

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 or their designee. 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 non-university consultants except where such delegation contravenes University policy. Additionally, named officials and their designees may consult with appropriate University officials, 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 a reasonable accommodation in order to participate in any part of the student conduct process should contact the Accessible Education Center (AEC). Accommodations 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 accommodation, should notify the Director 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 (such as 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 the 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 an 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.

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 as necessary. 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 Contract 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 suspend 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 relating to the student conduct process. Education records, including student conduct records, are protected by the Family Educational Rights and Privacy Act (FERPA). As such, information about the allegations, Participants, and process is only shared within the University with those who have a “need to know” the information in order to assist with the University’s management or resolution of the allegations. In general, the University will not disclose personally identifiable information in a student’s education record to any third party unless the Student provides a signed written release or as otherwise allowed by law (e.g., a lawfully issued subpoena or court order).

Record Retention: Where the Complainant and/or Respondent are students, reports are considered student education records. These 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.

Prohibition on Retaliation

Retaliation is prohibited by University policy. The University will 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 include statements that omit a material fact as well as statements that the Participant knows to be untrue.

Selective Participation: The University will not draw any 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 information 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 Administrative Conference or refusal to answer cross-examination or other questions.

Advisors: Parties are entitled to an Advisor of their choosing and at their own expense. If a Party does not have an Advisor, the University will provide an Advisor of the University's choosing at no cost to either or both Parties. 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 undergo the required informational meeting and/or training required to be an Advisor. Unless specifically stated otherwise, a person designated as a Party's Advisor is also that Party's Support Person for purposes of the Code. The University does not permit its confidential support employees to serve in the Advisor role.

Once designated, Advisors may attend meetings and be copied on case communications. Advisors may also participate in the Administrative Conference as set forth in the rules of decorum which will be provided to parties and advisors before the Conference.

An Advisor does not have to be an attorney. However, a person should not offer legal advice if they are not a trained legal professional. Each Party may only have one person at a time who is designated either as their Advisor. Each Party may designate a new Advisor by submitting a new designation form.

Time Limit to Report Discriminatory Misconduct or File Formal Complaints

The University encourages Complainants and other persons with knowledge of possible violations of the University's Prohibited Discrimination and Retaliation Policy to submit reports as soon as possible. A delay in reporting may impact the University's ability to gather relevant and reliable information. It may also limit the University's ability to sanction a Student who is found in violation of the Student Conduct Code or other University policy.

Section 2: Initiating Student Conduct Allegations

Jurisdiction

These procedures apply to allegations of Discriminatory Misconduct against a Student pursuant to the Student Conduct Code and Prohibited Discrimination and Retaliation Policy. As set forth in the Code, the University has jurisdiction over conduct that is alleged to have occurred while the Respondent was a University of Oregon Student.

Jurisdictional Assessment

Upon receipt of a report of potential Discriminatory Misconduct, the Office of Investigations and Civil Rights Compliance will assess whether the University has jurisdiction over the Respondent and whether the report includes allegations that, if proven, would violate the Student Conduct Code or other University policy. A jurisdictional assessment will be updated where appropriate based on new information.

Where a report is submitted but the identity of the Complainant is unknown, the Chief Civil Rights Officer will assess the report, including whether the University has jurisdiction, whether it provides information that identifies a potential Complainant, Respondent, or any other person with knowledge of the reported incident and where appropriate, take reasonable steps to respond to the report. Where a report alleges misconduct other than Discriminatory Misconduct, the report will be referred to the appropriate University office for resolution.

Request by Complainant that the University Not File a Formal Complaint or Proceed Under These Procedures

The University respects a Complainant's desire for anonymity and decision to not pursue a Formal Complaint. Prior to filing a Formal Complaint, a Complainant may request confidentiality (i.e., that their personal identifying information not be shared, that the Respondent not be informed of the Report, or that the University not file a Formal Complaint and initiate a student conduct process). The University will seek to honor a Complainant's request(s) to the extent possible while also meeting its obligation to protect the health and safety of the Complainant and the University community. The University cannot file an anonymous Formal Complaint.

