

# 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 of 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: age, veteran status, race, sex, color, sexual orientation, ancestry, gender identity, national or ethnic origin, perceived gender, religion, marital or family status, gender, pregnancy-related conditions, disability, genetic information, service in the uniformed services, and 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. For a glossary of additional important terms, see Appendix A. In particular, "Complainant" is the person who submits a Formal Complaint alleging a violation of the Student Conduct Code, and "Respondent" is the person against whom the Formal Complaint is filed. "Director" refers to the Director of Student Conduct and Community Standards or their designee. "Chief Civil Rights Officer" refers to the Title IX Coordinator/Chief Civil Rights Officer or their designee. "Investigator" is defined as a trained and impartial person designated by the Title IX Coordinator/Chief Civil Rights Officer to investigate allegations of Discriminatory Misconduct. "Decision-maker" is defined as a trained and impartial person designated by the Director to conduct the Administrative Conference and make findings as to whether a policy violation occurred. "Title IX Sexual Harassment" refers to conduct subject to the Title IX regulations, as defined in Appendix A.

Throughout these procedures, various University officials, such as the Title IX Coordinator/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

### 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), leaves of absence, modifications of work or class schedules, campus escort services, assistance with housing and other support services. Students may also seek confidential resources such as counseling and health services, ombudsperson services, legal advice, confidential support persons, and referrals to community agencies. 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 community members, 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 will 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 interim action) and be provided an opportunity for a preliminary meeting with the Director, within 2 business days of the Notice, to explain why the interim action should not be taken.
- Within one (1) business day of the preliminary meeting, the Party will receive an interim action decision from the Director.
- Both Parties may request a review of the Director's decision by the Vice President of Student Life, or designee. A decision will be issued by the Vice President or designee within ten (10) business days of the request to both Parties.

### Mutual No Contact Directives

A Student may request a mutual No Contact Directive between themselves and another Student. The Director may also decide to issue a mutual No Contact Directive between Student Parties as necessary. If a mutual No Contact Directive is issued, it will apply 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 in extraordinary circumstances.

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

### Concurrent Criminal Process

In some instances, conduct may constitute a violation of both criminal law and the Code. Individuals have the right to file a criminal complaint, a Formal Complaint under these procedures, both or neither. A Complainant has the right to notify, or decline to notify, law enforcement. Initiation of a criminal process, either by a Complainant or the University, does not necessarily mean a University process will also be initiated. However, depending on the nature of the conduct investigated through the criminal process, an obligation on the part of the University to respond, as appropriate, to ensure the safety of Students and the campus community may be triggered.

Law Enforcement Delay: At the request of law enforcement, including the University of Oregon Police Department, the University may temporarily delay all or part of its own investigation for a reasonable period of time. The decision to suspend the student conduct process will be made by the Director and Chief Civil Rights Officer in consultation with the relevant law enforcement agency, in consideration for the health and safety of the campus community, and in accordance with state and federal law. The University will notify the Parties, if a conduct action has already been initiated, of any decision to suspend the student conduct process and the resulting timelines.

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.

## 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). Any accommodations deemed necessary and approved by AEC will be incorporated into the student conduct process. Employees needing to request 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.

## 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 shared within the University only 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: Reports are considered student education records in the name of the Respondent and Complainant, if applicable. These records will be maintained for a minimum of 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.

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

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.

## Retaliation Statement

Retaliation is prohibited by University policy and law. 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 Director. Retaliation is further defined in the Discrimination Complaint and Response policy and the Student Conduct Code.

## Participation Expectations

Honest Participation: All Participants are required to be honest and forthright throughout the process. Any Participant who knowingly makes a false statement in connection with the investigation and

adjudication of the allegations may be subject to disciplinary action. 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 inference about the determination regarding whether a violation occurred based solely on a Party's or Witness's absence from the Administrative Conference or refusal to answer cross-examination or other questions.

