

# UW POLICY DIRECTORY

## EO 70 Compliance with Education Department Sexual Harassment Regulations

### 1. Purpose

This executive order affirms the University's commitment to compliance with Title IX of the Education Amendments of 1972, 20 USC § 1681, and the Department of Education's Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance regulations under 34 CFR Part 106, effective August 14, 2020 (Education Department federal regulations" or "EDFR").

This order is intended to comply with the EDFR and the "grievance procedures" for formal complaints against employees as defined in 34 CFR 106.30 and as provided for in 34 CFR 106.45. To the extent there is a conflict between state or local law and the EDFR as implemented by 34 CFR 106.30, 106.44, and 106.45, the obligation to comply with those sections is not obviated or alleviated by any state or local law.

### 2. Applicability

The EDFR and this order apply prospectively and only to formal complaints against employees accepted under [Section 13](#) on or after August 14, 2020, unless 34 CFR Part 106 or any of its subparts are deemed unenforceable by law and/or by United States courts, and not retroactively to any open or closed matter, including but not limited to investigations, hearings, or adjudications under the Faculty Code.

The EDFR applies to allegations of sexual harassment as defined in Section 8 that occur in the University's education program or activity, which includes locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the sexual harassment as defined in Section 8 of this order occurred. This also includes any building owned or controlled by a student organization that is officially recognized by the University. In accordance with the EDFR, this order only applies to sexual harassment (as defined in Section 8) occurring against a person in the United States.

The University retains the authority to take action under other University policies and processes that govern alleged conduct, whether or not the EDFR also applies.

### 3. Duration of Executive Order

This order will be effective through August 14, 2025, unless the President rescinds this order prior to that date. This order will have no effect after August 14, 2025 or if rescinded.

## 4. University Grievance Processes for Formal Complaints of EDFR Sexual Harassment and Delegation for Conflict Resolution

To address formal complaints of EDFR sexual harassment under Section 13, the University will incorporate the grievance procedures set forth in this order into applicable University processes. Where there are conflicts, these grievance procedures control. The complainant and respondent must be treated equitably throughout the University processes used to address EDFR sexual harassment.

Compliance Services, in consultation with appropriate administrative or faculty governance personnel, has the delegated authority to interpret the requirements of this order, resolve conflicts between this order and other University policies or processes, and advise on the process or procedures to be used. The President retains the authority to make final decisions under this delegation.

University processes include, but are not limited to:

- Administrative Policy Statement [46.3](#), Resolution of Complaints Against University Employees;
- [Faculty Code](#);
- Collective Bargaining Agreements; and
- [Librarian Personnel Code](#).

## 5. Intersection of EDFR and Other University Policies, Designation of Offices to Receive Complaints, and Authority to Initiate Combined Proceedings

Separate from the EDFR, other University policies address sexual harassment, sexual assault, and other forms of sexual misconduct. These policies include, but are not limited to:

- Administrative Policy Statement [46.3](#), Resolution of Complaints Against University Employees;
- Executive Order [No. 31](#), Nondiscrimination and Affirmative Action;
- Executive Order [No. 51](#), Sexual Violence Elimination;
- Executive Order [No. 54](#), Employee-Student Romantic Relationships and Conflicts of Interest;
- Collective Bargaining Agreements;
- [Faculty Code](#); and
- [Librarian Personnel Code](#).

Depending on the circumstances, each policy or all policies may apply.

For the purposes of complying with federal regulations and this order, the University has designated the University Complaint Investigation and Resolution Office (UCIRO), in addition to the Office of the Title IX Coordinator, as the office to receive complaints of sexual harassment, sexual assault, and other sexual misconduct. The University has also designated UCIRO as the office to determine whether this order and/or other University policies apply to a complaint.

If the allegations that form the basis of a formal complaint involve conduct that would potentially fall under the EDFR and other University policies, the University may, in its discretion, initiate combined proceedings, and responsible personnel will apply the policies and procedures that correspond to each (see Section 4).

## 6. University Officials Required to Report

The following University personnel are required to contact the Office of the Title IX Coordinator or designee if they become aware that a member of the University community may have experienced sexual harassment:

- The Provost;
- Any senior leader reporting directly to the President or the Provost; and

- Officials as specifically designated by the Vice President of Human Resources, the Vice Provost for Academic Personnel, or the Office of Compliance and Risk Services.

## 7. Definitions

Definitions in this section are intended to be consistent with the EDFR and relevant University policies. Any inconsistency with the EDFR will be resolved in favor of the EDFR.