Where the Chief Civil Rights Officer determines that the University can honor a Complainant's request to not file a Formal Complaint and initiate a student conduct process the University

may take other appropriate steps designed to eliminate the alleged conduct, prevent its reoccurrence, and address its impact on a Complainant and the University community.

Where the Chief Civil Rights Officer determines that the University is unable to honor Complainant's request to not file a Formal Complaint and pursue an investigation in other circumstances where the Chief Civil Rights Officer determines it is necessary to file a Formal Complaint, the Chief Civil Rights Officer will file a signed, written Formal Complaint on behalf of the University, and will inform the Complainant that a Formal Complaint has been filed.

The Formal Complaint

A Formal Complaint will be filed when a Complainant requests to file a Formal Complaint or when the Chief Civil Rights Officer decides to file a Formal Complaint. A Complainant will be afforded the opportunity to review a draft Formal Complaint before a Notice of Allegations is issued.

Notice of Allegations

The University will simultaneously issue a written Notice of Allegations to the Complainant and Respondent. The Notice will include the following:

- The name and contact information for the designated Investigator;
- 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;
- For the Respondent Only: The date, time, and location (or access information) for the informational meeting;
- For the Complainant Only: An opportunity to schedule an informational meeting;

and

- 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.

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

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., Weingarten rights) and/or additional employment-related policy or procedural rights.

Consolidation of Complaints

The University may consolidate two or more Formal Complaints where the allegations of Discriminatory Misconduct arise out of the same facts or circumstances. The requirement for the same facts or circumstances means that the allegations at issue are intertwined and relate to the same Parties.

Dismissals

The University may dismiss the Formal Complaint, either in whole or in part, at any time after the Formal Complaint has been filed and before the Administrative Conference. Dismissal may be appropriate where:

- The Complainant notifies the University in writing that they would like to withdraw the Formal Complaint or specific allegations in the Formal Complaint;
- The Respondent is no longer enrolled or employed by the University;
- It is determined that, accepting all the information presented as presented, there is not sufficient information to support a finding that more likely than not the Respondent violated the Student Conduct Code; or
- Specific circumstances prevent the Investigator from gathering information sufficient to reach a determination (including where no Complainant is identified during the investigation, when allegations have been adjudicated previously, when the length of time between incident and complaint prevents collection of information, or when Complainant has stopped participating and the only information available is the Complainant's statement).

The University must dismiss any allegations of Title IX Sexual Harassment if the conduct alleged in the Formal Complaint does not meet the definition of Title IX Sexual Harassment (see

Appendix A), did not occur in an education program or activity of the University of Oregon, or did not occur against a person in the United States. Such a dismissal does not preclude action under the Student Conduct Code or the University's Prohibited Discrimination and Retaliation Policy.

The University will send a Notice of Dismissal to both Parties indicating which allegations are being dismissed and stating the reason(s) for the dismissal. If the resolution of the issues involves a determination of the credibility or reliability of the information, the case is not appropriate for dismissal. A dismissal may be appealed within 5 business days.

Informational Meeting

After the Formal Complaint has been filed, the Respondent will have an opportunity to attend an informational meeting with the University. The date and time of the informational meeting will be included as part of the Notice of Allegations. The University will grant requests to reschedule the informational meeting. The Respondent is encouraged to bring a support person to the informational meeting.

During the informational meeting, the Respondent will be able to learn about the Formal Conduct Process, options for identifying an Advisor, and possible options for resolving the complaint including alternative resolution. The Respondent may not respond to the allegations in this meeting.

Alternative Resolution

Alternative resolution (informal resolution) may be an option to resolve a Formal Complaint following the Notice of Allegations and prior to the Administrative Conference. Alternative resolution processes include but are not limited to facilitated dialogue, mediation, and restorative justice. Alternative resolution is appropriate where the University determines that it 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.

Either party may submit a request for alternative resolution to the University. If both Parties agree, voluntarily and in writing, to the alternative resolution process, the Formal Conduct Process will generally be placed on hold for a reasonable period of time, typically not to exceed 30 business days, to determine whether the alternative resolution will be successful. Either Party may decide to end their participation at any time prior to an agreement being reached, whereupon the Formal Conduct Process will resume.

