

# Standard Operating Procedures for Discriminatory Misconduct Allegations

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## Introduction

The University of Oregon is committed to equal access to programs, course offerings, facilities, admission, and employment for all its students, employees, and community members. It is the policy of the University to maintain an environment free of prohibited harassment and discrimination against any person because of: race, color, religion, national origin, sex, sexual orientation, gender identity, gender expression, pregnancy (including pregnancy-related conditions), age, physical or mental disability, genetic information (including family medical history), ancestry, familial status, citizenship, service in the uniformed services (as defined in federal and state law), veteran status, expunged juvenile record, and/or the use of leave protected by state or federal law.

In recognition of this commitment, the University has established these procedures to implement the student conduct process as it relates to allegations of Discriminatory Misconduct consistent with the Student Conduct Code. If there is a conflict between the Code and these procedures, the Code controls. In cases where allegations are related to both Discriminatory Misconduct and other forms of Prohibited Conduct under the Code, these procedures may be utilized to resolve all potential violations associated with the alleged misconduct.

These procedures provide for prompt, fair, and equitable resolution of allegations of Discriminatory Misconduct for all participants.

The student conduct process is designed to fit within the University's larger education system and does not function as a court of law. As such, these procedures use language that is designed to be both educationally focused and procedurally neutral. Throughout these procedures, the term "Director" is used to refer to the Director of Student Conduct and Community Standards or their designee. The term "Chief Civil Rights Officer" is used to refer to the Title IX Coordinator/Chief Civil Rights Officer." For a glossary of additional important terms, see Appendix A.

Throughout these procedures, various University officials, such as the Chief Civil Rights Officer, are assigned responsibility for performing specific functions. Named officials are authorized to delegate responsibility to other appropriate University officials and contracted consultants.

Additionally, named officials and their designees may consult with appropriate University officials, including the Office of the General Counsel and subject-matter experts.

## Section 1: Preliminary Considerations

### Access Accommodations

The University of Oregon is committed to ensuring an inclusive, accessible, and equitable process for all participants. Students who have a disability and believe they require reasonable accommodations in order to participate in any part of the student conduct process should contact the Accessible Education Center (AEC). Any accommodation deemed necessary and approved by the AEC will be incorporated into the student conduct process. Employees who need accommodations should contact the University's ADA Coordinator. Requests should be made as soon as possible to ensure the University has sufficient time to review and process the accommodation request. Participants who wish to request language interpretation or translation services, for a need other than a disability-related accommodation, should notify the University of the request in writing as soon as possible during the process.

## Supportive Measures and Confidential Resources

All Students who have experienced, witnessed, or been accused of Discriminatory Misconduct are entitled to supportive measures, including but not limited to academic arrangements (which may include class withdrawals, incomplete grades and alternative course completion, extension of deadlines), campus escort services, assistance with housing, transportation, and other support services, ombudsperson services, legal advice, confidential support persons, referrals to community agencies, and/or other reasonable measures. Students may also seek confidential resources such as health and counseling services, as well as financial assistance, visa and immigration assistance, and safety planning. Students may access these supportive measures and confidential resources regardless of whether a Formal Complaint is made to the university.

## Interim Action

If allegations of Discriminatory Harassment present an immediate and substantial threat to the health or safety of any person(s), the Director, in consultation with the Chief Civil Rights Officer and/or other qualified campus officials, will determine whether interim action, as outlined in Section VI of the Code, is necessary. This determination must be made on a case-by-case basis through an individual and objective assessment of the Parties' needs and of the Respondent's alleged misconduct.

If interim action is to be taken, the following will occur:

- When possible, the Complainant will be informed of any interim action prior to its implementation.
- The Respondent will receive written Notice of the interim action (which may occur simultaneously with the implementation of the interim action) and be provided an opportunity for a meeting with the Director, to occur within two (2) business days of the Notice. During the meeting, Respondent may ask questions and agree to the interim action or request that the interim action be amended or rescinded.
- Within one (1) business day of the meeting, the Parties will receive an interim action decision from the Director.
- Both Parties may request a review of the Director's interim action decision by the Vice President of Student Life or their designee. A final decision will be issued to both Parties within ten (10) business days of the request.

If, after an interim action has been taken, the Complainant declines to further participate in the adjudication of the alleged misconduct and there is insufficient other evidence to adjudicate the alleged misconduct, the interim action may be rescinded. The university may offer Complainant and Respondent other supportive measures designed to ensure their continued access to their education and ensure the health and safety of the Complainant and campus community.

## Mutual No Contact Directives

When a Student requests a No Contact Directive, a mutual No Contact Directive will be issued to both Students. The Director may also decide to issue a mutual No Contact Directive between Student Parties. A mutual No Contact Directive applies equally to both Students. Generally, a mutual No Contact Directive remains in effect until otherwise stated. The Director may remove the directive by petition from both Students or when circumstances warrant its removal.

A violation of a No Contact Directive should be reported to the Director. If a Student has

questions regarding whether certain actions would or would not violate a No Contact Directive, that Student should contact the Director immediately. Failure to comply with a No Contact Directive may constitute a separate student conduct violation and may be considered by the University in determining whether to issue an interim action and/or in determining an Action Plan if a Student is found responsible at the conclusion of the investigative process.

