



OFFICE OF COMPLIANCE SERVICES  
UVM.EDU/POLICIES

## UNIVERSITY OPERATING PROCEDURE

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**Title:** Resolution Procedures for Title IX Offenses involving Student Respondents under 2020 Final Rule - Interim

### IMPORTANT NOTICE

These procedures **apply solely** to allegations of Title IX Offenses involving Student Respondents as defined in the UVM Discrimination, Harassment Sexual Misconduct Policy. All other matters of discrimination, harassment and sexual misconduct involving student Respondents are reviewed and addressed under [Handling and Resolving Discrimination, Harassment, and Sexual Misconduct Complaints Involving Student Respondents – Interim](#)

These procedures also **do not** apply to allegations of discrimination, harassment or sexual misconduct involving an employee respondent. Such matters are reviewed and addressed under [Handling and Resolving Discrimination, Harassment, and Sexual Misconduct Complaints involving Employee Respondents – Interim](#).

### Overview

These Procedures apply to the intake and resolution of disclosures and formal complaints against a student respondent alleging a Title IX Offense under the 2020 Final Rule as defined by the Discrimination, Harassment, and Sexual Misconduct Policy, by the Office of Equal Opportunity.<sup>1</sup>

The University takes seriously all complaints of discrimination and discriminatory harassment, including sexual misconduct and is committed to taking all necessary steps to prevent recurrence and remedy discriminatory effects. The University of Vermont's processes related to discrimination and discriminatory harassment are designed to:

- Stop the behavior, prevent its recurrence, and remedy its discriminatory effects;
- Consider the rights of all parties, the safety of the community, and applicable laws and University policies;
- Conduct a timely, fair, impartial, and equitable process with respect for all involved parties;

<sup>1</sup> The provisions of collective bargaining agreements may modify or supersede these provisions. Questions regarding the effect of collective bargaining agreements on these provisions should be directed to appropriate union representatives.

- Protect the privacy of all parties to the extent practical, while balancing the need to comply with applicable law, maintain campus safety, and provide a safe and non-discriminatory environment for all members of the campus community;
- Hold individuals found to have violated the University's policies accountable for their actions; and
- Address the effects of discrimination and discriminatory harassment, and related retaliation, on the campus community.

## Applicability of the Procedure

This UOP applies to all University of Vermont faculty, staff, students, contractors, program participants, visitors, and guests.

## Definitions

<u><i>Adjudicator:</i></u>	The individual assigned to conduct the live hearing, render a determination of responsibility for the alleged policy violation(s).
<u><i>Center for Student Conduct (CSC):</i></u>	The office responsible for imposing appropriate outcomes for student respondents if the Adjudicator determines University policy has been violated.
<u><i>Formal Complaint:</i></u>	A document filed by a Complainant who is currently participating in or attempting to participate in the education program or activity of the University, or is otherwise signed by the Title IX Coordinator, alleging a Title IX Offense against a Respondent and requesting that the Office of Equal Opportunity investigate the allegation. This may be done in person or electronically.
<u><i>Hearing Advisor:</i></u>	An individual independently retained by either party, or otherwise assigned by the University, to serve as a party's proxy for voicing questions to the other party and witnesses during the Title IX Hearing. Other than those assigned by the University, UVM employees must obtain the approval of their supervisor and the Title IX Coordinator before serving as a Hearing Advisor to ensure no conflict of interest or conflict of commitment exists.
<u><i>Process Advisor:</i></u>	An individual selected by a party to provide personal support through the applicable resolution process. Advisors may have no other role, such as a witness, in the University process, and may not speak on behalf of or otherwise represent their advisees during meetings. While Process Advisors are not limited to members of the campus community, the University has identified several employees to serve in a voluntary capacity as <a href="#">Office of Equal Opportunity Process Advisors</a> , all of whom have received dedicated training on University policies and procedures, and can assist with identifying additional appropriate resources.

For additional definitions related to these Procedures, please see: [Discrimination, Harassment, and Sexual Misconduct Policy](#).

## Procedures

### **Step 1 – OFFICE OF EQUAL OPPORTUNITY INTAKE**

Upon notice to the Office of Equal Opportunity that an individual (the “Complainant”) has been the subject of alleged discrimination or discriminatory harassment constituting a Title IX Offense under the 2020 Final Rule by a UVM student, whether through a direct report by the complainant or another witness, through disclosure by an individual with required reporting obligations (“UVM Reporters”), or by any other means, the Office of Equal Opportunity Support Coordinator, or designee, will provide outreach to the Complainant. The Support Coordinator will offer to schedule a time to meet with the Complainant and discuss the individual’s needs for support, as well as options for resolution. The Support Coordinator will also provide written information about applicable University policies, resolution options and procedures, support measures, and other helpful resources.<sup>2</sup>

The Office of Equal Opportunity will accept disclosures from any affiliate or non-affiliate against a student who is alleged to have engaged in behavior constituting a Title IX Offense under the 2020 Final Rule as defined in the Discrimination, Harassment, and Sexual Misconduct Policy. Disclosure of allegations to the Office of Equal Opportunity may be made verbally or in writing.