To encourage an open exchange of views and maximize the chances of agreement, communication during the alternative resolution process shall be confidential and may not be recorded, unless Parties agree to a different arrangement. Communications made during the alternative resolution process are confidential subject to ORS 36.220 and may not be used in any subsequent Administrative Conference or appeal.

Any alternative resolution agreement shall be in writing and shall represent the final resolution of the case. Failure to adhere to the terms of the alternative resolution agreement may constitute a separate violation of the Student Conduct Code and/or result in reopening of the existing conduct matter.

Section 3: Investigation

The investigation phase of the Formal Conduct Process begins when the University sends the Notice of Allegations and concludes when the parties receive the Final Investigative Report. The investigation phase will conclude within approximately twelve (12) weeks from the date of the Notice of Allegations. Specific deadlines and dates calculated according to these procedures will be outlined in communications from the University.

Fact-Gathering

During the fact-gathering portion of the investigation, the Investigator will gather relevant information or evidence, including documents, photographs, communications between the Parties, other electronic records as appropriate, as well as other evidence the Parties may provide.

The Investigator may also consider information publicly available from online sources that comes to the attention of Investigator. The Investigator may visit relevant sites or locations and record observations through written, photographic, or other means. In some cases, the Investigator may consult with relevant experts when deemed appropriate and necessary by the University. The University does not actively monitor online sources; however, and as with all potentially relevant information, the Complainant, Respondent or Witnesses should bring online information to the attention of the University if they believe it is relevant. Generally, fact-gathering will conclude within thirty (30) business days from the date of the Notice of Allegations.

Providing Information to the Investigator: Parties are expected to provide names, contact information, and a summary of expected information for any proposed Witnesses, and any relevant documents, within fifteen (15) business days of receiving the Notice of Allegations. Parties are also expected to promptly respond to any communication from the University during the investigation phase, including communications seeking to schedule a meeting with the Investigator.

Preservation of Relevant Material: Both Parties are expected to comply with the Investigator's requests to provide relevant information or material from any source. Parties must not delete, destroy or otherwise alter any relevant information or material. Failure to comply with this expectation 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 Evidence File

Within ten (10) business days of the conclusion of fact-gathering, the Investigator will send the Evidence File to each Party for inspection and review in an electronic format.

The Evidence File consists of all information obtained as part of 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 any Parties or Witnesses, and documents or other evidence submitted by the Parties or gathered by the Investigator that are deemed directly related to the allegations. The Investigator has the sole discretion to determine which information is directly related to the allegations and thus included in the Evidence File. The Investigator may indicate which information is tentatively deemed relevant, and which information is tentatively deemed to be not relevant to the allegations in the Formal Complaint.

Within fifteen (15) business days after receiving the Evidence File, the Parties may submit a written response to the Investigator. The Investigator may conduct further fact-gathering if deemed necessary after the Parties respond to the Evidence File. If additional information is gathered, the Parties will be given an opportunity to review the information and provide a response regarding the relevancy of the information.

The Investigation Report

After considering any timely responses from the Parties, the Investigator will draft an Investigation Report that indexes the relevant information gathered during the investigation. Generally, the Investigation Report will be sent to the Parties within fifteen (15) business days after the due date for the response to the Evidence File Evidence File, and at least ten (10) business days before the Administrative Conference.

Relevance of Information: Information is relevant if it has any tendency to make a fact that is of consequence more or less probable than it would be without the information. In general, the following types of information, are not considered relevant, will not be relied upon in decision-making, may be redacted from the Evidence File, and will be excluded from the Investigation Report:

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 about incidents not directly related to the allegations in the Formal Complaint, unless the incidents are offered to show a pattern of behavior;

Information covered by legal privileges including, but not limited to: information covered by attorney client privilege, a Party's medical or counseling records, or communications made during alternative resolution.

Medical Information: 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.

Response to the Investigation Report: The Parties may provide the Decision-maker with a written response to the Investigation Report. If a Party disagrees with any of the investigator's determinations about relevance, the Party can make that argument to the Decision-maker in the Party's response to the Investigative Report. The Decision-maker will make the final decision regarding relevancy of information gathered during the investigation phase.

