

# 600.040 Equity Resolution Process for Resolving Complaints of Discrimination, Harassment, and Sexual Misconduct against a Faculty Member

Bd. Min. 2-5-15; Amended 2-09-17 with an effective date of 3-1-17.

1. **General.** The University will promptly and appropriately respond to any complaint of violation of the University's Anti-Discrimination policies. The procedures described below apply to such complaints when the Respondent is a Faculty Member, except as noted herein. Further, when the Complaint involves allegations against the President or a Chancellor, upon consultation between the Office of the General Counsel and the System Title IX Administrator, the investigation may be conducted by an outside investigator.
2. **Jurisdiction.** Jurisdiction of the University of Missouri generally shall be limited to conduct which occurs on the University of Missouri premises or at University-sponsored or University-supervised functions. However, the University may take appropriate action, including, but not limited to, the imposition of sanctions under Section 600.040 of the collected Rules and Regulations against Faculty Members for conduct occurring in other settings, including off-campus, (1) in order to protect the physical safety of students, employees, visitors, patients or other members of the University community, or (2) if there are effects of the conduct that interfere with or limit any person's ability to participate in or benefit from the University's educational programs, activities or employment, (3) if the conduct is related to the Faculty Member's fitness or performance in the professional capacity of teacher or researcher or (4) if the conduct occurs when the Faculty Member is serving in the role of a University employee.

If a Complainant simultaneously alleges or the investigation suggests violations of the University's Anti-Discrimination Policies and (1) violation, misinterpretation, or arbitrary application of another written University rule, policy, regulation, or procedure which applies personally to the faculty member; and/or (2) that there has been an infringement on the academic freedom of the faculty member, the University shall have the authority to investigate and take appropriate action regarding each of the Complainant's allegations pursuant to this Equity Resolution Process (i.e., the Academic Grievance Procedure shall not apply). In conducting such investigations, the Provost, Title IX Coordinator, and/or their Investigator may consult with and/or seek guidance from the Human Resources staff or other appropriate administrators as necessary.

### 3. Definitions:

1. **University's Anti-Discrimination Policies.** The University's Anti-Discrimination Policies include the Equal Employment/Education Opportunity and Nondiscrimination Policy located at Section 600.010 of the Collected Rules and

Regulations and the Sex Discrimination, Sexual Harassment and Sexual Misconduct in “Employment/Education Policy located at Section 600.020 of the collected Rules and Regulations.

2. **Complainant.** “Complainant” refers to the person alleged to have been subjected to discrimination, harassment or sexual misconduct in violation of the University’s Anti-Discrimination Policies. The University may serve as the complainant when the person alleged to have been subjected to discrimination, harassment or sexual misconduct in violation of the University’s Anti-Discrimination Policies chooses not to act as the complainant in the resolution process or requests that the complaint not be pursued. If the University decides to pursue a claim of discrimination by a visitor, third party or applicant through the applicable equity resolution process, the University will act as the Complainant. Former University Faculty or Staff members may act as the complainant in the applicable equity resolution process only when their employment is terminated and they allege that the termination of employment was discriminatory. For any other allegations of discrimination by former University Faculty or Staff members, the University will investigate and appropriately respond to complaints of violation of the University’s Anti-Discrimination policies and if the University decides to pursue a claim of discrimination through the applicable equity resolution process, the University will act as the Complainant.
3. **Respondent.** The Faculty Member or Members alleged to have violated the University’s Anti-Discrimination Policies.
4. **Faculty Member.** For purposes of Section 600.040, Faculty Member includes all regular and non-regular academic staff appointments as defined in Section 310.020 and 310.035 of the Collected Rules and Regulations.
5. **Complaint.** Any verbal or written communication or notice of an alleged violation of the University’s Anti-Discrimination Policies.
6. **Advisors.** The individuals selected by the Complainant and the Respondent to provide support and guidance throughout the Equity Resolution Process. Each Party is allowed one Advisor.
7. **Investigators.** Investigators are trained individuals appointed by the Equity Officer or Title IX Coordinator (or their designee) to conduct investigations of the alleged violations of the University’s Anti-Discrimination Policies.
8. **Equity Officer.** The Equity Officer is a trained administrator designated by the Chancellor (or Designee) to receive and assist with the investigation and resolution of reports or complaints regarding violation of the University’s Anti-Discrimination Policies. All references to “Equity Officer” throughout this policy refer to the Equity Officer or the Equity Officer’s designee.
9. **Title IX Coordinator.** The Title IX Coordinator is a trained administrator designated by the Chancellor (or Designee) to receive and assist with the investigation and resolution of reports or complaints regarding violation of the University’s Sex Discrimination, Sexual Harassment and Sexual Misconduct in Employment/Education Policy. All references to “Title IX Coordinator” throughout this policy refer to the Title IX Coordinator or the Title IX Coordinator’s designee.
10. **Equity Resolution Hearing Panelists Pool (“Hearing Panelist Pool”).** A group of at least ten (10) faculty and ten (10) administrators and/or staff selected by the Chancellor (or Designee) to serve as hearing panel members in the Hearing Panel Resolution. The faculty hearing panel members selected by the Chancellor (or Designee) shall be selected from a list of no less than twenty (20) faculty members proposed by the faculty council/senate.
11. **Equity Resolution Hearing Panel (“Hearing Panel”).** A group of three (3) trained Equity Resolution Hearing Panelist Pool members who serve as the Hearing Panel for a specific Complaint. Whenever possible, the panel will include at least one faculty member and one administrator or staff member.
12. **Hearing Panelist Pool Chair (“Pool Chair”).** The Hearing Panelist Pool Chair is selected by the Chancellor (or Designee). The Pool Chair assigns and coordinates the hearing panel members to serve on the Hearing Panel for a specific Complaint