### **Step 2 – PRE-RESOLUTION REVIEW**

If the Complainant expresses a desire to explore a University resolution process, or if the nature of the disclosure prompts the Title IX Coordinator to take independent action, the Office of Equal Opportunity will take the following steps, as appropriate:

#### **A. INTERVIEW WITH COMPLAINANT**

An Office of Equal Opportunity staff member will be assigned to the matter and will invite the Complainant to provide additional information about the disclosed incident(s) via interview. The Complainant may be accompanied by a Process Advisor when meeting with the Office of Equal Opportunity. The Office of Equal Opportunity may make an audio recording of this meeting for note-taking purposes. A Formal Complaint is required to proceed with an Equal Opportunity resolution process under these Procedures.

#### **B. DETERMINATION OF EQUAL OPPORTUNITY JURISDICTION TO RESOLVE THE COMPLAINT**

The Office of Equal Opportunity’s ability to offer a resolution process is limited to alleged violations of the University’s Discrimination, Harassment and Sexual Misconduct Policy. This is referred to as “jurisdiction.” The Office of Equal Opportunity may also investigate other adjoining conduct matters as detailed below (Consolidation of Complaints; Multiple Policy Violations). Before proceeding with a resolution process, the Office of Equal Opportunity must determine (1) whether the Respondent was subject to applicable University policy at the time of the conduct and (2) whether the conduct as alleged, and if proven by a preponderance of evidence, could be a violation thereof. A Formal Complaint is required.

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<sup>2</sup> Pursuant to federal law, for cases of alleged intimate partner violence, sexual assault, and sex-based stalking, these written materials shall include an explanation of Complainants’ rights and options for both University and criminal action, as well as applicable support resources available on campus and in the greater Burlington community, including but not limited to counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, and student financial aid resources. In many cases, the Office of Equal Opportunity Support Coordinator provides this information in an email sent to the individual’s official UVM email account.

If the Office of Equal Opportunity determines that jurisdiction is not supported by the information available or the matter is not otherwise appropriate for resolution under these procedures, the Office of Equal Opportunity shall follow the requirements of "Dismissal of Title IX Formal Complaints; Appeal Rights" as outlined below. In all cases, the Office of Equal Opportunity will communicate the determination and accompanying rationale to the Complainant and will provide appropriate referrals to campus and off-campus resources, including continued access to a Support Coordinator. The Office of Equal Opportunity will also inform complainants that they should immediately report any recurrences or escalation of conduct. If new information is subsequently provided to the Office of Equal Opportunity, the Office of Equal Opportunity may reevaluate whether or not the Office has jurisdiction.

#### **C. NOTICE OF ALLEGED POLICY VIOLATION AND OFFICE OF EQUAL OPPORTUNITY PROCESS**

If jurisdiction is supported, the Office of Equal Opportunity will issue written notice to the Complainant and Respondent that an Office of Equal Opportunity process has been initiated to resolve alleged violation(s) of University policy. Additionally, the Respondent will receive outreach from a Support Coordinator, or designee, that includes information about helpful resources and be invited to meet to discuss the individual's needs for support, as well as answer questions about the EO resolution process.

The written notice will include the identities of the parties, the conduct allegedly constituting the policy violation, and the date and location of the alleged conduct, if known. The written notice will also include a copy of these Procedures, and a statement indicating whether the Complainant has expressed interest in Facilitated Resolution (if applicable).

### **Step 3 – OFFICE OF EQUAL OPPORTUNITY RESOLUTION PROCESS**

#### ***Option 1. FACILITATED RESOLUTION***

##### **A. PURPOSE**

The Facilitated Resolution process is designed to be flexible to respond to the needs of the parties and the unique circumstances presented. The purpose of a Facilitated Resolution is to allow a Complainant to express the harm they have experienced, and the Respondent to reflect on the impact felt by Complainant in a supportive environment. The Facilitated Resolution process seeks to repair harm through reflection and education without rendering an institutional policy decision. Facilitated Resolution is not a disciplinary process. The culmination of the process is the creation of a cooperatively designed agreement that outlines steps or actions a Respondent will take to both address the impact of the reported conduct and prevent its recurrence.

##### **B. APPROPRIATENESS DETERMINATION**

Facilitated Resolution can be pursued following Notice of Complaint (Step 2) or following creation of a Record (Step 3, Option 2).

As a threshold matter, both the Complainant and Respondent must voluntarily agree to pursue the Facilitated Resolution process. Additionally, the Office of Equal Opportunity must determine that the nature of the reported conduct is appropriate for Facilitated Resolution, considering the following factors and others as uniquely appropriate:

- The power dynamics present between the parties, including applicable University affiliation<sup>3</sup>
- The nature of the conduct reported and whether it presents an ongoing safety risk to the UVM community;
- The level and type of harm reported, subjectively and objectively;
- The severity of conduct reported, subjectively and objectively;
- The number of people affected by the reported conduct;
- Whether the parties are willing to participate in good faith; and
- The conduct history of the Respondent.