Inclusion of Information in the Evidence File or Investigation Report: To be included in the Evidence File, the Parties must provide the information to the Investigator during the fact-gathering portion of the investigation, and to be included in the Investigation Report, the parties must provide information no later than when they respond to the Evidence File.

Threshold Review of the Report

Prior to issuing the Investigation Report to the Parties, the Chief Civil Rights Officer, in consultation with the Investigator, will review the draft Investigation Report and make a threshold determination either to dismiss the entirety or portions of the Formal Complaint or proceed to adjudication. Dismissal is appropriate only when required as described in Section 2 above or when viewing the information in the light most favorable to the Complainant, there is insufficient information to find that the Respondent committed the conduct alleged. A dismissal decision under this provision will not be based on an assessment of the credibility of a Party or Witness.

Section 4: Adjudication

The adjudication phase of the Formal Conduct Process begins when the Director sends the Adjudication Notice and concludes when the Decision-maker issues a written Notice of Findings. The adjudication phase will conclude approximately eight (8) weeks from the date of the Notice of Adjudication. Specific deadlines and dates calculated according to these procedures will be outlined in communications from the University.

Adjudication Options

When a case proceeds to adjudication, the Parties will receive an Adjudication Notice with an attached Proposed Violation Agreement from the University within five (5) business days of receiving the Investigation Report. The Parties will elect one of the following options within five (5) business days of the Adjudication Notice:

1. Resolution by Violation Agreement: Agree to resolve the matter through a Violation Agreement, acknowledge that the violation(s) occurred, and accept the proposed Action Plan. Parties who elect to accept the Violation Agreement preserve the option to appeal the Action Plan (in writing).
2. Administrative Conference: Proceed to an Administrative Conference in accordance with the SOPs.

Resolution by Violation Agreement

If the Respondent agrees to acknowledge the violation(s) occurred by choosing option 1, and the Complainant does not choose option 2, the University will send a Notice of Resolution by Violation Agreement and Action Plan to both Parties. This Notice will also describe the parties' right to appeal the Action Plan. Either party may appeal the Action Plan.

Administrative Conference Overview

If either Party chooses option 2 or if the Respondent does not respond to the Adjudication Notice, then an Administrative Conference will proceed as outlined below.

The Administrative Conference 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 Administrative Conference: At least ten (10) business days before the Administrative Conference, the University will provide the Parties written notice of the name of the Decision-maker and the date, time, and location of the Administrative Conference. For allegations of Title IX Sexual Harassment, the Administrative Conference constitutes the "live hearing" requirement in the Title IX regulations, see 34 CFR section 106. Where appropriate, the Decision-maker may make decisions prior to the Adjudication phase, including decisions concerning the relevance of evidence.

The Decision-maker may postpone the Administrative Conference for good cause and will notify the Parties of the new Conference date. The Decision-maker may also determine that it is appropriate to hold portions of a Conference on different dates. This may be done, for example, when the Decision-maker 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 Conference by Either Party: The Parties are not required to attend the Administrative Conference. If, despite being notified of the date, time and location of the Conference, one or both Parties are not in attendance, the Conference may proceed and if applicable, an Action Plan may be imposed. Where a Party chooses not to attend the Conference, 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

Conference. In a Title IX case, if a Party's designated Advisor does not attend the Conference, the University will provide an Advisor to conduct cross-examination on behalf of that Party.

Participants to the Administrative Conference: The Administrative Conference is a closed proceeding and is not open to the public. The individuals who may be present during the Administrative Conference are the Decision-maker, Complainant, Respondent, Advisors to the Complainant and Respondent, Witnesses, and other individuals the Decision-maker may deem necessary or appropriate.

At either Party's request, the Parties may participate in the Conference from separate rooms using technology that enables participants to hear each other.