### Support Persons and Advisors

Support Persons: As outlined in the Code, Support Person means any person who accompanies a Complainant or Respondent for the purpose of providing support, advice, or guidance. Each Party may designate one Support Person of their choice; Witnesses, the Person Reporting, and other Respondents involved cannot be designated as Support Persons in that case. If a Party chooses to have a Support Person, they must submit a Support Person Designation Form, signed by the Support Person to demonstrate their agreement to serve in that role. By signing the form, the Party and the Support Person agree to abide by the University's expectations for Support Persons and Advisors including that the Support Person will undergo the required informational meeting and/or training required to be a Support Person. The University does permit its confidential support employees to serve in the Support Person role.

Once designated, Support Persons may attend meetings and may be copied on formal case communications. The Support Person may not speak on behalf of a Party except regarding procedural questions and scheduling. A Support Person is not permitted to serve as a Witness in the same matter, disrupt meetings, or participate in the Administrative Conference. However, a Support Person who is also designated as the Party's Administrative Conference Advisor may participate as explained below. The Investigator or Director may require a Support Person to leave a meeting if the Support Person engages in unreasonable, disruptive, harassing or retaliatory behavior.

Administrative Conference Advisors: If a case proceeds to the Adjudication phase, each Party may select an Administrative Conference Advisor (Advisor) of their choice. To designate this Advisor, the 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 Support Persons and Advisors including that the Advisor will undergo the required informational meeting and/or training required to be an Advisor. The University does not permit its confidential support employees to serve in the Administrative Conference Advisor role. If a Party does not designate an Advisor of their choice, the University will provide an Advisor of the University's choosing at no cost to the Party.

Once designated, Advisors may attend meetings including the Pre-Conference Meeting, may attend and participate as allowed in these procedures in the Administrative Conference, and may be copied on formal case communications and the Notice of Findings. The Advisor may not speak on behalf of a Party except regarding procedural questions and scheduling and as necessary to perform direct or cross-examinations or to make a closing statement. The Decision-maker may require an Advisor to leave the

Administrative Conference if they are disruptive or fail to abide by the rules of decorum that will be provided before the Administrative Conference.

A Support Person or 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 Support Person or Administrative Conference Advisor, depending on the stage in the process. Each Party may switch their Support Person or 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 Discrimination Complaint and Response policy to make 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 Code or 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 Discrimination Complaint and Response 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.

### Preliminary Assessment

Upon receiving a Report of potential Discriminatory Misconduct, the Director will make a preliminary decision as to whether the University has jurisdiction over the underlying allegations and whether the Report includes allegations that, if proven, would violate the Code.

In all cases, the Complainant will be provided with referrals to resources, including support measures and information about the Formal Conduct process.

If the Director's preliminary assessment establishes jurisdiction, the Chief Civil Rights Officer will engage in an initial assessment of the allegations and may attempt to gather additional information from the Complainant or Person Reporting, including whether the Complainant wishes to file a Formal Complaint. If the Director's preliminary assessment does not establish jurisdiction, typically the Chief Civil Rights Officer will not attempt to gather additional information. However, the Director may update their jurisdictional assessment based on new information, and a Complainant may still request an intake interview with the Office of Investigations and Civil Rights Compliance.

Where a report is filed but the identity of the Complainant is unknown, the Chief Civil Rights Officer will assess the nature and circumstances of the report, including whether it provides information that identifies the potential Complainant, the potential Respondent, any Witnesses, and/or any other third party with knowledge of the reported incident, and take reasonable and appropriate steps to respond to the report of Discriminatory Misconduct consistent with applicable federal and state laws and these procedures.

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

The University strongly supports a Complainant's decision not to pursue a Formal Complaint under these procedures and desire for anonymity. Prior to the issuing of 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 subsequently pursue an investigation. The University will seek to honor the individual's request(s) to the extent possible while also protecting the health and safety of the Complainant and the University community.

Where the Chief Civil Rights Officer determines that the University can honor Complainant's request not to file a Formal Complaint and subsequently pursue an investigation, the University may take other appropriate steps designed to eliminate the alleged conduct, prevent its reoccurrence, and address its impact on Complainant and University community.