### A. Complainant

The complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment under Section 8.

### B. Decision-maker(s)

Decision-maker(s) are the individual or individuals delegated authority by the University to make interim decisions and/or determine responsibility and/or afford remedies and/or impose sanctions for sexual harassment under Section 20, and/or decide appeals under Section 13, Subsection C and Section 23. The decision-maker(s) cannot be the same person(s) as the Title IX Coordinator or the investigator(s).

### C. Education Program or Activity

Education program or activity includes locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the sexual harassment as defined in [Section 8](#) of this policy occurred. It also includes any building owned or controlled by a student organization that is officially recognized by the University.

### D. Employee

For the purpose of compliance with the EDFR, employees include, but are not limited to, University personnel as identified in Administrative Policy Statement [40.1](#).

### E. Grievance Procedure

As used in the EDFR, a grievance procedure is the procedure for addressing formal complaints of sexual harassment as defined in Section 8. Unless a formal complaint has been dismissed under Section 13 or resolved as a result of an informal resolution under Section 15, the University must use the grievance procedures for the formal complaint under the EDFR. "Grievance procedure" does not mean a grievance under a University labor contract or other process under University policy, the Faculty Code, or the Librarian Personnel Code.

### F. Investigator

Individual(s) delegated authority to conduct investigations under the EDFR, which includes UCIRO or an individual external to the University designated specifically by the University to conduct an investigation.

### G. Party

The complainant and respondent are each a party to the grievance and where a grievance process involves more than one complainant or more than one respondent, references to the singular "party," "complainant," or "respondent" include the plural, as applicable. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under the EDFR.

### H. Remedies

Remedies must be designed to restore or preserve equal access to the University's education program or activity and may include supportive measures under Section 11, as well as disciplinary sanctions or other actions against the respondent at the conclusion of the grievance procedure.

## I. Respondent

The respondent is a University employee who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Section 8 below.

## 8. Definition of Sexual Harassment under the EDFR

The EDFR defines “sexual harassment” as conduct on the basis of sex that satisfies one or more of the following:

### A. EDFR Quid Pro Quo Sexual Harassment

An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct;

### B. EDFR Hostile Environment Sexual Harassment

EDFR hostile environment sexual harassment is 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 University’s education program or activity;

### C. EDFR Sexual Assault

EDFR sexual assault includes a sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Specifically EDFR sexual assault means one or more of the following:

1. The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of a complainant, without the consent of the complainant.
2. The oral or anal sexual intercourse with a complainant, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
3. The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of a complainant, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
4. The touching of the private body parts of a complainant (e.g. buttocks, groin, breasts) for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
5. Sexual intercourse between persons who are related to each other within degrees wherein marriage is prohibited by Washington law.
6. Sexual intercourse with a person who is under the statutory age of consent of Washington.

### D. EDFR Dating Violence

EDFR dating violence is an act or acts of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship will be determined based on the length and type of relationship as well as the frequency of interaction between the individuals involved in the relationship.

### E. EDFR Domestic Violence

EDFR domestic violence is an act or acts of violence committed by a current or former intimate partner of the complainant, by a person with whom the complainant shares a child in common, or by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner.



## F. EDFR Stalking

EDFR stalking is engaging in a course of conduct directed at a complainant that would cause a reasonable person to fear for the complainant's safety or the safety of others, including the safety of the respondent, or would cause a reasonable person to suffer substantial emotional distress.

1. For the purposes of this section, "course of conduct" means two or more acts including, but not limited to, acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Stalking also includes cyberstalking such as through electronic media, the internet, social networks, blogs, cell phones, or text messages.
2. For the purposes of this section, "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

## 9. Consent for the Purposes of EDFR Sexual Assault

For the purposes of Section 8, Subsection C, the EDFR does not require the University to adopt a particular definition of consent, and as such, consent is defined by Executive Order [No. 51](#), Sexual Violence Elimination.

## 10. Retaliation Prohibited

Under the EDFR, neither the University nor other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the EDFR, or because the individual has made a report or complaint, testified, assisted, or participated, or refused to participate in any manner in an investigation, proceeding, or hearing under the regulations.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sexual harassment but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by the EDFR, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this section.

For complaint reporting options and procedures see the [Civil Rights Investigation Office](#) website. Such complaints are subject to all applicable University policies and processes, including those under Executive Order [No. 31](#) and/or Executive Order [No. 51](#) and Administrative Policy Statement [46.3](#).

