impaired by drugs or alcohol is not a defense for violating the Code and does not diminish one's responsibility to obtain consent. Therefore, when assessing responsibility under the Code, respondents will be treated as reasonable persons not under the influence of drugs or alcohol.

b. Force

Force is determined by looking at whether there was any physical force/violence, threats, intimidation and/or coercion. If an individual used force to obtain sexual access, they did not obtain Explicit Consent.

c. Coercion

Coercion is the use of an unreasonable amount of pressure to gain sexual access. It is more than an effort to persuade, entice, or attract another person to have sex. An evaluation as to whether pressure for sexual access rises to the level of coercion should take into consideration: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the susceptibility of the person being pressured including their degree of isolation, and (iv) the duration of the pressure. A finding of coercion also generally involves either the use of physical force, or the threat of harm. Harm can include, but is not limited to physical harm, harm to social relationships or reputation, financial harm, harm to terms and conditions of employment or academic situation, or other types of leverage created from the explicit or implicit threat of harm. Conduct arises to the level of coercion if it wrongfully impairs an individual's freedom of will to choose whether to engage in sexual activity. If an individual used coercion to obtain sexual access, they did not obtain Explicit Consent.

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Appendix C: Sanctioning Guidelines

The Director will assign individualized sanctions tailored to the facts of the violation and considering multiple criteria. Evidence of prior or subsequent conduct, regardless of whether there has been a prior finding of a policy violation, may be deemed relevant and probative to the determination of appropriate corrective action or sanction for the conduct finding. The criteria considered include but are not limited to:

- The nature of the conduct underlying the policy violation, including the severity, persistency or pervasiveness of the conduct;
- The impact of the conduct on the complainant or the University community;
- Whether the respondent has previously been found responsible for student conduct violations;
- Whether the respondent has any history of violent behavior that has been adjudicated by the student conduct process;
- Whether the respondent has a history of failing to comply with any University No Contact Order or Emergency Action, other university protective measures, and/or any judicial protective order;
- Whether the Administrator found that the charged conduct:
 - Involved physical violence or threats of physical violence. Physical violence means exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking and brandishing or using any weapon;
 - Was part of a pattern of misconduct;
 - Was facilitated through the use of “date-rape” or similar drugs or intoxicants;
 - Occurred while the complainant was unconscious, physically helpless or unaware that the incident was occurring;
 - Occurred when the complainant was (at the time of the charged conduct) a minor (under 18);
- Whether the respondent failed or refused to participate in any university required trainings on Prohibited Discrimination and Harassment, sexual violence prevention, or related trainings;
- Whether the Administrator found any other aggravating circumstances or signs of predatory behavior;
- Whether the Administrator found that the respondent was pressured into the situation, even though the respondent made a conscious choice to participate;

- Whether the Administrator found that the respondent’s ability to think rationally at the time of the conduct at issue was impaired by serious personal circumstances. Note: the consumption of alcohol or other drugs by the respondent at the time of the conduct at issue is not a mitigating circumstance;
- Whether the respondent demonstrates a clear understanding of the impact that their behavior has had on the complainant and/or the community;
- Whether the respondent took immediate steps to remedy and/or address relevant underlying personal issues that may have contributed to the violation, including educating themselves on issues of sexual harassment, consent, or other issues directly related to the misconduct or seeking appropriate counseling;
- Whether the respondent has demonstrated sincere remorse for the conduct at issue;
- Whether the respondent accepted responsibility for the conduct at issue;
- The respondent's level of cooperation and compliance during the process;
- The necessity of any specific action in order to eliminate the conduct, prevent its recurrence and remedy its effects on the complainant or other university community members;
- Whether the misconduct was motivated by bias based on age, ancestry, color, disability, gender identity or expression, genetic information, HIV/AIDS status, military status, national origin, race, religion, sex, sexual orientation, or veteran status;
- Any mitigating, aggravating or compelling circumstances in order to reach a just and appropriate resolution in each case.

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Appendix D: Factors Considered in Requests for Confidentiality or No Action

A Complainant may request anonymity (i.e., that the personal identifying information not be shared with the Respondent), that the Respondent not be informed of the report, or that no investigation be pursued. The Director and Title IX Coordinator will seek to honor the Complainant’s request(s) to the extent possible while also protecting the health and safety of the Complainant and the University community.

In evaluating the Complainant’s request, the Director and Title IX Coordinator will consider a number of factors, including:

- the nature and scope of the alleged conduct;
- the respective ages and roles of the complainant and respondent;
- the risk posed to any individual or to the campus community by not proceeding, including the risk of additional violence;
- whether there have been other reports of other prohibited conduct or other misconduct by the respondent;
- whether the report reveals a pattern of misconduct related to Prohibited Conduct (e.g., illicit use of drugs or alcohol) at a given location or by a particular group;
- whether the reported conduct involves the use of a weapon;
- the complainant's interest in the University not pursuing an investigation or disciplinary action and the impact of such actions on the complainant;
- whether the University possesses other means to obtain relevant evidence;
- fairness considerations for both the complainant and the respondent;
- the University's obligation to provide a safe and non-discriminatory environment; and any other available and relevant information;
- or the presence of any risk factors such as those considered for emergency actions.

In instances where a complainant requests no action and the university can honor that request, the university will take all reasonable steps to respond to the complaint consistent with the request not to pursue an investigation. Generally, this may include initiating a discussion with the respondent regarding the allegations and explaining the applicable policy.

Where the university cannot pursue further investigation because a complainant has specifically requested confidentiality (i.e. not to be identified), it will pursue other steps to mitigate the effects of the alleged harassment or misconduct and prevent its recurrence to the extent that it can consistent with the request for confidentiality.

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