Where the Chief Civil Rights Officer determines that the University is unable to honor Complainant's request not to file a Formal Complaint and subsequently pursue an investigation, or in other circumstances when the Chief Civil Rights Officer determines it is necessary to do so, 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

When a Complainant has requested to file a Formal Complaint or when the Chief Civil Rights Officer has decided to file a Formal Complaint, the Chief Civil Rights Officer will use the available information, including information in the Report and information gathered in the intake meeting to draft the Formal Complaint. Either the Complainant or the Chief Civil Rights Officer, as applicable, will be asked to review and sign, or otherwise approve the Formal Complaint.

## Notice of Allegations

Upon the Director's receipt of a Formal Complaint, the Director will issue a written Notice of Allegations to the Complainant and Respondent. This Notice will include the following:

- The name and contact information for the designated Investigator;
- The Formal Complaint, which includes 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 conduct known by the University at the time of the Formal Complaint;
- A statement of the alleged Code and 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 Code prohibits knowingly making false statements or knowingly submitting false information during the student conduct process, and 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, statement that a determination regarding whether the Respondent is in violation is made at the conclusion of the student conduct process, the right to a Support Person and/or Advisor of their choice who may 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 Director may issue a revised Notice of Allegations.

In cases where the Respondent may be subject to suspension, expulsion, and/or negative transcript notation, at the time of the Notice of Allegations the Director will place a hold on Respondent's account to prevent the Respondent from obtaining an official copy of their transcript during the conduct process.

When the Respondent is also an employee of 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 violations.

## Dismissals

The University may dismiss the Formal Complaint, either in whole or in part, at any time after the Complainant has had the opportunity to speak with the Investigator and before the Administrative Conference. Dismissal may be appropriate where:

- The Director determines that, accepting all the information presented as proven, there is not sufficient information to support a finding that more likely than not the Respondent violated the Code;
- The Complainant notifies the Director in writing that they would like to withdraw the Formal Complaint or any allegations in the Formal Complaint;
- The Respondent is no longer enrolled in or employed by the University;
- 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 prevent 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) even if proven, 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 another provision of the Student Conduct Code, including other forms of Discriminatory Misconduct.

The Director 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

Respondent has the opportunity to attend an informational meeting with the Director. At the informational meeting, the Respondent will be able to review the Report and relevant information, to learn more about the Formal Conduct Process, and to review possible options for resolving the matter, including other possible resolution options. The Respondent is not required to respond to the allegations in this meeting.

While the informational meeting is scheduled by the Director as a part of the Notice of Allegations, the Director will grant reasonable requests to reschedule. Requests to reschedule must be submitted to the Director within 3 business days of the Notice of Allegations.

The Complainant may also request an informational meeting with the Director. Parties are encouraged to invite a Support Person to accompany them to this meeting.

### Alternative Resolution

Pursuant to the Code, an alternative resolution (informal resolution) may be an option to resolve a Formal Complaint following the Notice of Allegations. Alternative resolution processes include but are not limited to facilitated dialogue, mediation, and restorative justice.

Either Party and/or the Director may suggest attempting to resolve the complaint via an alternative resolution process at any time prior to the Administrative Conference. Prior to initiating an alternative resolution process, the Director, in consultation with the Chief Civil Rights Officer, will determine if an alternative resolution is consistent with the University's obligations – under the law, institutional policies, and institutional values – to end the harassment, prevent the harassment from happening again, and address or remedy its effects.

In order to request an alternative resolution, a Party must notify the Director of their interest. The Director may also discuss alternative resolution with the Parties including during the informational meeting. 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.

In order 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 Code and/or result in reopening of the existing conduct matter. Any case resolved

through an alternative resolution process may not be appealed and does not result in a finding of a student conduct violation.

## Section 3: Investigation

The investigation phase of the Formal Conduct Process begins when the Director sends the Notice of Allegations and concludes when the parties receive the Investigation Report. The investigation phase will conclude within approximately 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.