and designates the Chair of the Hearing Panel for a specific Complaint. The Pool Chair may serve as a panel member or the Chair of the Hearing Panel for a specific Complaint.

13. **Chair of the Hearing Panel (“Panel Chair”).** A Chair of the Hearing Panel for a specific Complaint is designated by the Hearing Panelist Pool Chair. The Pool Chair may serve as the Chair of the Hearing Panel for a specific Complaint.
  14. **Summary Resolution.** Resolution of the complaint upon a determination by the Equity Officer or Title IX Coordinator that there is an insufficient basis to proceed with the complaint that the Respondent violated the University’s Anti-Discrimination Policies.
  15. **Conflict Resolution.** Resolution using alternative dispute resolution mechanisms such as mediation, facilitated dialogue or restorative justice.
  16. **Administrative Resolution.** Resolution of a Complaint by the Provost making the finding on each of the alleged policy violations and the finding on sanctions.
  17. **Hearing Panel Resolution.** Resolution of a Complaint by an Equity Resolution Hearing Panel making the finding on each of the alleged policy violations and recommending sanctions, and the Provost making the finding on sanctions.
  18. **Record of the Case in Section 600.040 Process.** The Record of the Case in the Section 600.040 Process includes, when applicable: Letter(s) of notice, exhibits, hearing record (an audio, video, digital or stenographic record of the hearing); the finding on each of the alleged policy violations by either the Hearing Panel, the Provost (or Designee) or Title IX Coordinator; the recommendation of sanctions by the Hearing Panel, the Provost (or Designee) or Title IX Coordinator; the recommendation of sanctions by the Hearing Panel (or Provost’s Designee); the finding of sanctions by the Provost; and the decision on the appeal, if applicable.
  19. **Parties.** The Complainant and the Respondent are collectively referred to as the Parties.
4. **Filing a Complaint.** Any student, employee, volunteer, visitor, or patient who believes that a Faculty Member has violated the University’s Equal Employment/Education Opportunity and Nondiscrimination Policy should report the complaint to the Equity Officer. Any student, employee, volunteer, visitor, or patient who believes that a Faculty Member has violated the Sex Discrimination, Sexual Harassment, and Sexual Misconduct in Employment/Education Policy should report the complaint to the Title IX Coordinator. Complainants may also contact campus police if the alleged offense may also constitute a crime. In order to foster reporting and participation, the University may provide amnesty to Complainants and witnesses accused of minor student conduct violations ancillary to the incident.
  5. **Preliminary Investigation.** Upon receiving the complaint, the Equity Officer or Title IX Coordinator shall conduct a preliminary investigation. The purpose of the preliminary investigation is to gather enough information to make a threshold decision regarding whether the complaint describes a possible violation of the University’s Anti-Discrimination policies. If the complaint describes a possible violation, the Equity Officer or Title IX Coordinator will refer the matter to the appropriate procedural process and provide appropriate interim remedies. If the Complaint does not describe a possible violation, the matter will be referred to the appropriate non-equity process. Under those circumstances, the Equity Officer or Title IX Coordinator may counsel and suggest monitoring or training opportunities to correct for inappropriate behavior that does not rise to the level of a violation. The preliminary investigation shall be conducted promptly (typically within 7-10 business days of receiving the Complaint). At the conclusion of the preliminary investigation, the Equity Officer or Title IX Coordinator will provide the Complainant with written information regarding the appropriate procedural process and interim remedies, if any.