The decision as to whether the use of the Facilitated Resolution process is appropriate is at the sole discretion of the Title IX Coordinator.

### **C. INITIATION OF PROCESS**

A Facilitator will be assigned.<sup>4</sup> To initiate the Facilitated Resolution Process, the Facilitator will provide both parties with a Notice of Rights and Options to review and sign before proceeding. Once initiated, either party can request an end to the Facilitated Resolution process at any time prior to signing a final agreement. Information gathered during a Facilitated Resolution Process cannot be used in another UVM process, including if the Facilitated Resolution terminates and an Investigative Resolution is initiated, and Facilitators will not serve as witnesses in any subsequent conduct or legal proceedings, except where required by law or regulation. Facilitated Resolution meetings will not be audio recorded.

### **D. CREATION OF MUTUALLY AGREED TERMS**

The Facilitator will engage in an interactive process with the parties to identify mutually agreeable and effective terms. In most cases, the parties will not engage in face-to face dialogue and will meet independently with the Facilitator. When face-to-face dialogue is mutually desired by the parties, and the Title IX Coordinator approves, live video conferencing is the default medium.

Educational and restorative measures that may be agreed upon as a result of Facilitated Resolution may include, but are not limited to:

- Personal reflection activities;
- Educational activities relating to pertinent topics, such as consent, healthy sexuality, healthy relationships, drug and alcohol use, conflict resolution, equity and inclusion, or similar topics;
- Voluntary participation in mental health or other counseling;
- Regular check-in meetings with an appropriate UVM official or resource;
- Reading of impact statements and responses presented by the parties, in a supported environment;
- No-contact and/or limited no-trespass agreements;
- Voluntary restriction from participation in particular campus events or activities; or
- Other appropriate measures proposed and agreed to by the parties.

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<sup>3</sup> Alternative resolution is not available to resolve any report of conduct that would constitute harassment based on a protected category by a UVM employee directed to a student.

<sup>4</sup> Facilitators will generally be Office of Equal Opportunity staff members; however, the Office of Equal Opportunity may also elect to use the services of an outside facilitator or a non-Office of Equal Opportunity staff member. The Facilitator will not also serve as an Investigator for the matter, if applicable.

Facilitated Resolution Agreements must be documented by the Facilitator, signed by both parties, and approved by the Title IX Coordinator. If no agreement is reached, or either party indicates in writing to the Facilitator that they no longer wish to pursue a Facilitated Resolution, the matter will be referred to the Title IX Coordinator, who will consider the Record of Investigation (if available), the wishes of the parties, and the interests of the campus community in determining next steps, which may include a return to or initiation of an investigative resolution process.

#### **E. COMPLIANCE WITH RESOLUTION AGREEMENT**

Once a Resolution Agreement has been signed by both parties and approved by the Title IX Coordinator, the Office of Equal Opportunity will ensure the agreed-upon terms are fulfilled by monitoring the agreement, reviewing information submitted by the parties, and in some cases, contacting third parties for verification.

When a Resolution Agreement requires a student Respondent to take active steps to fulfill a term (e.g., participation in a program or participation in an impact statement conference) by a certain date, the Office of Equal Opportunity may request that the Dean of Students place a registration or degree hold on the Respondent's account until the term is fulfilled. The Office of Equal Opportunity will request that the hold be lifted when the term is fulfilled. The Respondent may request an extension of the time by which a specific term must be fulfilled for good cause. Such an extension shall be in the sole discretion of the Title IX Coordinator.

Consequences for non-compliance with the terms of a Resolution Agreement shall be agreed to by the parties and memorialized in the Agreement prior to execution. If the Office of Equal Opportunity believes that a Respondent has not complied with the terms of a Resolution Agreement, the Office of Equal Opportunity will initiate appropriate steps to effectuate a non-compliance response consistent with the terms of the Resolution Agreement. Where any term is predicated on some action by Complainant, such as the submission of an impact statement, and Complainant does not complete that action, Respondent shall not be subject to a finding of non-compliance. The Office of Equal Opportunity is not obligated to warn parties who are not in compliance prior to initiation of a non-compliance response.

### ***Option 2. INVESTIGATIVE RESOLUTION***

#### **A. INTERVIEWS AND INFORMATION GATHERING**

Following Notice (Step 2, described above), the Office of Equal Opportunity will seek to interview identified and relevant witnesses and the Respondent.<sup>5</sup> Witnesses, like the parties, are protected from retaliation and may be accompanied by a Process Advisor of their choice during any Office of Equal Opportunity meeting. The Office of Equal Opportunity will notify all participants in the process that they should immediately report any recurrence or escalation of the conduct at issue or of acts of retaliation to the University.

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<sup>5</sup> The Office of Equal Opportunity has the sole discretion to determine what questions to pose to parties or witnesses, and to determine the overall length of any meeting.