### Initiating the Investigation

Parties are expected to provide names, contact information, and a summary of expected information for any proposed Witnesses, and any relevant documents, within 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.

### 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, medical records (subject to the consent of the applicable person), and other electronic records as appropriate.

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 Administrator University if they believe it is relevant.

Generally, fact-gathering will conclude within 30 business days from the date of the Notice of Allegations.

**Preservation of Relevant Material:** Both Parties are expected to comply with requests from the Investigator to provide relevant information or material from any source. Both Parties expected to 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.

### Evidence Review

Within 10 business days of the conclusion of fact-gathering, the Investigator will send an 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 15 business days after receiving the Evidence File, the Parties may submit a written response to the Investigator. In the response, Parties may request that information which was tentatively marked as not relevant be deemed relevant and may also request that information which was tentatively marked as relevant be deemed not relevant. The Investigator will consider any responses prior to the completion of the Investigation Report.

### 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 15 business days after the due date for the response to the Evidence File, and at least 10 business days before the Administrative Conference.

The Investigator has the sole discretion to determine whether information is relevant and thus included in the Investigation Report.

Evidence 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 evidence. In general, the following types of information, are not considered relevant, will not be relied upon in decision making, 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 are 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 mediation.

The parties may provide a written response to the Investigation Report. The written response will be submitted to the Decision-maker at the same time as the other Pre-Conference Submissions, see Section 4(c). The Decision-maker will make the final determination as to which evidence is relevant to the allegations and included in the Record of information available to the Decision-maker when reaching a decision about responsibility and sanctions.

Even though generally relevant, the Decision-maker may tend to give less weight or credibility to the following types of evidence: Personal opinion about a Party or Witnesses' general reputation or character trait; witness statements obtained by someone other than the Investigator (or agent of the Investigator); and polygraph examination results. The University will conduct an objective evaluation of

all relevant evidence—including both inculpatory and exculpatory evidence—and ensure that credibility determinations are not based on a person’s status as a Complainant, Respondent, or witness.

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 the 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 Director and Chief Civil Rights Officer, in consultation with the Investigator, will review the draft Investigation Report and make a threshold determination either to dismiss the Formal Complaint or certain allegations within the Formal Complaint, or to proceed to adjudication. Dismissal is appropriate only when required as described in Section 2 above, or when the Director and Chief Civil Rights Officer determine, upon viewing the information in the light most favorable to the Complainant, that there is insufficient information to find that the Respondent committed the conduct alleged. A dismissal decision under this provision should not be based on an assessment of the credibility of a Party or Witness and may be appealed within 5 business days.

## 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 its written Notice of Findings. The adjudication phase will conclude within approximately 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 the adjudication phase, the Parties will receive an Adjudication Notice with an attached Violation Agreement from the Director within 5 business days of receiving the Final Investigative Report. The Parties will elect one of the following options within 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 Director will send a Notice of Resolution by Violation Agreement to both Parties, which includes the Investigation Report and the Action Plan. 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 10 business days before the Administrative Conference, the University will provide the Parties and the Chief Civil Rights Officer with advance 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.

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 Witness. Once the Administrative Conference is scheduled and barring any exceptional unforeseen circumstance that would prevent a Party from participating in the Administrative Conference, the absence or unavailability of a Party, or their respective Advisors will generally not be considered good cause to reschedule the Administrative Conference.

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 with additional participation rights. Parties are expected to notify the University if their Advisor will not be attending the Conference. Under those circumstances, the University will provide an Advisor to conduct cross-examination on behalf of the Party whose previously designated Advisor does not attend.

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, any individuals appearing as Witnesses, and other individuals the Decision-maker may deem necessary or appropriate such as support for logistics.