### Law Enforcement Delay

At the request of law enforcement, including the University of Oregon Police Department, the University may temporarily delay the student conduct process. The decision to delay the student conduct process will be made taking into consideration the health and safety of the campus community. If a student conduct action has already been initiated, the University will notify the Party or Parties of any decision to delay the student conduct process and of any resulting timeline changes.

Concurrent Interviews: In cases where there are concurrent criminal and conduct processes, both investigations may proceed concurrently, and the Investigator may conduct interviews jointly with law enforcement as appropriate.

### Privacy

The University of Oregon recognizes that Parties and other Participants are often concerned about the privacy of information. Where the Complainant and/or Respondent are students, their student conduct records are education records, and are protected by the Family Educational Rights and Privacy Act (FERPA). As such, information about the student conduct process may be shared with those who have a “need to know” the information in order to assist with the student conduct process. The University may also need to disclose information about the student conduct process in order to comply with the law (e.g., a lawfully issued subpoena or court order). Students may also consent to the disclosure of their records and/or information.

Record Retention: Student conduct records will be maintained for a minimum of seven (7) years in accordance with State of Oregon records policies and in compliance with federal legislation such as FERPA, the Clery Act, and Title IX.

Privileged Information: The University will not require, allow, rely upon, or otherwise use evidence or questions that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has given voluntary, written consent to waive the privilege.

### Request by Complainant that the University Not Initiate a Formal Investigative Process

A Complainant may request that the University not initiate a Formal Investigative Process. The University will seek to honor a Complainant’s wishes to the extent possible while also meeting its obligation to protect the health and safety of the Complainant and the University community.

Where the University can honor a Complainant’s request to not initiate the Formal Investigative Process, the University may take other appropriate steps designed to eliminate the alleged conduct, prevent its reoccurrence, and address its impact on the Complainant and/or University community. Where the University is unable to honor a Complainant’s request to not initiate a Formal Investigative Process, the Complainant will be notified that a Formal Complaint will be filed.

### Prohibition on Retaliation

Retaliation is prohibited by University policy. The University does not tolerate retaliation in any form against any individual who makes an allegation, files a report, serves as a witness, assists a Complainant or Respondent, or participates in an investigation under these procedures.

Allegations of retaliation should be immediately reported to the University. Retaliation is further defined in the Prohibited Discrimination and Retaliation Policy and the Student Conduct Code.

## Participation Expectations

Honest Participation: All Participants are required to be honest and forthright throughout the process. False statements are statements that a Participant knows to be untrue and include statements that intentionally omit a material fact.

Selective Participation: The University will not draw an adverse inference against a Party who chooses to remain silent during the process. 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 University may consider how that affects the credibility or weight of the evidence that Party or Witness chooses to provide. The Decision-maker shall not draw an adverse inference about whether a violation occurred based solely on the absence of a Party or Witness from the hearing or refusal to answer cross-examination or other questions.

Advisors: For cases proceeding under the Formal Investigative Process, the University will offer to provide each Party with an Advisor at no cost. However, Parties are also entitled to an Advisor of their choosing. If a Party incurs costs to retain an Advisor of that Party's choosing, the Party will be responsible for those costs. To designate an Advisor, a Party must submit an Advisor Designation form, signed by the Advisor to demonstrate their agreement to serve in that role.

By signing the form, the Party and the Advisor agree to abide by the University's expectations for Advisors including that the Advisor will participate in any required informational meeting and/or training. Unless specifically stated otherwise, a person designated as a Party's Advisor is also that Party's Support Person for purposes of the Code. Each Party may only have one person at a time who is designated as their Advisor. Parties may designate a new Advisor by submitting a new designation form.

## Section 2: Initiating Student Conduct Allegations

### Review of Initial Report

When a report is received, the University will consider the following:

- Whether the report contains information that, if proven, would constitute discriminatory misconduct under University policy and the Conduct Code;
- Whether the University has jurisdiction over the Respondent and underlying allegations; and
- Whether the report requires a formal response, taking into consideration the totality of the information and the wishes of the Complainant.

**The following applies whenever the University has determined that a formal response**

**is appropriate, and applies to both the Formal Investigation Process and to the Administrative Disciplinary Process:**

### The Formal Complaint

A Formal Complaint will be filed when the Chief Civil Rights Officer decides to file a Formal Complaint. In addition, in a Title IX case, a Complainant has the right to submit a Formal Complaint.

### Consolidation of Complaints

The University may consolidate two or more Formal Complaints where the allegations of Discriminatory Misconduct are intertwined and concern the same Parties.

### Notice of Allegations

The University will simultaneously issue a written Notice of Allegations to the Complainant and Respondent. The Notice of Allegations includes the Formal Complaint, describes the alleged violations of the Student Conduct Code, and sets forth applicable rights and procedures. A full description of the Notice as well as additional information pertaining to the Notice can be found in Appendix B.

If the investigation reveals the existence of additional or different allegations, the University may issue an Amended Notice of Allegations.