6. **Interim Remedies.** During the Equity Resolution Process and prior to a finding whether the alleged violation has occurred, the Equity Officer of Title IX Coordinator, in consultation with the Provost (or Designee) when directly impacting a Faculty Member, may provide interim remedies including, but not limited to, one or more of the following:

1. Referral and facilitating contact for the Complainant to on- or off-campus counseling, medical services and/or mental health services.
2. Implementing contact limitations on the Respondent or on all Parties.
3. Referral of the Complainant to victim advocacy and support services either on and/or off-campus.
4. Adjusting the extracurricular activities, work schedules, work assignments, supervisory responsibilities, or work arrangements of the Complainant and/or the Respondent, as appropriate.
5. If the Complainant is a student:
  1. Referral of the Complainant to academic support services and any other services that may be beneficial to the Complainant.
  2. Adjusting the courses, assignments, exam schedules of the Complainant and/or the Respondent.
  3. Altering the on-campus housing assignments, dining arrangements, or other campus services for either the Complainant and/or the Respondent.
6. Providing transportation accommodations for the Complainant.
7. Informing the Complainant of the right to notify law enforcement authorities of the alleged incident and offering to help facilitate such a report.
8. Implementing leave from work with pay for the Complainant and/or Respondent.
9. Implementing suspension from campus with pay for the Respondent.

7. **Employees and Students Participating in the Equity Resolution Process.** All University employees and students must be truthful when making any statement or providing any information or evidence to the University throughout the process, including to the Investigator, the Provost (or Designee), the Equity Officer, the Title IX Coordinator, the Hearing Panel and/or the Chancellor (or Designee), and all documentary evidence must be genuine and accurate. False statements, fraudulent evidence or refusal to cooperate with the Investigator, the Provost, the Title IX Coordinator, the Hearing Panel and/or the Chancellor (or Designee) by an employee may be the basis for personnel action or by a student may be the basis for student conduct action pursuant to Section 200.010.B.14 or other provisions of Section 200.010. However, this obligation does not supersede nor expand any rights the individual may have under applicable state or federal statutory law or the U.S. Constitution. Nothing in this provision is intended to require a Complainant to participate in the process.

No employee or student, directly or through others, should take any action which may interfere with the investigation. Employees and students are prohibited from attempting to or actually intimidating or harassing any potential witness. Failure to adhere to these requirements may lead to disciplinary action, up to and including expulsion or termination.