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 5 business days before the Conference. The University has the discretion as to whether 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 and shall not constitute a procedural irregularity for the 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 at the time of scheduling the Conference. 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 (Witness lists): At least 3 business days before the Pre-Conference Meeting, or if no Pre-Conference Meeting, at least 5 business days before the Administrative Conference, the Parties must provide the Decision-maker with a list of witnesses they wish to be called. Parties must petition the Decision-maker and demonstrate good cause in order to introduce any new information, including Witnesses, that was not provided to the Investigator during the Investigation phase. The Decision-maker will provide each party with a copy of the list of Witnesses submitted by each party and will typically discuss the Witness lists at the Pre-Conference meeting.

At this same time, the parties must submit any petitions they wish to make before the start of the Administrative Conference.

Pre-Conference Meeting: At the discretion of the Decision-maker, the Decision-maker may opt to hold a Pre-Conference meeting with the Complainant, Respondent and their Advisors to discuss any logistical issues associated with the Administrative Conference and any other issues that could help the Conference proceed more smoothly if discussed ahead of time. The Decision-maker may also choose to hold the Pre-Conference Meeting with each of the Parties separately. At the Pre-Conference Meeting, the Decision-maker can address issues raised in the Parties' written responses, if any, to the Investigation Report, and can make pre-Conference decisions about admissibility of evidence. The Decision-maker may also choose to hold the Pre-Conference Meeting with each of the Parties separately.

### 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 not to 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 that the Decision-maker determines are appropriate to participate in the Administrative Conference, the Decision-maker 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 any Witnesses all relevant questions and follow-up questions, including questions challenging credibility. Such cross-examination will be conducted after the Decision-maker asks introductory questions of the Witness. The Parties themselves may not ask questions of the other Party or Witnesses.

Before a Party or Witness answers a cross-examination question, 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. 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.

The Decision-maker may choose to hear from the Parties' Advisors regarding whether a certain question should or should not be permitted. If the Decision-maker decides to hear from the Advisors, the Advisors will abide by the direction of the Decision-maker regarding what information the Advisors may provide and the length of their response. The Decision-maker will consider the Advisor's comments and provide a decision about whether the question will be allowed.

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 determine which evidence is admitted, including information from witnesses and documentary evidence.

The standard of relevance articulated previously also applies to evidence submitted during the conference. Evidence 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 evidence.

When considering allegations of Title IX Sexual Harassment, if a Party or Witness does not submit to cross-examination at the Administrative Conference, the Decision-maker must not rely on any statement of that Party or Witness (including statements relayed through third parties or in writing) in reaching a determination regarding responsibility. This exclusion rule does not apply where a Party or Witness refuses to answer questions posed by the Decision-maker. The rule also does not apply regarding statements that are the subject of the allegation. If, for example, the allegation is verbal harassment, the words that constitute the harassment may still be relied upon by the Decision-maker when reaching a decision. A Witness will be deemed to have submitted to cross-examination, and their statements admissible, if (a) the Parties agree to that in writing or (b) the Decision-maker informs the

Parties of the Decision-maker's intent to rely on information from that Witness in the Investigation Report, including documentary evidence, and the Parties do not object and request that the Witness appear at the Conference. Objections must be sent to the Decision-maker within 2 business days. The Decision-maker may consider all statements introduced at the Administrative Conference, including those from the Investigation Report, pertaining to a Witness if that Witness submits to cross-examination, even if those statements are not directly discussed during the cross-examination.

Where there are non-Title IX allegations addressed at the same Administrative Conference, the Decision-maker may consider all information they deem relevant for the non-Title IX allegations, however, in all other regards, when Title IX and non-Title IX allegations are addressed together at a Conference, the procedures applicable to Title IX allegations will be used for all allegations.

If the Decision-maker determines that unresolved issues exist that would be clarified by the presentation of additional information, the Decision-maker may, at their discretion, 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 15 business days of the conclusion of the Administrative Conference, the Decision-maker will issue a written Notice of Findings.

### Notice of Findings

Presumption of Non-Responsibility and Standard of Proof: The Respondent will be 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 committed all of the elements of 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.