## 11. Supportive Measures for Complainants and Respondents

In accordance with the EDFR, complainants and respondents may request supportive measures.

Supportive measures are non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed under Section 13. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment.

Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

The University must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. The Office of the Title IX Coordinator or designee is responsible for coordinating the effective implementation

of supportive measures.

## 12. Accessible Reporting

Any person may report sexual harassment under the EDFR or sexual harassment under other University policies (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sexual harassment). See the Office of the Title IX Coordinator for [reporting options and procedures](#).

## 13. Formal Complaint

### A. Initiating a Formal Complaint

For the purposes of complying with the federal regulations and this order, the University has designated UCIRO, in addition to the Office of the Title IX Coordinator, as the office to receive complaints of sexual harassment, sexual assault, and other sexual misconduct. The University has also designated UCIRO as the office to determine whether this order and/or other University policies apply to a complaint.

A formal complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment as defined in Section 8 against an employee respondent and requesting that the University investigate the allegation of sexual harassment. At the time of filing a formal complaint under this section, a complainant must be participating in or attempting to participate in the education program or activity of the University. If the complainant is not participating in or attempting to participate, UCIRO will assess whether other University policies apply.

### B. Dismissal of a Formal Complaint Without a Determination of Responsibility

In accordance with the EDFR, if the conduct alleged in the formal complaint would not constitute sexual harassment as defined in Section 8, even if proved, did not occur in the University's education program or activity, or did not occur against a person in the United States, then the investigator or decision-maker(s) must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under the EDFR.

An investigator or decision maker(s) may dismiss the formal complaint under the EDFR or any allegations therein, if at any time during the investigation or hearing:

1. A complainant notifies the Office of the Title IX Coordinator or designee in writing that the complainant would like to withdraw the formal complaint or any of the formal complaint allegations therein;
2. The respondent is no longer enrolled or employed by the University, but only as permitted by federal or state law, regulation, or University policy; or
3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal required or permitted under this section, the investigator or decision maker(s) must promptly send written notice of the dismissal and reason(s) simultaneously to the parties.

Such a dismissal does not preclude action under another provision of the University's policies and processes.

Upon receiving notice, the parties may appeal the dismissal under this section.

### C. Appeal of Dismissal of Formal Complaint Without a Determination of Responsibility

#### 1. Requesting an Appeal of a Dismissal

A party may appeal a dismissal of a formal complaint or any allegations therein, on the following bases:

- a. Procedural irregularity that affected the decision to dismiss;
- b. New evidence that was not reasonably available at the time the dismissal was made, that could affect the decision to dismiss; or
- c. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the decision to dismiss.

If one of the grounds is to consider newly discovered evidence, then that evidence must be provided with the appeal.

## 2. Initiating an Appeal of a Dismissal

Once a request for an appeal of a dismissal of a formal complaint or any allegations therein has been filed, the decision-maker(s) must:

- a. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- b. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in [Section 18, Subsection A](#).

## 3. Opportunity to Submit Written Statements

Both parties will be given a reasonable, equal opportunity to submit a written statement in support of, or challenging the dismissal.

## 4. Decision on Appeal of a Dismissal

Appeals of a dismissal of a formal complaint under this section may be decided by a single decision-maker, who may be a staff member.

The decision-maker(s) must issue a written decision describing the result of the appeal and the rationale for the result and must provide the written decision simultaneously to both parties.

If the dismissal of the formal complaint is upheld, the allegations may be addressed under other applicable University policies.

# 14. Consolidation of Formal Complaints

A decision maker(s) may consolidate formal complaints as to allegations of sexual harassment under Section 8 against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment under Section 8 arise out of the same facts or circumstances.

# 15. Informal Resolution

In accordance with the EDFR, the University cannot offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student when those allegations may be covered by the EDFR. The University also cannot require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment under the EDFR. In addition, the University cannot require the parties to participate in an informal resolution process of the EDFR allegations and cannot use an informal resolution process before a formal complaint is filed.

After a formal complaint is filed, and provided it is not alleged that an employee sexually harassed a student, at any time prior to reaching a determination regarding responsibility the University may facilitate an informal resolution process, such as mediation, provided that the University provides to the parties a written notice disclosing:

- The allegations,

- The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The University must also obtain the parties' voluntary, written consent to the informal resolution process.

## 16. Reassignment and Administrative Leave

At any time after allegations have been made, the University may reassign an employee, including a student employee, from any duties, assignments, or work locations, in accordance with University policies or provisions.