### Presumption of Non-Responsibility and Standard of Proof

The Respondent is presumed “not in violation” unless and until the Respondent accepts responsibility or the University determines the Respondent is in violation of the Code at the conclusion of the Adjudication Phase in the Notice of Findings.

To find the Respondent in violation of the Code, the Decision-maker must determine by a preponderance of the evidence that the conduct alleged in the Complaint occurred. This means that the Decision-maker must find that it is more likely than not that the Respondent engaged in the alleged prohibited conduct. The Decision-maker may find by a preponderance of the evidence that some but not all of the alleged conduct occurred.

### Alternative Resolution

Alternative resolution processes allow the Parties to have significant influence over the resolution process and the outcome. Alternative resolution may not be an appropriate option for all cases but is appropriate where consistent with the University’s obligations and values and where it will be an effective method to end the conduct, prevent its reoccurrence, and address or remedy its effects. If (1) Both Parties agree to attempt alternative resolution and to place the Formal Investigation Process or Administrative Disciplinary Process on hold for a reasonable period while pursuing alternative resolution, and (2) The Director believes that the agreed-upon form of alternative resolution is appropriate, then arrangements will be made to start the alternative resolution process.

The following also applies to alternative resolution:

- A party may request to engage in alternative resolution at any stage of the Formal Investigation Process and either Party may end alternative resolution and return to the Formal Investigation Process at any time before an agreement is reached.
- The University must approve all agreements reached through alternative resolution.
- Agreements reached through alternative resolution must be in writing and shall be the final resolution of the case. Failure to adhere to the terms of an agreement reached



through alternative resolution may constitute a separate violation of the Student Conduct Code and/or result in reopening of the original student conduct allegations. Whether the original student conduct case is reopened will depend on the term(s) of the agreement alleged to have been violated.

Resolution through Agreement. The Parties may come to an agreement that involves the Respondent accepting responsibility for one or more Conduct Code violations. Any agreement reached by the Parties is subject to review and approval by the University. If the Parties cannot also agree on a sanction the University will impose a sanction and either party may appeal the sanction.

Restorative Justice and Mediation. Mediation is a non-disciplinary resolution option and may take the form of Restorative Justice. This resolution option allows Parties, with the guidance of a facilitator, to collectively identify and discuss issues, focus on the impacts that resulted from an incident, and develop their own solutions. Communications made during mediation are confidential, subject to ORS 36.220, and may not be used in any university process, including a hearing or appeal.

### Acceptance of Responsibility

In addition to the alternative resolution options described above, at any time during the conduct process, a Respondent may accept responsibility and elect to be found in violation of the Code for some or all of the alleged violations. As stated above, Respondent is presumed “not in violation” for the allegations. If a Respondent accepts responsibility, the University will impose a sanction.

Either Party may appeal the sanction in accordance with Section 5 below.

## Section 3: Formal Resolution Processes

### Expectations of the Parties during Formal Resolution Processes

To help ensure a timely and fair process for both Parties:

- Parties are expected to promptly respond to case-related communication, including communications seeking to schedule a meeting with the Investigator.
- Parties must not delete, destroy, or otherwise alter information or evidence which is related to the allegations. This includes attempting to influence the participation or statements of Witnesses. Failure to comply with this expectation may result in a negative inference as to the information or evidence destroyed or altered.

Cases subject to Formal Resolution Processes will be resolved using either the Administrative Disciplinary Process or the Formal Investigative Process. The Administrative Disciplinary Process will be used to resolve cases where the Action Plan will not include suspension or expulsion, including non-Title IX sexual harassment cases where the Action Plan will not include suspension or expulsion.

The Formal Investigative Process will be used in Title IX cases and in all other cases where Discriminatory Misconduct is alleged and the potential sanction includes suspension or expulsion from the University.

### Administrative Disciplinary Process

Unless an Administrative Disciplinary Process case is resolved by Resolution Agreement, Restorative Justice or Mediation, such cases will be resolved using the following procedure:



1. The University will schedule an informational meeting for the Respondent after the Notice of Allegations has been sent to the Parties. The informational meeting is a meeting between the Respondent and an Investigator to review the report and relevant evidence, explain the process and review possible options for resolving the matter.
2. The Respondent may accept responsibility at any time after the informational meeting. If the Respondent accepts responsibility, the Respondent will be deemed “in violation,” and the Investigator, in coordination with the Director, will impose a sanction. The Complainant will be provided with notice that the Respondent is “in violation” of the Code. Either Party may appeal the sanction imposed.
3. If the Respondent does not accept Responsibility, the Investigator will offer both Parties the opportunity to propose witnesses and to provide evidence. The Investigator may contact Witnesses. The Investigator will provide the Parties with a summary of the information gathered from the Parties and Witnesses.
4. The Investigator will schedule an administrative conference. If the Respondent does not appear for the administrative conference, the Investigator will proceed with the process.
5. Following the administrative conference, the Investigator, applying a preponderance of the evidence standard, will determine if a violation of the Code occurred. If the Respondent is determined to be “in violation,” the Investigator, in coordination with the Director, will impose an appropriate sanction.
6. Both Parties will be notified of the decision regarding responsibility for the alleged policy violation(s) and the Action Plan, if applicable.
7. Either Party may appeal the finding or sanction following the administrative conference as set forth in Section 5 below.