In addition to participating in a personal interview, both parties may provide, if they wish, relevant information and documentation they would like the Office of Equal Opportunity to review, and the names of potential witnesses with factual knowledge directly related to the allegations.<sup>6</sup>

## B. CREATION OF RECORD OF INVESTIGATION

Following all interviews and the collection of information and documentation, the Office of Equal Opportunity will provide both parties with a written record of the directly related evidence collected (“the Record of Investigation”) for review.<sup>7</sup> The parties may elect to provide any correction of their own statements as well as any additional directly related evidence for review by the Office of Equal Opportunity, including additional proposed witnesses with directly related and relevant knowledge of the conduct to interview. All responses to the Record of Investigation must be submitted within ten (10) calendar days<sup>8</sup> of access to the Record of Investigation being provided to the parties.

The Office of Equal Opportunity may conduct additional investigation, including interviews, based on submission of new, directly related evidence or identification of additional relevant witnesses, and will issue a supplement to the Record of Investigation to both parties containing the new information.<sup>9</sup>

The Record of Investigation and any Record Supplement shall collectively be referred to as the Final Record of Investigation, a copy of which shall be provided to both parties. Once the Final Record has been issued, the Investigator, or designee, will schedule a Title IX Hearing as described below. Additionally, the parties will be provided ten (10) calendar days to submit a written response to the Final Record of Investigation, if they choose, as well as submit the name of their Hearing Advisor, or request that a Hearing Advisor be assigned to them.

## C. TITLE IX HEARING

Each party will be notified of the date and time of their scheduled Hearing at least seven (7) calendar days in advance of the Hearing. The notification will include the identity of the assigned Adjudicator and the CSC staff member who will be in attendance. Witnesses who are identified in the Final Report of Investigation will also be notified of the scheduled Hearing and invited to participate. No other witnesses will be permitted to participate in the Hearing.

Hearings will typically be scheduled to occur within two weeks of the issuance of the Final Record, absent extenuating circumstances. Parties must be accompanied by a Hearing Advisor to conduct appropriate questioning during the hearing. Parties may also be accompanied by an Office of Equal Opportunity Process advisor for personal support. If a Hearing Advisor does not appear at the Hearing, a Hearing Advisor will be assigned. If at all feasible, the Hearing date will not be changed.

- a. **Purpose.** Hearings are for the express purpose of the Adjudicator determining whether the Respondent is “responsible” or “not responsible” for the alleged violation(s). The Respondent

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<sup>6</sup> The decision to interview particular witnesses and allow or consider evidence offered by the parties is within the sole discretion and professional judgment of the Office of Equal Opportunity.

<sup>7</sup> The Record of Investigation is comprised of a summary of interviews conducted as well as documentary evidence. If the parties request to review the original evidence, the parties may review it to the extent that it is relevant and not otherwise impermissible by making an appointment with the Office of Equal Opportunity. Where applicable, EO has discretion to allow parties to review transcripts, which may be redacted, in lieu of allowing the parties to listen to an original audio recording. The parties may not make copies of the original evidence. If the parties request to review the evidence, they must do so within 7 calendar days.

<sup>8</sup> Where this deadline lands on a weekend or UVM Administrative Holiday, the deadline shall be the next UVM business day.

<sup>9</sup> The Investigator has discretion to issue additional supplements for information that is new and directly related.

will be presumed "not responsible" until proven otherwise by a preponderance of the evidence. A staff member from the Center for Student Conduct will attend the hearing in a non-speaking role. If the Adjudicator determines that the Respondent is "responsible" for the alleged violation(s), the CSC staff member will assign appropriate sanctions.

- b. ***Maintaining Order.*** The Adjudicator is responsible for maintaining order during the Hearing and may take all steps reasonably necessary to ensure an orderly hearing up to and including removal of disruptive individuals.
- c. ***Information Considered.*** The Adjudicator will consider all relevant information and will weigh the reliability and credibility of that information when rendering a determination regarding responsibility.
  - 1. ***Final Record of Investigation and Reply to Final Record.*** The Adjudicator will be well-versed in the details contained in the Final Record of Investigation and the parties' responses to the Record, if any.
  - 2. ***Responses to Relevant Questions.*** The Adjudicator will permit the parties' Title IX Hearing Advisors to ask relevant questions of the parties and witnesses on matters that are contained within the Final Report of Investigation. The Adjudicator will determine the relevance of questions by applying logic and common sense and considering whether the question is likely to elicit non-privileged information that has a tendency to make a disputed fact more or less probable to have occurred.<sup>10</sup> Information that is protected by a legally recognized privilege shall not be permitted unless the party gives written, voluntary consent. The Adjudicator will determine whether a question posed by either party's Title IX Hearing Advisor is relevant before the Complainant, Respondent, or witness answers the question. If the Investigator determines that a question is not relevant or is otherwise impermissible, the Adjudicator will state the basis for their decision. Questions which seek information already contained in the Final Record of Investigation or have otherwise been asked and answered may be excluded as duplicative. Disagreements regarding the Adjudicator's determination of relevance / permissibility shall not be discussed at the Hearing but may be addressed through the appeals process (See section G).