Content of the Notice of Findings: A Notice of Findings following an Administrative Conference 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 Administrative Conference;
- A general description of the Record - the information considered when reaching a decision;
- Findings of fact in support the determination;
- 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;
- The Action Plan imposed by the University on the Respondent, if any;
- Any remedies provided to the Complaint designed to restore or preserve access to the University’s education program or activity; and
- The University’s procedures and permissible bases for Parties to appeal.

The Decision-maker will issue a Notice of Findings to both Parties at the same time. To the extent possible, the Decision-maker will give the Parties notification at least 24 hours prior to sending the Notice of Findings.

## 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(6) of the Student Conduct Code, Parties may only appeal a final decision on at least one of the following bases.

1. To determine whether there was any procedural irregularity that affected the outcome of the matter;
2. To determine whether the Action Plan imposed was appropriate for the violation(s);
3. To determine whether the finding is not supported by the preponderance of the evidence; and/or
4. To consider new information that could alter a decision, 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 Title IX Coordinator/Chief Civil Rights Officer, Investigator, or Decision-maker, against Complainants or respondent generally or the individual Complainant or Respondent that affected the outcome of the matter.
- Under basis 2, the Party may provide a Mitigation Statement or Impact Statement as defined in Appendix A, to explain their appeal of the Action Plan. The Mitigation or Impact Statements will be considered by the Appeal Administrator during their review of the appeal.
- 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 legal or evidentiary determinations.
- Under basis 4, the Party may also appeal a final decision based on new information that could alter a decision provided that new information was not reasonably available at the time a decision for no action or dismissal was made.

## Notice of Appeal

Within three 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 University Appellate Body for Discriminatory Misconduct is a single Appeal Administrator as designated by the Vice President for Student Life.

This Notice will also offer the Parties an opportunity to submit information supporting or opposing the appeal directly to the Appeal Administrator. This information must be submitted to the Appeal Administrator within 10 business days of the Notice of Appeal.

## Scope of the Appeal

Except as the Appeal Administrator determines necessary to explain the basis of new information, an appeal is limited to the Record. This means that the Appeal Administrator will consider official Record of the case including the Formal Complaint and, if appropriate, the Preliminary and Investigative Reports, the recording from the Administrative Conference and, to the extent at issue in the appeal, information and questions submitted by a Party or gathered by the Investigator during the process but not considered by the original 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 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 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 matter back to the Director with a recommendation for additional fact finding, other resolution, or dismissal of the case. If the Appeal Administrator grants an appeal on the basis of "new information" the only action the appellate body may take is to send it back to the Director 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 that they will be irreparably harmed if the Action Plan is not stayed pending an appeal.

Parties wishing to make a request for a stay pending appeal must (i) first submit an appeal as described in these procedures and (ii) submit a petition to stay the Action Plan to the Director within ten (10) business days of the date the appeal is submitted. The Complainant will be notified of the Respondent's petition to stay the sanctions, and will generally be provided the opportunity to submit a response prior to the Director issuing a decision.

The Director, in consultation with the Chief Civil Rights Officer, will decide whether to issue the stay appeal upon considering the harm caused to the appealing Party as well as the impact on the non-appealing Party and larger University community. After the University's appeals process has concluded, any Action Plan imposed will take effect. This means that Action Plan imposed by the University will remain in effect through any external appeals process, unless the court or other review body issues a stay of the 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 investigation phase), Decision-maker (during adjudication phase), or Director (before investigation phase and after adjudication phase) for good cause.

In order to be considered, petitions must:

- Be submitted by Complainant or Respondent, rather than by an Advisor, Support Person or other third party;
- Where a form is available at [investigations.uoregon.edu](https://investigations.uoregon.edu) for a petition, both Parties must use that form for the petition;
- Provide a brief written statement regarding the reason for the exception;
- Be received 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 will 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, they 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 Director as soon as the Party has reason to believe the designated individual is biased, and no later than 24 hours prior to the next relevant meeting with the allegedly biased individual. When the petition alleges bias by the Director, the petition must be submitted to the Vice President for Student Life.