In accordance with the EDFR, the University may also place a non-student employee respondent on administrative leave after a formal complaint has been initiated under [Section 13](#). There may be circumstances that warrant administrative leave for student employees as a supportive measure or as part of the University's response to a formal complaint. The specific facts of a particular matter will dictate whether the University may place a student employee on administrative leave and the process to be followed.

This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

## 17. Emergency Removal from Employment

The University may remove a student-employee respondent from the University's education program or activity on an emergency basis, which may include or impact University employment. Prior to making this decision, the University must undertake an individualized safety and risk analysis to determine whether an immediate threat to the physical health or safety of any student or other individual arising from the allegation of sexual harassment justifies removal, and if so, must provide the student-employee respondent with notice and an opportunity to challenge the decision immediately following the removal.

This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

## 18. General Provisions for EDFR Grievance Procedures

### A. Conflict of Interest or Bias

In a grievance proceeding, any individual designated by the University as a Title IX Coordinator, investigator, decision-maker, or any person designated by the University to facilitate an informal resolution process, must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

### B. Standard and Burden of Proof

The University uses a "preponderance of evidence" standard and the burden of proof rests with the University.

### C. Evidence

The following evidentiary provisions apply solely in grievance proceedings under the EDFR. No other evidentiary standards can be imposed, such as under the Washington State Rules of Evidence.

#### 1. Gathering and Evaluating Evidence and Presenting Relevant Evidence



The burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties. The parties will be provided an equal opportunity to present witnesses and other inculpatory and exculpatory evidence.

## **2. Relevant Evidence**

All relevant evidence will be objectively evaluated, including both inculpatory and exculpatory evidence, and credibility determinations cannot be based on a person's status as a complainant, respondent, or witness. Relevant evidence cannot be excluded, except as follows under C.2.a through C.2.c below:

### **a. Evidence of Prior Sexual Disposition or Prior Sexual Behavior**

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

### **b. Confidential Records**

The University cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so for a grievance proceeding under the EDFR.

If a party is not an "eligible student," as defined in [FERPA] 34 CFR 99.3, then the University must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3.

### **c. Privileged Information**

The University cannot require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

## **D. Time frames and Continuances**

The University's grievance proceeding under the EDFR must include reasonably prompt time frames for conclusion of the grievance proceeding, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the University offers informal resolution processes. The University may create a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause includes considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

## **E. Confidentiality**

The University must keep confidential the identity of any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex harassment, any respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of the EDFR, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

The University, however, cannot restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

## **F. Advisors**

The University must provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. In accordance with the EDFR, the University must not limit the

choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the University may establish restrictions regarding the extent to which the advisor may participate in the grievance proceedings, as long as the restrictions apply equally to both parties.

## **G. Notice of Meetings and Hearings**

The University must provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

## **19. University Investigations**

Investigations of formal complaints under the EDFR are designed to provide a prompt, fair, and impartial complaint investigation and resolution, and to equitably protect the rights of individuals participating in the investigation. No University employee or official can initiate an investigation, process, or adjudication to investigate EDFR allegations and impose disciplinary sanctions without a formal complaint under Section 13.

### **A. Notice of Investigation**

Upon initiation of a formal complaint, the investigator must provide, to the parties who are known, written notice including:

- Notice of the University's grievance process, including any informal resolution process;
- Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in Section 8, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under Section 8, and the date and location of the alleged incident, if known;
- An explanation regarding presumptions relating to non-responsibility and good-faith filing; and
- Inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence under Section B below.

If in the course of an investigation, the investigator decides to investigate allegations about the complainant or respondent that are not included in the notice provided above, the investigator must provide notice of the additional allegations to the parties whose identities are known.

### **B. Investigation**

During the course of the investigation, the assigned investigator will gather evidence and conduct interviews of the complainant, respondent, and witnesses. During the investigation, the complainant and the respondent will have the opportunity to identify witnesses and provide the investigator with evidence. Advisors may accompany and provide support and advice but may not participate directly in the investigation.

The parties will be provided with an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can respond meaningfully to the evidence prior to conclusion of the investigation.

Prior to completion of the investigative report, the investigator will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.

Upon completion of the investigation, the investigator will create an investigative report that fairly summarizes relevant evidence, which may include recommended findings and conclusions. At least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, the investigator will send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard

copy, for their review and written response.

The final investigative report and all evidence related to the allegations are included in the record for the hearing.