## Formal Investigative Process

### Investigation

The investigation phase of the Formal Investigative Process begins when the University sends the Notice of Allegations and concludes within approximately 12 weeks when the Parties receive the Investigation Report. The Formal Investigation Process does not apply to the Administrative Disciplinary Process.

### Fact-Gathering

The University will designate an Investigator who will be responsible for gathering information directly related to the allegations raised in the Formal Complaint. All information gathered by the Investigator is considered evidence. The Investigator will conduct a thorough fact-gathering investigation which includes interviewing the Parties and Witnesses and gathering other evidence. Both Parties may identify Witnesses they request to have interviewed and may suggest and provide documents, photographs, text message or social media communications, or other evidence. The investigator may also ask the Parties to provide evidence and information about Witnesses, and the Parties’ responses to such requests may become part of the Record. The fact-gathering portion of the investigation phase will conclude approximately thirty (30) days from the date of the Notice of Allegations.

### The Evidence File

Within seven (7) days after fact-gathering concludes, both Parties will be given electronic

access to the Evidence File.

The Evidence File consists of all evidence obtained up to that point in the investigation that is directly related to the allegations raised in the Formal Complaint. This includes, but is not limited to, transcripts or recordings of the interviews with Parties and Witnesses, and other records, including documents and records of electronic communications gathered during the investigation.

The following information is neither directly related to allegations, nor relevant, will be excluded from the Evidence File and Investigation Report, and will not be relied on when reaching a decision about responsibility:

- Information about the Complainant's sexual predisposition or prior sexual behavior unless offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the information concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is offered to prove consent;
- Information covered by legal privileges including attorney-client privileged information, medical or counseling records, and communications during alternative resolution. However, when a Party provides medical information about themselves to the University, the medical or counseling information is no longer covered by legal privilege and the University will review the information for relevance and include it in the Record just as any other information.

Within fourteen (14) days after receiving the Evidence File, each Party may submit one written response to the Investigator. The Investigator may conduct further fact-gathering if deemed necessary after the Parties respond to the Evidence File. The Parties may respond to information added after the release of the Evidence File when they respond to the Investigation Report.

## The Investigation Report

After considering timely responses to the Evidence File and after completing any additional fact-gathering, the Investigator will prepare an Investigation Report. The Investigation Report consists of the Evidence File, the Parties' responses to the Evidence File, and a summary of the evidence gathered during the investigation. The Investigation Report will be sent to the Parties within twenty-one (21) days after the due date for the response to the Evidence File, and at least fourteen (14) days before the hearing.

## The Adjudication Phase

The adjudication phase of a formal investigative process begins when the Parties receive the Investigation Report and concludes in approximately eight (8) weeks when the Decision-maker issues a written Notice of Findings.

The University will designate a Decision-maker who will be responsible for overseeing the adjudication phase of the process and reaching a decision about responsibility for the alleged violations and, if applicable, the Action Plan. The Decision-maker will receive a copy of the Investigation Report at the beginning of the adjudication phase.

Pre-Hearing Submissions: The Decision-maker will designate a due date for pre-hearing submissions, including:

- 1) A Party's response to the Investigation Report, if any,
- 2) A witness list containing the names of those Witnesses interviewed during the investigation phase whom the Party wishes to have participate in the hearing, and

3) Petitions a Party wishes to file before the start of the hearing.

After considering any timely responses from the Parties to the Investigation Report, the Decision-maker will decide which evidence is relevant to the allegations in the Formal Complaint.

If a Party wishes to have a Witness participate in the hearing who was not interviewed during the investigation phase or admit evidence not included in the Investigation Report, the Party must first submit a petition showing good cause to do so. Petitions must be submitted as part of the pre-hearing submissions or as soon thereafter as the need for the Witness or evidence is known. This requirement does not pertain to information provided orally by a Party during the hearing or to information obtained during Witness cross-examination.

Pre-Hearing Meeting: The Decision-maker may hold a pre-hearing meeting to discuss any issues that could help the hearing proceed more smoothly if discussed ahead of time.

## The Hearing

The hearing is an administrative proceeding not comparable to a criminal or civil trial and is not subject to the rules of evidence, the rules of civil procedure or other rules that apply to court and court-like proceedings.

Notice of the Hearing: At least fourteen (14) days before the hearing, the University will provide the Parties written notice of the name of the Decision-maker and the date, time, and location of the hearing. For allegations of Title IX sexual harassment, the hearing constitutes the “live hearing” requirement in the Title IX regulations, see 34 CFR section 106.

The Decision-maker may postpone the hearing for good cause and will notify the Parties of the new hearing date. The Decision-maker may also determine that it is appropriate to hold portions of a hearing on different dates. This may be done, for example, when the Decisionmaker determines that it is appropriate to do so in order to accommodate reasonable scheduling issues with a Party, an Advisor, or a Witness.