If either Party prefers not to attend or cannot attend the Administrative Conference in person, the Party may petition to use technology to participate in the Conference remotely. Such requests must be made at least five (5) business days before the Conference. The University has the discretion to allow remote participation. The University may also decide without a petition that one or more participants, including one or both Parties and some or all Witnesses, will appear remotely. The technology used for remote participation must allow the Conference 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.

Digital Recording: The Administrative Conference will be audio recorded and may be transcribed at the University's discretion. This recording is the sole property of the University of Oregon. Video recording is prohibited except to the extent necessary to facilitate remote participation of one or more Parties through technological means. No other person (including Parties, Advisors, and Witnesses) is permitted to audio or video record any part of the Conference. Failure by the University to record all or part of an Administrative Conference shall not be grounds for invalidating the Administrative Conference, does not constitute a procedural irregularity, and is not a basis of appeal.

The University will make the recording or transcript of the Administrative Conference available for the Parties to review upon request.

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

Pre-Conference Submissions: At a time designated by the Decision-maker, at least five (5) business days prior to the Administrative Conference, the Parties must provide the Decision-maker with a list of Witnesses they wish to participate in the Administrative Conference. The Decision-maker will provide each party with the names of the Witnesses requested by the other Party.

After the Investigation Report is issued, Parties may not submit new documents (such as emails, texts, records of social media posts or other electronic records or communication) or introduce new witnesses without approval from the Decision-maker. Parties request approval by demonstrating good cause for why the document or witness could not be not submitted earlier. Petitions requesting to introduce new documents or witnesses at the Administrative Conference should be included with the Party's pre-conference submissions. Parties may provide information orally at any stage of the investigation, including at the Administrative Conference.

Pre-Conference Meeting: The Decision-maker may hold a Pre-Conference meeting with the Complainant, Respondent and their Advisors to discuss any logistical issues associated with the Administrative Conference, the admissibility of evidence, as well as other issues that could help the Conference proceed more smoothly if discussed ahead of time.

Administrative Conference Procedures

The below procedures apply to Administrative Conferences concerning allegations of Discriminatory Misconduct.

Witness Participation: The Decision-maker will determine whether it is appropriate to have a proposed Witness participate in the Administrative Conference. The Decision-maker will confer with the Parties before deciding to not allow a proposed Witness to participate at the Conference. The Decision-maker also reserves the right to call any Witness, even if not identified by the Parties, who was previously interviewed by the Investigator.

For those Witnesses whom the Decision-maker determines are appropriate to participate in the Administrative Conference, the University will utilize the provided contact information to contact the Witnesses and request that they appear at the Conference.

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

Before a Party or Witness answers a question from an Advisor, the Decision-maker must determine whether the question is relevant and, if the Decision-maker refuses to allow a given question, they must explain the decision to the Parties. The Decision-maker may choose to hear from the Advisors regarding whether a given question will be permitted. Parties and Witnesses will only answer questions allowed by the Decision-maker. Questions may be limited by the Decision-maker only if they are irrelevant, including if they are repetitive, harassing or abusive. Questions proposed by the Parties but not asked will become part of the file available during an appeal.

If a Party elects to have their own Advisor ask them questions, the questioning by the Advisor is not considered cross-examination and the questions must be non-leading.

Once a Witness has been dismissed, they may not be recalled for additional questioning absent a petition and showing of good cause.

Evidence at the Administrative Conference: The Decision-maker will admit the Investigation Report into evidence at the Administrative Conference. The Decision-maker will determine which additional information is admitted, including information from Witnesses and documentary evidence.

The standard of relevance articulated previously also applies to information submitted during the Conference. Information is relevant if it has any tendency to make a fact that is of consequence more or less probable than it would be without the information. The decision-maker may also decide the weight to assign 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 information, the Decision-maker may suspend the Administrative Conference in order to obtain such information. The Decision-maker may ask the Investigator to conduct further investigation. The Decision-maker will reconvene the Conference in a timely manner. The Conference will not be suspended due to the failure of a Witness to appear without good cause or due to the proposed introduction of information that could have been provided during the Investigation phase.