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 made a decision involving the same Party;
- 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 the 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.

**Consent** – For the purposes of sexual misconduct, Consent is voluntary, non-coerced, and clear communication indicating a willingness to engage in a particular act. This communication includes an affirmative verbal request or response, or voluntary acts unmistakable in their meaning. A lack of verbal or physical resistance does not, by itself, constitute consent. Consent to one act does not necessarily imply consent to another. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time. Individuals who are under the age of 18, unconscious, physically helpless, or unaware that the incident is occurring are unable to give consent. In determining whether the Complainant gave consent for a sexual act, the University will analyze whether the communication (through words and/or actions) between the Parties would be interpreted by a reasonable person under similar circumstances as a willingness to engage in a particular sexual act and if so, whether incapacitation, force, and/or compulsion were used to obtain that consent.

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

**Decision-maker:** A trained and impartial person designated by the Director 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 do 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 Discrimination Complaint and Response 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 known details of the alleged misconduct, lists the alleged violations of the Student Conduct Code and other applicable University policy, and request that the University initiate the student conduct process as outlined in these procedures.

**Formal Conduct Process** – A term for the overall process described in these Standard Operating Procedures, beginning with the Notice of Allegations and ending with the Appeal, but excluding alternative resolution.

**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 Chief Civil Rights Officer to investigate allegations of Discriminatory Misconduct (e.g. gather relevant information and conduct interviews).

**Non-participating Complainant** – This term is used for the Complainant when the Chief Civil Rights Officer signs the Formal Complaint to initiate the student conduct process. While a Non-participating Complainant does not have to participate in the process, a Non-participating Complainant can still exercise certain rights. For example, a Non-participating Complainant has the right to access any written determinations, including the Final Investigative Report and/or Notice of Findings, and may file an appeal in accordance with these procedures. The University will not take disciplinary action against a Non-participating Complainant for refusing to participate in the process.

**Notice/Notification** – An official correspondence between the University and the Parties, for example the Notice of Allegations, Notice of 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 3 days after it was sent.**

**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** – The greater weight of the credible evidence, often described as “more likely than not” that something occurred 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: the Final Investigative Report and any supplements, any petitions filed after the Final Investigative Report was issued and the responses to those petitions, 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 deemed not relevant, 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 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.

### Guidelines for Administrative Sanctions

**Status Sanction:** In every case, the Decision-maker may impose a “status sanction” (e.g. disciplinary probation, suspension, or expulsion). Dependent on the criteria outlined below, the University may apply a status sanction based on the type of violation as follows:

- Non-Consensual Penetration involving Violence: Generally, the administrative sanction will result in expulsion.
- Non-Consensual Penetration: The administrative sanction will range between a multi-year suspension and expulsion.
- Sexual Exploitation: The administrative sanction will range between suspension and expulsion.
- Non-consensual Sexual Contact (touching intimate body parts and fondling): The administrative sanction will range between suspension and expulsion.
- Non-consensual Sexual Contact (other touching of a sexual nature and kissing): The administrative sanction will range between disciplinary probation and suspension.
- Sex and gender-based harassment (including bullying, stalking, interpersonal and relationship violence): The administrative sanction will range between disciplinary probation and expulsion.
- All other forms of Discriminatory Misconduct: The administrative sanction will range between disciplinary probation and expulsion.

Before reinstatement after a suspension, regardless of length, the Respondent will be required to meet with the Director, and/or other relevant professionals, to ensure that the student does not present an ongoing safety risk to the campus community.

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 an active suspension period or upon expulsion the respondent is not permitted to Participate in University Sponsored Activities, or appear at or be present on all, or a specified portion of, 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.

### 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 criteria. Evidence of prior or subsequent misconduct, regardless of whether there has been finding of a policy violation related to that alleged misconduct, may be deemed relevant to the determination of an appropriate Action Plan under these procedures:

- 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.
- 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.

### 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.