Non-Attendance of the Hearing by Either Party: The Parties are not required to attend the hearing. If, despite being notified of the date, time, and location of the hearing, one or both Parties are not in attendance, the hearing may proceed and if applicable, an Action Plan may be imposed. Where a Party chooses not to attend the hearing, their Advisor may still attend and participate as permitted under these procedures. The non-attendance by a Party does not grant the Party’s Advisor additional rights.

Parties are expected to notify the University if their Advisor will not be attending the hearing. In a Title IX case, if a Party’s designated Advisor does not attend the hearing, the University will provide an Advisor to conduct cross-examination on behalf of that Party.

Participants to the Hearing: The hearing is a closed proceeding and is not open to the public. The individuals who may be present during the hearing are the Decision-maker, Complainant, Respondent, Advisors to the Complainant and Respondent, Witnesses, and other individuals the Decision-maker deems appropriate.

Format of the Hearing: The hearing will be held remotely using video conferencing technology. The technology used for remote participation must allow the hearing participants to see and hear each other, and the Decision-maker to hear and see all Parties and Witnesses. The Decision-maker and the Parties must be able to simultaneously see and hear the Party or Witness answering questions.

Requests for an in-person hearing must be submitted in writing to the Decision-maker no later than ten (10) days before the hearing. A hearing will only be held in-person with the

agreement of both Parties.

Digital Recording: The hearing will be audio recorded and may also be video recorded. hearing recordings are the sole property of the University. No other person is permitted to audio or video record any part of the hearing. Failure by the University to record all or part of a hearing shall not be grounds for invalidating the hearing, does not constitute a procedural irregularity, and is not a basis of appeal. The University will make the recording or transcript of the hearing available for the Parties to review upon request.

## Hearing Procedures

The procedures below apply to hearings concerning allegations of Discriminatory Misconduct. The Parties will also be provided with detailed information about the hearing.

Rules of Decorum for Participants: The Advisors and Parties will be provided with Rules of Decorum for the hearing. In addition to the rules that specifically apply during the hearing, Parties and Advisors will be expected to continue to adhere to all other expectations outlined in these procedures.

Witness Participation: The Decision-maker will determine whether it is appropriate to have a proposed Witness participate in the hearing. The Decision-maker will confer with the Parties before deciding to not allow a proposed Witness to participate in the hearing. The Decision-maker may also request the participation of any Witness who was interviewed during the investigation phase.

Questioning Parties and Witnesses the Hearing: Each Party's Advisor may ask the other Party and Witnesses all relevant questions and follow-up questions, including questions challenging credibility. The Parties may not themselves question the other Party or Witnesses.

Evidence at the Hearing: The Decision-maker will admit the Investigation Report into evidence at the hearing and has the sole discretion to determine which additional evidence is admitted during the hearing.

The standard of relevance articulated previously also applies to evidence submitted during the hearing. The Decision-maker will also decide the weight to assign to any evidence, and in making that determination may consider whether the Witness submitted to cross-examination, whether the Witness has personal knowledge, and/or other factors affecting the believability or persuasiveness of the evidence.

If the Decision-maker determines that unresolved issues exist that would be clarified by the presentation of additional evidence, the Decision-maker may suspend the hearing in order to obtain such evidence. The Decision-maker may ask the Investigator to conduct further investigation.

Mitigation and Impact Statements: In the event the Decision-maker intends to find Respondent responsible for some or all of the conduct at issue, the Decision-maker will invite the Parties to submit impact and mitigation statements to the University.

Notice of Findings: Within twenty-one (21) days of the conclusion of the hearing, the Decision-maker will issue a written Notice of Findings, which will include:

- The provisions of the Code and applicable University policies alleged to have been violated;
- A description of the procedural steps taken from the Formal Complaint through the decision, including any notifications to Parties, interviews with Parties and Witnesses, site visits, methods used to gather other evidence, and the hearing;

- The evidence considered in reaching a decision;
- Findings of fact in support of the determination;
- The conclusion regarding the application of the Code and applicable University policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding whether the Respondent is in violation; and
- The Action Plan, where the Decision-maker determines that the Respondent violated a University policy.

“In Violation” Finding: The Decision-maker will consult with the Director regarding an appropriate Action Plan when the Respondent is in violation of the Code. The Code includes a list of sanctions and outcomes that may be imposed individually or in various combinations to form an Action Plan. A list of factors and guidelines generally considered in creating the Action Plan determination can be found in Appendix B.

Action Plan: The Action Plan will include:

The sanction imposed by the University on the Respondent, if any;

- Any remedies provided to the Complainant designed to restore or preserve access to the University’s education program or activity; and
- The University’s procedures and bases for Parties to appeal. The Decision-maker will issue the Notice of Findings and Action Plan, where appropriate, to both Parties at the same time. To the extent possible, the Decision-maker will give the Parties notification at least twenty-four (24) hours prior to sending the Notice of Findings and Action Plan.

## Section 4: Appeal of Final Decision

Either Party may appeal the decision in the Notice of Finding, in writing, using the designated [Appeal Form](#), within fourteen (14) days of the Decision-maker sending the Notice of Findings to the Parties.