Structure of the Administrative Conference: The Administrative Conference will proceed according to the basic structure outlined below. The Decision-maker may adjust the sequence as necessary to ensure fairness:

1. The Decision-maker will address the Parties and provide information about procedures and expectations during the Administration Conference. The Decision-maker will address any issues that need to be addressed before the conference begins, including any evidentiary questions or petitions;
2. The Complainant, or Complainant's advisor, has the option to present a brief opening statement of 5 minutes or less;
3. The Respondent, or Respondent's advisor, has the option to present a brief opening statement of 5 minutes or less;

4. The Complainant will be given the opportunity to respond to any information in the Investigation Report and to any questions posed by the Decision-maker and/or Parties' Advisors;
5. The Respondent will be given the opportunity to respond to any information in the Investigation Report and to any questions posed by the Decision-maker and/or Parties' Advisors;
6. Witnesses will be asked to respond to questions posed by the Decision-maker and/or Parties' Advisors;
7. The Respondent may, depending on the circumstances and at the discretion of the Decision-maker, be given an opportunity to respond to any new information arising from the questioning of the Complainant or Witnesses;
8. The Complainant may, depending on the circumstances and at the discretion of the Decision-maker, be given an opportunity to respond to any new information arising from the questioning of Respondent or Witnesses;
9. The Complainant, or Complainant's Advisor, presents closing statement of 10 minutes or less;
10. The Respondent, or Respondent's Advisor, presents closing statement of 10 minutes or less.
11. Complainant and Respondent may have the option to present a rebuttal closing statement using time reserved from the 10 minutes given for closing.

Within five (5) business days of the conclusion of the Administrative Conference, the Parties may submit impact and mitigation statements to the Chief Civil Rights Officer. The impact and mitigation statements will only be provided to the Decision-maker for consideration if the Decision-maker determines that the Respondent violated a University policy.

Within fifteen (15) business days of the conclusion of the Administrative Conference, the Decision-maker will issue a written Notice of Findings.

Presumption of Non-Responsibility and Standard of Proof: The Respondent is presumed “not in violation” unless and until the Decision-maker determines the Respondent is in violation in the Notice of Findings. The Decision-maker will determine whether the Respondent is in violation by a preponderance of the evidence standard. This means that to find the Respondent is in violation of the Code, the Decision-maker must find that it is more likely than not that the Respondent engaged in the alleged prohibited conduct.

When the Decision-maker intends to find the Respondent in violation, the Decision-maker will consult with the Director and Chief Civil Rights Officer regarding the determination of an appropriate Action Plan prior to issuing the Notice of Findings. The Code includes a list of sanctions and outcomes that may be imposed individually or in various combinations of an Action Plan. A list of factors and guidelines generally considered in creating the Action Plan determination can be found in Appendix B.

Notice of Findings: Following the Administrative Conference, the Decision-maker will issue a Notice of Findings, to 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 Administrative Conference;
- A general description of the Record - the information considered when reaching a decision;
- Findings of fact in support 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,

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 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 5: Appeal of Final Decision

Either Party may appeal the decisions in the Notice of Finding, in writing, ([Appeal Form](#)) within 10 business days of the final decision, as follows:

- If the case is resolved by Violation Agreement, the final decision is the Notice of Resolution by Violation Agreement, and the 10-day timeline starts to run on the date the Notice of Findings is issued.
- If a determination is made by the Decision-maker following an Administrative Conference, the final decision is the Notice of Findings, and the 10-day timeline will start to run on the date the Notice of Findings is issued.

Bases for Appeal

Pursuant to Section V(7) of the Student Conduct Code, Parties may only appeal a final decision on at least one 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 information that could alter a decision, but only if such information could not have been known to the appealing Party at the time of the Administrative Conference.

For the purpose of these procedures, the following applies to the above listed bases:

- Under basis 1, the Party may appeal based on a conflict of interest or bias held by the Chief Civil Rights Officer, Investigator, or Decision-maker, against complainants or respondents generally, or against the individual Complainant or Respondent that affected the outcome of the matter.
- Under basis 2, a Party may submit a statement explaining their reasons for appealing, the Action Plan or requesting that the current Action Plan be upheld, including mitigating and aggravating factors.
- Under basis 3, the Appeal Administrator will review for sufficiency of the evidence, meaning that they will uphold a finding as long as a reasonable person could accept the available evidence as adequate to support the decision and the Decision-maker did not abuse their discretion with respect to any evidentiary determinations.