The Adjudicator may consider information contained in the Record of Investigation with or without the participation of a party or witness during the Hearing. The Adjudicator may not draw an inference about responsibility based solely on a party or witness's absence from the Hearing or refusal to answer questions that are relevant and not impermissible. The Adjudicator may choose to place less or no weight upon statements by an individual who refuses to respond to questions that are relevant and not impermissible.

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<sup>10</sup> Information about a party's prior sexual history or disposition may only be 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.



3. ***Written Opening and Closing Statements In Lieu of Participation.*** Parties may choose to submit a written opening and/or closing statement to be read by the Adjudicator if the party chooses not participate in the Hearing. For any written statement to be considered, it must be submitted no later than 48 hours prior to the Hearing. The statement(s) should be clearly labeled as either an opening or closing statement. In the absence of such a label, they will be read as opening statements.
- d. ***Presentation.*** The Adjudicator will be well-versed in the facts of the case based upon the Final Record of Investigation and the parties' responses to the Record, if any. The Hearing is an opportunity for both parties to ask questions of parties and witnesses as they may arise from the Record through their Hearing Advisor. The parties are not permitted to ask questions of the other party or witnesses directly.
  1. ***Introductions.*** At the beginning of the Hearing, the Adjudicator and CSC staff member shall introduce themselves and ask each party and their Advisors to do the same. The Adjudicator shall read the statement of alleged policy violations as outlined in the Office of Equal Opportunity Notice Letter and shall also confirm that both parties have received and had an opportunity to read and respond to the Final Report of Investigation. Both parties will have the opportunity to ask any initial questions concerning the process at this time.
  2. ***Opening Remarks.*** Both parties will be given the opportunity to provide personal statements, if they wish, to introduce themselves and what they hope to demonstrate to the Adjudicator. If a written opening statement has been submitted in lieu of participation, the Adjudicator will read the statement out loud. The order of remarks by the parties will be determined by the Adjudicator.
  3. ***Questioning of Parties.*** The Adjudicator may pose questions to the parties prior to any other questioning of that party. The parties' Hearing Advisors may then pose follow-up questions. Hearing Advisors posing questions must pause after asking their question to allow the Adjudicator to rule on whether the question is relevant and permissible. If the Adjudicator determines that a question is relevant and not otherwise impermissible, the party will be permitted to answer the question. If an Adjudicator determines a question is not relevant or is impermissible, the Adjudicator will state the reason for that determination and the party need not answer the question. The order of party questioning will be determined by the Adjudicator, and the Adjudicator may question parties at any point in the proceedings.
  4. ***Questioning of Witnesses.*** Witnesses who have agreed to participate may have questions posed to them by the Adjudicator prior to any other questioning of that witness. The parties' Hearing Advisors may then pose follow-up questions. Hearing Advisors posing questions must pause after asking their question to allow the Adjudicator to rule on whether the question is relevant and not otherwise impermissible. If the Adjudicator determines that a question is relevant and permissible, the witness will be permitted to answer the question. If an Adjudicator

determines a question is not relevant or is impermissible, the Adjudicator will state the reason for that determination and the witness need not answer the question. The order of appearance by witnesses will be determined by the Adjudicator, and the Adjudicator may question witnesses at any point in the proceedings.

5. **Closing Remarks.** Both parties will be given the opportunity to provide closing remarks, including any statement as to the existence of aggravating or mitigating circumstances. If a written closing statement has been submitted in lieu of participation, the Adjudicator will read the statement out loud. The order of remarks by the parties will be determined by the Adjudicator.

e. **Expectation of Truthful Statements.** The Complainant, the Respondent, and all witnesses are expected and presumed to provide truthful information throughout the investigation and hearing process. Knowingly making false statements and/or knowingly submitting false information is a violation of University policy.

f. **Closed Hearing.** All proceedings are closed. Both parties and their respective Advisors may be present throughout the Hearing. Witnesses, if any, shall be present only during their own statements. The Adjudicator shall maintain an official record of the Hearing and any other recording is prohibited. No camera, television, recording devices, or other electronic equipment, including cellphones, will be permitted in the hearing room except as arranged by the University.

#### F. **DETERMINATION REGARDING POLICY VIOLATION; OUTCOMES**

Following the Hearing, the Adjudicator will consider all relevant and permissible evidence and make a determination, by a preponderance of the evidence, regarding whether the Respondent has violated the Policy(ies) named in the Office of Equal Opportunity Notice of Investigation letter. If the Adjudicator determines that the Respondent violated UVM Policy, the representative from CSC will determine the appropriate outcomes. A written Determination Regarding Responsibility (Determination) will be issued which will contain factual findings, a determination regarding whether a Policy violation occurred, the rationale in support thereof, and, where applicable, the assigned outcomes and rationale therefore, including consideration of aggravating and mitigating factors. The Adjudicator and CSC Staff member will strive to issue this Determination simultaneously to both parties within fourteen calendar days of the Hearing. This notice will include information for both parties about their right to appeal, and the method for doing so.