### Bases for Appeal

Pursuant to Section V(7) of the Student Conduct Code, Parties may only appeal a final decision on one or more of the following bases:

1. Whether there was a procedural irregularity that affected the outcome of the matter.
2. Whether the Action Plan imposed was commensurate with the violation(s) for which Respondent was found responsible.
3. Whether the finding is supported by a preponderance of the evidence.
4. To consider new evidence that could alter a decision, but only if such evidence could not have been known to the appealing Party at the time of the hearing.

### Submission of Information Related to the Appeal.

Along with the designated Appeal Form, Parties may submit written argument supporting their appeal. The non-appealing party will be permitted to review and respond to the Appeal Form and written argument and submit a written response. The Appeal Administrator will set the timeline for the response.

### Notice of Appeal



Within five (5) days of receiving an Appeal Form, the University will send a Notice of Appeal to both Parties notifying them that an appeal has been filed. The Notice will include the Appeal Form and any accompanying argument submitted by the appealing party. An Appeal Administrator will be appointed to decide the appeal. The Appeal Administrator may not be the Investigator, the Decision-maker, or the Chief Civil Rights Officer.

## Requesting a Stay of Sanction Pending Appeal

A Party may request a stay of the sanction pending the outcome of the appeal. If granted, a stay of the sanction will result in a delay of the Action Plan. To request a stay, a Party must submit a petition to stay the Action Plan simultaneously with the Appeal Form. The other Party will be notified of the petition to stay the sanction(s) and may be provided an opportunity to submit a response prior to the University issuing a decision. The University will decide whether to issue the stay pending appeal, taking into account the harm to the moving Party and the impact on the non-moving Party and larger University community.

## Scope of the Appeal

Except as the Appeal Administrator determines necessary to explain the basis for new evidence, an appeal is limited to the Record.

### Administrative Disciplinary Process

For cases subject to the Administrative Disciplinary Process, the Record for Appeal includes the Notice of Allegations containing the Formal Complaint, summaries of statements provided by the Parties and Witnesses, the transcript or recording of the administrative conference, the notice of the outcome, other relevant records, and to the extent at issue in the appeal, records related to the Action Plan.

Absent extenuating circumstances, the Appeal Administrator will issue a decision within fourteen (14) days of the Notice of Appeal. The decision will be delivered to both Parties at the same time. The Appeal Administrator may or may not modify a decision or sanction.

### Formal Investigative Process

For cases subject to the Formal Investigative Process, the Record for Appeal includes the Notice of Allegations containing the Formal Complaint, the Evidence File and the Final Investigation Report, evidence admitted after the Final Investigation Report, the Notice of Findings, the transcript or recording of any status conferences, the pre-hearing meeting and the hearing, and to the extent at issue in the appeal, records related to the Action Plan, other relevant records, as well as evidence and questions submitted by a Party or gathered by the Investigator but not considered by the Decision-maker.

Absent extenuating circumstances, the Appeal Administrator will issue a decision within forty-five (45) days of the Notice of Appeal. The decision will be delivered to both Parties at the same time. To the extent possible, the Appeal Administrator will give the Parties notification at least twenty-four (24) hours prior to sending out the decision. The Appeal Administrator may or may not modify a decision or sanction.

## Upholding a Decision

After considering an appeal, the Appeal Administrator may uphold both the finding that a policy violation occurred and the sanction. If both the violation and sanction are upheld, the Action Plan will take effect. This means the Action Plan imposed by the University will remain in effect through any external appeals process unless the reviewing body issues a stay of the Action Plan.

## Modifying the Sanction or Changing a Decision

After considering an appeal, the Appeal Administrator may change the decision about whether Respondent is in violation of the Code for one or more alleged violations, modify the Action Plan, or recommend additional fact finding or dismissal of one or more alleged violations.

## Section 5: Exceptions to Procedures

### Petitions by Complainant or Respondent

Either Party may request exceptions to these procedures including requests to extend or shorten timeframes, by submitting a petition to the Investigator (during the investigation phase), Decision-maker (during the adjudication phase), or Director (before the investigation phase and after the adjudication phase) for good cause.

In order to be considered, petitions must:

- Provide a brief statement (oral or written) regarding the reason for the exception; and
- Be made by the date specified in these procedures and where not specified no later than a date that gives the University a reasonable amount of time to consider the request.

The University has the discretion to grant or deny petitions. Where the outcome of a petition has the potential to impact both Parties, the University may provide the other Party with an opportunity to respond to the petition.

### Exceptions by the University

For good cause, the University may make exceptions to these procedures. If an exception is made by the University which significantly impacts timelines or other aspects of the process, the Parties will be notified of the exception within a reasonable time.

### Petition for Bias or Conflict of Interest

If a Party believes that an Investigator, Decision-maker, Appeal Administrator, or other individual who makes decisions as part of the process is biased or has a conflict of interest, that Party may make a request for a new individual to be assigned or designated to make the decision in question. Petitions must be submitted as soon as the Party has

reason to believe the designated individual is biased, and no later than twenty-four (24) hours prior to the next relevant meeting with the allegedly biased individual.