- Under basis 4, the Party may appeal a final decision based on new information that could alter a decision.

Notice of Appeal

Within three (3) business days of an appeal, the Director will send a Notice of Appeal to both Parties that an appeal has been filed. This Notice will include the basis for appeal and the designated University Appellate Body. The designated University Appellate Body for Discriminatory Misconduct is a single Appeal Administrator. The Appeal Administrator is not the Investigator, the Decision-Maker or the Chief Civil Rights Officer.

Scope of the Appeal

Except as the Appeal Administrator determines necessary to explain the basis for new information, an appeal is limited to the Record. This means that the Appeal Administrator will only consider the official Record of the case including the Formal Complaint, the Evidence File and the Investigation Report, the recording from the Administrative Conference and, to the extent at issue in the appeal, the Action Plan and /or information and questions submitted by a Party or gathered by the Investigator during the process but not considered by the original Decision-maker.

Appellate Review

After reviewing the information submitted by the Parties, the Appeal Administrator may request additional information from the Parties to explain the basis of new information or may ask a Party to respond to the other Party's information. If information is provided by a Party, the other Party will have an opportunity to review and respond to the information. The Appeal Administrator is permitted to set reasonable timelines regarding responses from both Parties.

Absent extenuating circumstances, the Appeal Administrator will issue a decision within thirty (30) business 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.

Modifying or Changing a Decision

After considering an appeal, the Appeal Administrator may either modify the Action Plan or send the back with a recommendation for additional fact finding, other resolution, or dismissal of the case. If the Appeal Administrator grants an appeal based upon "new information" the only action the appellate body may take is to send the case back with a recommendation for additional fact finding, other resolution, or dismissal of the case.

Requesting a Stay Pending Appeal

The Action Plan imposed by the University will remain in effect through the University's appeals process. Exceptions to this rule may be granted if a Party demonstrates irreparable harm if the Action Plan is not stayed pending an appeal.

Parties may request a stay pending appeal by submitting (i) an appeal as described in these procedures and (ii) a petition to stay the Action Plan to the University within ten (10) business days of the date the appeal is submitted. The other Party will be notified of the petition to stay the sanction(s) and 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. After the University's appeals process has concluded, any Action Plan imposed 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.

Section 6: 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 Investigator or Decision-maker 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 choose to provide the other Party with an opportunity to respond to the petition.

Exceptions by the University

For good cause, and in consultation with the Director or Chief Civil Rights Officer, an Investigator or Decision-maker 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 (conferences held on separate dates). If an exception is made by the Investigator or Decision-maker which significantly impacts timelines or other aspects of the

process, the Investigator or Decision-maker will send out notice 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 to the University 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 considered 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.

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.

Day – Unless otherwise specified, the word “day” means “business day.”

Decision-maker – A trained and impartial person designated by the University to administer the process during the adjudication phase, including to conduct the Administrative Conference, 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, signed 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 Conduct Process – also referred to as the Formal Process, this is the process for resolving student conduct cases which is outlined in the Standard Operating Procedures for Discriminatory Misconduct. The Formal Conduct Process does not include the alternative resolution 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 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 information available to the Decision-maker when reaching a decision about responsibility and sanctions, including but not limited to: those portions of the Investigation Report and any supplements that are admitted into evidence, audio recordings or transcripts of the Pre-Conference Meeting(s), the audio recording or transcript of the Administrative Conference less any information from the conference which is not deemed relevant or not admitted into evidence, and any other information 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 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.

Appendix B. 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.

Criteria for Determining Administrative Sanctions

To determine what administrative sanctions outlined above 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.

Sanctions

- In every case where the Decision-maker determines that the Respondent has violated a University policy, the Decision-maker may impose a sanction. 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: Generally, a notation will be added to a transcript as follows.

- 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 which result in expulsion, including a deferred expulsion, a negative transcript notation will be applied indefinitely.

Exclusion: 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.

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.