A detailed listing of possible outcomes, as well as aggravating and mitigating factors considered, can be found in the [Code of Student Conduct](#) and at <https://www.uvm.edu/sconduct/potential-outcomes-conduct-meeting>.

#### G. **APPEALS**

The Determination may be appealed by either party for the following reasons only: (1) a procedural error unfairly and materially affected the outcome of the case, (2) material evidence has been discovered that was not reasonably available at the time of the investigation, or (3) there was a clear abuse of discretion on the part of the Title IX Coordinator/Director, Investigator, Adjudicator, or representative from CSC including the presence of a conflict of interest or bias against a party that affected the outcome. To

appeal, a party must submit a written statement to the Dean of Students or designee ("Appellate Official") within five business days of the date of the hearing decision stating, as precisely as possible, the basis for the appeal. If sufficient information has been submitted to support an appeal on one of the listed bases, the Appellate Official shall then provide a copy of the written appeal and any supporting documentation to the other party. The other party may submit a written response to the appeal within five business days of the date the appeal was sent to that party. A copy of this response, if any, will be sent to the appealing party from the Appellate Official.

The Appellate Official will review all submitted materials, and the pertinent case documents, and render a written decision within ten business days, absent extenuating circumstances. Should additional time be required, the Appellate Official will promptly notify both parties of the revised (expected) timeframe. The Appellate Official will issue a copy of the written appeal decision to parties who are UVM affiliates, in accordance with federal law. The appeal decision may uphold, modify, or overturn the Equal Opportunity decision, including applicable outcomes, or refer the case back to the Investigator, Adjudicator, or representative from CSC, as warranted. The appeal decision rendered is the final action taken by the University.

#### H. **ADDITIONAL CONSIDERATIONS**

1. ***Dismissal of Formal Title IX Complaints; Dismissal Appeal Rights.*** The Office of Equal Opportunity may decline to initiate an EO process, or dismiss a Formal Complaint and end an EO process, or reassign a Formal Complaint, in whole or in part, ("Dismissal") to another University process at any time if:
  - the Complainant notifies the Office of Equal Opportunity, in writing, that the Complainant would like to voluntarily withdraw the complaint;
  - the Respondent is no longer enrolled or employed by the University; or
  - specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Complaint or allegations therein.

Upon Dismissal, EO will promptly notify the Complainant, in writing, of the basis therefore. If Dismissal occurs after Notice has been issued (see Step 2), then EO will also notify the Respondent. Dismissal may appeal to the Director of the Office of Equal Opportunity within five (5) business days. The dismissal may be appealed for the following grounds only: (1) a procedural error unfairly and materially affected the outcome, (2) material evidence has been discovered that was not reasonably available at the time of the determination, or (3) there was a clear abuse of discretion, including the presence of a conflict of interest or bias against a party that affected the outcome. If sufficient information has been submitted to support an appeal on one of the listed bases, the Director of the Office of Equal Opportunity, or designee, shall then provide a copy of the written appeal and any supporting documentation to the other party. The other party may submit a written response to the appeal to the Director of the Office of Equal Opportunity, or designee, within five business days of the date the appeal was sent to that party. A copy of this response, if any, will be sent to the appealing party from the Director of the Office of Equal Opportunity or designee. The Director of the Office of Equal Opportunity or designee will review all submitted materials, and the pertinent case documents, and render a written decision within ten business days, absent extenuating circumstances. Should additional time be required, the Director of the Office of Equal Opportunity or designee will promptly notify both parties of the revised (expected) timeframe. The Director of the Office of Equal Opportunity or designee will issue a copy of the written appeal decision to parties who are UVM

affiliates, in accordance with federal law. The appeal decision may uphold the decision, modify the decision, overturn the decision, or refer the case back to the Investigator, as warranted.