The following will not, on their own, be sufficient to establish bias:

- The fact that the Investigator has previously or is currently investigating other cases involving the same Party;
- The fact that a decision-maker has previously decided a case involving the same Party; or
- Previous roles or positions held by the Investigator, Decision-maker, Appellate Body, or other University decision-maker.

A finding of bias will require specific allegations about why the individual cannot be fair or impartial under the circumstances of a particular case. Upon a finding of bias or conflict of interest, the University will assign a new individual to serve in that role or delegate a new person to make the decision.



## Appendix A: Glossary of Important Terms

In addition to the terms below, these procedures incorporate by reference the definitions of the Student Conduct Code and other University policy.

**Appeal Administrator** – A trained and impartial person designated by the Vice President of Student Life to review appeals of final decisions subject to these procedures. The Appeal Administrator is not otherwise involved in the underlying process as a Decision-maker.

**Chief Civil Rights Officer** – The University of Oregon’s Title IX Coordinator and Chief Civil Rights Officer or person serving as their designee.

**Coercion** – Use of physical force or inducing fear through the use of words or conduct to obtain compliance. A Complainant’s subjective fear of harm, in the absence of physical force or words or conduct by the Respondent that would induce fear in a similarly situated reasonable person, does not constitute coercion. Fear must be the result of the Respondent’s use of physical force words (i.e., threat of harm) or conduct.

**Complainant** – The person who signs a Formal Complaint alleging a violation of the Student Conduct Code or, when the Formal Complaint is signed by the Chief Civil Rights Officer, the person who is listed in the Formal Complaint as having been subjected to Respondent’s alleged misconduct. Definition includes Non-participating Complainants.

**Decision-maker**: This term is only applicable to the Formal Investigative Process. A trained and impartial person designated by the University to administer the process during the adjudication phase, including to conduct the Hearing, make a decision regarding the alleged violations based upon a preponderance of the evidence, and impose an action plan, if applicable. Also called “Case Manager” under the Code. In cases that involve Title IX Sexual Harassment, as defined in Appendix A, the Decision-maker may not be the same person as the Investigator.

**Director** – The Director of Student Conduct and Community Standards or person serving as their designee.

**Discriminatory Misconduct** – Includes conduct based on a protected status in violation of the University’s Prohibited Discrimination and Retaliation policy and as set forth in the Student Conduct Code.

**Formal Complaint** – A written document, submitted by a Complainant or the Chief Civil Rights Officer, that describes basic details about the alleged misconduct, lists the alleged violations of the Student Conduct Code and other applicable University policy, and requests that the University initiate the student conduct process as outlined in these procedures.

**Formal Investigative Process** – The process for resolving student conduct cases which is outlined in the Standard Operating Procedures for Discriminatory Misconduct. The Formal Investigative Process does not include the alternative resolution process or the Administrative Disciplinary Process.

**Impact or Mitigation Statement** – A statement describing any factors that the Party believes were not, and should have been, considered during the creation of the Action Plan.

**Investigator** – A trained and impartial person designated by the University to investigate allegations of Discriminatory Misconduct.

**Notice/Notification** – An official correspondence between the University and the Parties, for example the Notice of Allegations, Notice of Dismissal, 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 the email address known to the University. If the Participant does not have an email address known to the University, the Participant will receive communications by first-class mail or an identified preferred method. If notice is sent via first-class mail, it will be considered received three (3) days after it was sent. The address on file in DuckWeb is the address to which communications will be mailed unless a Party provides the University with an alternate mailing address in writing, in which case communication will be sent to the alternate mailing address.

Participant - Any Party or Witness or other participant in the student conduct process, including any Advisor.

Party/Parties – The Complainant(s) and/or Respondent(s).

Preponderance of the Evidence – Also often described as “more likely than not,” means that the greater weight of the evidence establishes that something more likely than not did or did not occur. Preponderance of the evidence is the standard for determining violations of the Student Conduct Code.

Person Reporting – means any person who reports alleged misconduct to the University. This person is not automatically considered the Complainant.

Petition – A written request submitted to the University for an exception to these procedures.

Record – The official “Record” of the case includes all evidence available to the Decision-maker when reaching a decision about responsibility and sanctions. This includes, but is not limited to, those portions of the Investigation Report and any supplements that are admitted into evidence, audio recordings or transcripts of the pre-hearing meeting(s), the audio recording or transcript of the hearing less any evidence from the hearing which was deemed not relevant or was not admitted into evidence, as well as any other evidence deemed relevant for the Decision-maker to consider.

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 the Student directly, or from any other source that gives the University actual knowledge that Discriminatory Misconduct or related violation may have occurred.

Respondent - The person(s) alleged to have violated the Student Conduct Code. The University will not take disciplinary action against a Respondent(s) for refusing to participate in the process. However, the student conduct process may continue consistent with the rights outlined in the Code and these procedures.

Student – Any person with student status as defined in the Student Conduct Code.