## **20. Hearings**

In accordance with the EDFR, if a formal complaint has not been dismissed or resolved during the investigation, after the investigative report is complete a hearing will be convened to permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Under Section 5, if the formal complaint involves conduct that falls under the EDFR and other University policies, the University may, in its discretion, conduct a combined hearing and apply those policies and procedures that correspond to each. A facilitator may be appointed by Compliance Services to help ensure this policy is properly followed and the facilitator may be a staff member.

### **A. Scheduling the Hearing**

The hearing date cannot be scheduled less than 10 days after the investigative report was provided to the parties.

### **B. Evidence from Investigation**

The University must make the evidence that was subject to inspection and review in the investigation available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

### **C. Separating Parties in the Hearing**

At the request of either party, the University must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

### **D. Electronic Hearings**

Hearings under this section may be conducted with all parties physically present in the same geographic location, or at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

### **E. Advisor in Hearings**

Under the EDFR, if a party does not have an advisor present at a live hearing relating to the formal complaint of sexual harassment, the University will provide without fee or charge to that party an advisor of the University's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party for the purposes of the formal complaint.

### **F. Procedures for Cross-Examination in Hearing**

Under the EDFR, the decision-maker(s) in a hearing must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor and never by a party personally.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Questions that are duplicative or repetitious may be determined to be irrelevant.

### **G. Recording of the Hearing**

The hearing will be recorded via an audio or audiovisual recording or transcript. The recording or transcript will be made available to the parties for inspection and review.



## 21. Determination Regarding Responsibility

The decision-maker(s) will issue a written determination regarding responsibility, and, if the respondent is found responsible, any sanction(s) and any remedy(ies) using the standard of proof under Section 18, Subsection B.

Under the EDFR, if a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility. A statement does not include a document, media content, verbal or written communications, or other verbal conduct that constitutes the alleged sexual harassment.

The decision-maker(s) also cannot draw an inference regarding the determination of responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

In a hearing involving allegations under other University policies, the determination of responsibility is made based on those relevant policies and processes.

The written determination will include:

- Identification of the allegations potentially constituting sexual harassment under the EDFR;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the University's code of conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the complainant; and
- The University's procedures and permissible bases for the complainant and respondent to appeal.

The written determination will be provided to the parties simultaneously.

## 22. Effective Date of Final Determination

The determination regarding responsibility, and if the respondent is found responsible, the sanction(s) and any remedy(ies) becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which filing an appeal would no longer be considered timely.

Once the proceeding is complete, the Office of the Title IX Coordinator or designee will ensure the remedy or remedies have been effectively implemented.

## 23. Appeal of a Determination Regarding Responsibility

Under Section 5, if the formal complaint involves conduct that falls under the EDFR and other University policies, the University may, in its discretion, conduct a combined appeal and apply the policies and procedures that correspond to each.

### A. Requesting an Appeal

Either party or both parties may appeal a determination regarding responsibility on the following bases:

1. Procedural irregularity that affected the outcome of the matter;



- 2. New evidence that was not reasonably available at the time the determination regarding responsibility was made that could affect the outcome of the matter; or
- 3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

If one of the grounds is to consider newly discovered evidence, then that evidence must be provided with the appeal.

**B. Initiating an Appeal**

Once a request for an appeal of a written determination of a formal complaint under the EDFR has been filed, the University will:

- 1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties; and
- 2. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in Section 18, Subsection A.

**C. Opportunity to Submit Written Statements**

Both parties will be given a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome.

**D. Decision on Appeal**

The decision-maker(s) will issue a written decision describing the result of the appeal and the rationale for the result and will provide the written decision simultaneously to both parties.

**24. Sanctions**

A respondent who engages in behavior in violation of the EDFR is subject to corrective or disciplinary action, up to and including termination of employment. The available sanctions for a respondent are based on the policies and processes that govern the respondent’s relationship with the University.

**25. History**

August 14, 2020; August 14, 2021; August 14, 2023.

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For related information, see:

- Executive Order [No. 31](#), “Nondiscrimination and Affirmative Action”
- Executive Order [No. 51](#), “Sexual Violence Elimination”
- Administrative Policy Statement [46.3](#), “Resolution of Complaints Against University Employees”
- *Student Governance and Policies*, [Chapter 210](#), “Student Conduct Policy for Discriminatory and Sexual Harassment, Intimate Partner Violence, Sexual Misconduct, Stalking, and Retaliation”