2. ***Students in Programs with Professional Standards; Sponsored Research; UVM Athletics.*** If the Respondent is a student in a program with established professional standards or is a member of a UVM Athletics team, at the conclusion of the applicable appeal period outlined above, the Title IX Coordinator shall send a copy of the case file, including investigation report, any decision letter, and any appeal/appeal determination to the program's applicable Dean or Director for student services or the Director of Athletics. While the institutional decision shall be considered final following expiration of the applicable appeal period, the Respondent's program may also, in its discretion, review conduct under the program's established professional standards and/or Student-Athlete Code of Conduct to determine whether any additional, program-specific disciplinary action is needed. Additionally, if the Respondent is engaged in a sponsored research program, UVM will comply with applicable federal reporting requirements. This provision applies irrespective of whether a policy violation was found by the Office of Equal Opportunity.
3. ***Timeframe for EO Process.*** The EO process requires timely response to reports during all stages of intake, review, and resolution following notice to the University of reported discrimination or discriminatory harassment. EO will strive to complete the pre-resolution review within seven (7) days, noting that this timeframe is highly dependent on the responsiveness of any identified complainant and witnesses to outreach efforts or other relevant factors. Typically, the Office of Equal Opportunity Investigative or Facilitated Resolution process will be completed within ninety (90) days from the documentation of a complaint, as outlined in Step 2, above. However, in some circumstances, it may be necessary to extend the timeframe due to the complexity of the case, availability of witnesses, the occurrence of a simultaneous criminal investigation and request from law enforcement that the Office of Equal Opportunity delay its resolution process, or other factors that cause an unavoidable delay, collectively "good cause." If good cause exists for the Office of Equal Opportunity to extend the timeframe, both parties will be promptly notified of the revised (expected) timeframe. This timeframe does not include any resultant hearing or appeals processes.
4. ***Impartiality.*** Individuals shall remove themselves from facilitating a resolution process if they believe they cannot be impartial. Additionally, either party may seek the removal of an assigned individual if they believe that the individual cannot be impartial by submitting a written statement to the Office of Equal Opportunity, stating the specific reasons for their belief. This written statement must be submitted to the Office of Equal Opportunity within 48 hours of when they become aware that a conflict exists. If it is determined that the assigned individual may not be impartial, a new assignment will be made and both parties will be notified.
5. ***Accommodations; Rescheduling Requests; Mode of Participation.*** Requests to reschedule meetings and/or extend deadlines for response must be submitted to the Office of Equal Opportunity in writing within 48 hours of a meeting date or deadline being communicated and will only be granted for good cause. In determining whether good cause exists, the Office of Equal Opportunity will consider whether rescheduling will unduly burden the other party or otherwise unreasonably delay resolution of the matter.

Parties, witnesses, and other participants in the Office of Equal Opportunity resolution process may request reasonable accommodations for a disability by informing the Office of Equal Opportunity of their need for accommodation based on a disability. The Office of Equal Opportunity will then collaborate with Student Accessibility Services (students) or the ADA/504 Coordinator (employees and non-affiliates) to determine eligibility for, and the parameters of, such accommodations.

The Office of Equal Opportunity can facilitate remote participation based upon administrative need, as well as upon request.

6. ***Role of Process Advisors.*** In all proceedings covered by these Procedures, each party may choose to be accompanied by a Process Advisor to provide personal support. Regardless of University affiliation or professional license, Process Advisors may be present only to provide support to, or otherwise privately consult with, their advisee, but may not speak on behalf of their advisee or otherwise directly participate. If a Process Advisor cannot abide by the rules for participation, they will be asked to leave.
7. ***Coordination with Criminal Process (if applicable).*** The University encourages individuals who have experienced discrimination or discriminatory harassment that they believe rises to the level of criminal misconduct, including hate crimes and all forms of sexual misconduct, to consider making a report to law enforcement to assure their personal and community safety, and to become informed about their options, including the option of pursuing a criminal investigation. Individuals may pursue both a criminal investigation and an Office of Equal Opportunity resolution process, and the University can assist with making a report to Police.

The Office of Equal Opportunity will not wait for the conclusion of a criminal investigation or proceeding to begin its own process. The Office of Equal Opportunity may, however, at the discretion of the Title IX Coordinator, comply with valid requests from law enforcement for cooperation in a criminal investigation, including temporarily delaying the Office of Equal Opportunity process while law enforcement is gathering evidence. In assessing whether to temporarily delay the Office of Equal Opportunity process pursuant to a request from law enforcement, the Title IX Coordinator will consider such factors as:

- The length of the requested delay;
- The impact that such delay will cause to the involved parties and the campus community; and
- The level of impact to the criminal investigation that will occur if the requested delay is not granted.

In the event the requested delay is granted, the Office of Equal Opportunity will promptly resume and complete its process once law enforcement has completed gathering evidence and will keep the Complainant apprised of such requests to the extent permitted by law.

8. ***Decision to Proceed without Complainant Cooperation; Requests for Anonymity.*** If the Complainant is unresponsive to outreach, does not want to participate in the University process, or expresses a desire to the Office of Equal Opportunity for their identity to be kept confidential, the wishes of that individual will be followed where possible. However, the University reserves the right to take appropriate action as may be necessary to protect the safety of the campus community. The decision as to whether the University will proceed under these circumstances ultimately rests with the Title IX Coordinator.<sup>11</sup>

Requests not to pursue a resolution, the Complainant's reasonable safety or other concerns regarding initiation of an EO process, as well as requests for confidentiality, are weighed against the University's responsibility to provide a safe and nondiscriminatory environment for all members of the campus community, which necessarily includes consideration of, but is not limited to:

- The risk that additional acts of discrimination, discriminatory harassment, or sexual misconduct would occur if an investigation is not initiated;
- The severity of the alleged acts of discrimination, discriminatory harassment, and sexual misconduct, including whether the acts, if established by a preponderance of the evidence, would require the removal of a Respondent from campus or imposition of another disciplinary outcome to end the discrimination and prevent its recurrence;
- The age and relationship of the parties, including whether the respondent is an employee of the University or otherwise has supervisory responsibilities;
- The scope of the alleged acts, including information suggesting a pattern, ongoing acts, or acts impacting multiple individuals;
- The availability of evidence to assist the Investigator / Adjudicator in determining whether the alleged acts occurred;
- Whether the University could end the alleged discrimination, discriminatory harassment, or sexual misconduct and prevent its recurrence without initiating its Investigatory Resolution procedures;
- The parties' rights under the Family Educational Rights & Privacy Act (FERPA); and
- Whether the University is required to proceed by law.

After weighing the factors, if the Title IX Coordinator decides to initiate an EO process, the Title IX Coordinator will notify the Complainant prior to initiating the EO process and will address reasonable concerns about safety.

9. ***Consolidation of Complaints; Multiple Policy Violations.*** If at any point the Office of Equal Opportunity becomes aware that University policies other than the Discrimination, Harassment, and Sexual Misconduct Policy may have been violated in relation to the matter being reviewed, these concerns may also be resolved through the processes detailed here, provided doing so does not unduly delay such process. The decision to consider other alleged policy violations that the Office of Equal Opportunity becomes aware of is within the discretion of the Title IX Coordinator. The Office of Equal Opportunity may also consolidate Complaints in situations that

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<sup>11</sup> The Office of Equal Opportunity may consult with the University's Sexual Misconduct Response Team when the alleged discriminatory behavior, if true, would constitute sexual harassment or misconduct prohibited by UVM policy.

arise out of the same facts or circumstances and involve more than one Complainant, more than one Respondent, or what amount to counter-complaints by one party against the other.

10. ***Ascertaining the Identity of Unknown Complainants, Respondents and Witnesses.*** The University accepts anonymous reports of discrimination and discriminatory harassment, including sexual misconduct. However, the ability of the University to respond may be limited when the identities of individuals involved in a report of misconduct choose to remain anonymous. Distinctly, when an individual who is a complainant, respondent, or witness is unknown, the Office of Equal Opportunity will make reasonable efforts in the intake and resolution process to determine, in the context of all available information, their identities. If a complainant is able to be identified, in determining next steps, the Office of Equal Opportunity will consider their autonomy and confidentiality in accordance with the *Decision to Proceed without Complainant Cooperation; Requests for Anonymity* section above. The University will also protect the privacy of all involved in an Office of Equal Opportunity process, as detailed in the *Statement on Privacy; Requests for Anonymity* section of the Discrimination, Harassment, and Sexual Misconduct Policy.

## Contacts

Questions concerning the daily operational interpretation of this UOP should be directed to the following:	
Title(s)/Department(s):	Contact Information:
Title IX Coordinator	Emily McCarthy Office of Equal Opportunity 428 Waterman Building (802) 656-3368

## Forms/Flowcharts/Diagrams

- [Online Bias, Discrimination, & Harassment Incident Reporting Form](#)

## Related Documents/Policies

- [Discrimination, Harassment, and Sexual Misconduct](#)
- [Handling and Resolving Discrimination, Harassment, and Sexual Misconduct Complaints Involving Student Respondents – Interim](#)
- [Handling and Resolving Discrimination, Harassment, and Sexual Misconduct Complaints involving Employee Respondents – Interim](#)
- [Hearing Procedures for Title IX Offenses Involving Employee Respondents](#)
- [Equal Opportunity/Affirmative Action Policy Statement](#)
- [Equal Opportunity in Educational Programs and Activities and Non-Harassment Policy](#)
- [Sexual Conduct Education and Resource Website](#)

## Training/Education

Training related to this procedure is as follows:

<b>Training Topic:</b>	UVM Resolution of Harassment and Discrimination Incidents		
<b>Training Audience:</b>	UVM Staff and Contractors responsible for execution of procedures under this Policy	<b>Delivered By:</b>	<a href="http://www.uvm.edu/equal-opportunity/title-g-sexual-misconduct">www.uvm.edu/equal-opportunity/title-g-sexual-misconduct</a>
<b>Method of Delivery:</b>	On-line Interactive Video or In Person	<b>Frequency:</b>	Annually or as assigned

## About This Procedure

<b>Responsible Official:</b>	Chief Human Resource Officer	<b>Approval Authority:</b>	Chief Human Resource Officer
<b>Affiliated Policy Number(s):</b>	V. 4.23.11, V. 4.24.11, V. 4.30.1	<b>Effective Date:</b>	August 23, 2024
<b>Revision History:</b>	<ul style="list-style-type: none"> <li>New August 23, 2024</li> </ul>		

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*University of Vermont Policies and Operating Procedures are subject to amendment. For the official, approved, and most recent version, please visit UVM's [Institutional Policies Website](#).*