Title IX Sexual Harassment – Sexual misconduct that is subject to the Title IX Rulemaking at 34 CFR section 106. This includes conduct on the basis of sex that satisfies one or more of the following: (1) Quid pro quo: An employee of the institution conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct; (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the

recipient's education program or activity; or (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30). In order to constitute Title IX Sexual Harassment, the conduct must have occurred in an education program or activity of the University of Oregon and must have occurred against a person in the United States.

Witness - Individuals who may have evidence relevant to the incident, including individuals who may have observed the acts in question, may be able to provide contextual evidence, or may have other evidence related to the incident, the disclosure, the Parties, or related matters.

## Appendix B. Content of Notice of Allegations

The Notice of Allegations will include:

- The name and contact information for the designated Investigator;
- For the Respondent Only: The date, time, and location (or access information) for the informational meeting;
- The Formal Complaint, which will include sufficient details about the alleged misconduct, including the identity of the Parties, if known, and the date(s), time(s), and location(s) of alleged misconduct if known by the University at the time the Notice of Allegations is issued;
- A statement of the portion(s) of the Student Conduct Code alleged to have been violated, and any applicable University policy violations being investigated, including which of the allegations, if any, involve Title IX Sexual Harassment, as defined in Appendix A;
- Whether the Respondent may be subject to suspension, expulsion, or negative transcript notation;
- A direct link to the Student Conduct Code and these procedures;
- A statement informing the Parties that the Student Conduct Code prohibits (1) knowingly making false statements, (2) knowingly submitting false information during the student conduct process, and (3) retaliation against any person for participating in the Conduct process;
- Information about supportive measures and confidential resources;
- A statement of the rights and resources to which Parties are entitled, including Respondent's right to be presumed not in violation for the alleged misconduct, a statement that a determination regarding whether the Respondent is in violation will be made at the conclusion of the student conduct process, the right to an Advisor of their choice who may be but is not required to be an attorney, and the right to inspect and review evidence.

In addition, when a Respondent is also employed by the University, the Notice of Allegations will indicate whether the information gathered in the student conduct process may be used to make disciplinary decisions in the employment context. The Notice will describe what, if any, employee process-related rights the Respondent and Complainant may be entitled to during the process (e.g., Respondent's Weingarten rights) and/or additional policy or procedural

rights that arise as a result of the Respondent's employment status.

## Appendix C. Action Plan Guidelines

The Decision-maker, in consultation with the Director and Chief Civil Rights Officer, will create an Action Plan utilizing the guidelines and criteria outlined below. The Action Plan will consist of outcomes and administrative sanctions as listed in the Student Conduct Code.

Each Action Plan will be individualized and dependent on the full context of the violation that is found to have occurred. The Action Plans is intended to be a proportional response to the violation that occurred, and that is in the best interest of preserving equal access to the institution's educational environment.

### Administrative Sanctions

In every case where the Decision-maker determines that the Respondent has violated a University policy, the Decision-maker may impose sanctions:

- The sanction will range between disciplinary probation, suspension, and expulsion, taking into consideration the criteria for determining administrative sanctions. Before reinstatement after a suspension, regardless of length, the Respondent will be required to meet with the Director and follow all directives related to Respondent's return to campus.
- Negative Transcript Notation to be added to a transcript as follows:
- Exclusion from campus: Generally, during periods of suspension or upon expulsion the Respondent may not participate in University sponsored activities or be present on University premises without advance written permission from the Director
  - Suspension: In cases which result in suspension, including a deferred suspension, a negative transcript notation will be applied for the length of the suspension period.
  - Expulsion: In cases that result in expulsion, including a deferred expulsion, a negative transcript notation will be applied indefinitely.
- Additional Administrative Sanctions: The Decision-maker may determine that additional administrative sanctions are appropriate on a case-by-case basis. For a complete list of Administrative Sanctions, please see the Student Conduct Code.
- Educational, Reflective, and Restorative Outcomes: As appropriate, the Decision-maker may apply educational, reflective, and restorative outcomes based on the specific needs of each case. Outcomes are designed to promote personal reflection and growth, prevent further misconduct, repair any harm caused, and help the Respondent realign with institutional values. For more information about outcomes, please see the Student Conduct Code.

### Criteria for Determining Administrative Sanctions

To determine what administrative sanctions are appropriate, the University will consider aggravating and/or mitigating factors, such as, but not limited to the following:

- The nature of the conduct underlying the policy violation, including the severity, persistency and/or pervasiveness of the conduct.
- The impact of the conduct on the Complainant and/or the University community.
- Evidence of prior or subsequent misconduct, regardless of whether there has been

finding of a policy violation related to that alleged misconduct.

- Whether the Respondent has previously been found in violation of the Code, and if so, the nature and severity of those prior violations.
- Mitigating factors, including without limitation if the Respondent demonstrates a clear understanding of the impact that their behavior has had on the Complainant and/or the community, took immediate steps to address relevant underlying personal issues that may have contributed to the violation, and/or acknowledged wrongdoing.
- Whether a particular sanction is necessary in order to eliminate the conduct, prevent its recurrence and remedy its effects on the Complainant or other University community members.
- Any other mitigating, aggravating or compelling circumstances in order to reach a just, proportional, and appropriate resolution in each case.