8. **Rights of the Complainant in the Equity Resolution Process**

1. To be treated with respect by University officials.

2. To be free from retaliation.
3. To have access to campus support resources (such as counseling and mental health services and University health services).
4. To have an Advisor of the Complainant's choice accompany the Complainant to all interviews, meetings and proceedings throughout the Equity Resolution Process.
5. To refuse to have an allegation resolved through Conflict Resolution or Administrative Resolution Processes.
6. To have an opportunity to present a list of potential witnesses and provide evidence to the Investigator.
7. To have Complaints heard in substantial accordance with these procedures.
8. When the Complainant is not the reporting Party, the Complainant has full rights to participate in any Equity Resolution Process.
9. To be informed in writing of the finding, rationale, sanctions and remedial actions.
10. To report the matter to law enforcement (if applicable) and to have assistance in making that report.
11. To have an opportunity to appeal the findings and sanctions.
12. Additional Rights For Hearing Panel Resolution:
  1. To receive notice of a hearing.
  2. To have the names of witnesses that may participate in the hearing and copies of all pertinent documentary evidence and any investigative report at least five (5) business days prior to the hearing. In the event the Hearing Panel becomes aware of additional witnesses or pertinent documentary evidence less than five (5) business days prior to the scheduled hearing date (or continued hearing date), the Complainant shall be provided reasonable notice of such witnesses and reasonable time to review pertinent documentary evidence prior to their introduction.
  3. To be present at the hearing, which right may be waived by either written notification to the Hearing Panel Chair or by failure to appear.
  4. To request alternative attendance or questioning mechanisms for the hearing (e.g.: screens, Skype, questions directed through the Chair, etc.).
  5. To have present an Advisor during the hearing and to consult with such Advisor during the hearing.
  6. To testify at the hearing or refuse to testify at the hearing.
  7. To present witnesses and documents deemed relevant by the Chair.
  8. To question witnesses present and testifying at the hearing. See Section 600.040.N. below for limitations on directly questioning the Respondent.

**9. Rights of the Respondent in the Equity Resolution Process:**

1. To be treated with respect by University officials.
2. To have access to campus support resources (such as counseling and mental health services and University health services), unless removed from campus pending the completion of the process.
3. To have an Advisor of the Respondent's choice accompany the Respondent to all meetings and proceedings throughout the Equity Resolution Process.
4. To refuse to have an allegation resolved through Conflict Resolution or Administrative Resolution Processes.
5. To have an opportunity to present a list of potential witnesses and provide evidence to the Investigator.

6. To receive notice of the policies alleged to have been violated.
7. To have Complaints heard in substantial accordance with these procedures.
8. To be informed in writing of the finding, rationale and sanctions.
9. To have an opportunity to appeal the findings and sanctions.

10. Additional Rights For Hearing Panel Resolution:

1. To receive notice of the hearing.
2. To have the names of witnesses that may participate in the hearing and copies of all pertinent documentary evidence and any investigative report at least five (5) business days prior to the hearing. In the event the Hearing Panel becomes aware of additional witnesses or pertinent documentary evidence less than five (5) business days prior to the scheduled hearing date (or continued hearing date), the Complainant shall be provided reasonable notice of such witnesses and reasonable time to review pertinent documentary evidence prior to their introduction.
3. To be present at the hearing, which right may be waived by either written notification to the Hearing Panel Chair or by failure to appear.
4. To request alternative attendance or questioning mechanisms for the hearing (e.g.: screens, Skype, questions directed through the Chair, etc.).
5. To have present an Advisor during the hearing and to consult with such Advisor during the hearing.
6. To testify at the hearing or refuse to testify at the hearing.
7. To present witnesses and documents deemed relevant by the chair.
8. To question witnesses present and testifying at the hearing. See Section 600.040.N. below for limitations on directly questioning the Complainant.

10. **Role of Advisors.** Each complainant and Respondent is allowed to have one Advisor of their choice present with them for all Equity Resolution Process interviews, meetings and proceedings. The Parties may select whoever they wish to serve as their Advisor, including an attorney. An Advisor is not required and any Party may elect to proceed without an Advisor. If the Complainant is a student, the student Complainant may request that the Equity Officer or Title IX Coordinator assign a trained Advisor to provide support throughout the Equity Resolution Process. University trained Advisors are administrators, faculty, or staff at the University trained on the Equity Resolution Process. The Complainant may not require that the assigned Advisor have specific qualifications such as being an attorney.

The Advisor may not make a presentation or represent the Complainant or the Respondent during the hearing. At the hearing, the Parties are expected to ask and respond to questions on their own behalf, without representation by their Advisor. The Advisor may consult with the advisee quietly or in writing, or outside the hearing during breaks, but may not speak on behalf of the advisee to the hearing panelists. Advisors who do not follow these guidelines will be warned or dismissed from the hearing at the discretion of the Chair.

11. **Investigation.** If, following the preliminary investigation, a Complainant or the University wants to pursue a formal investigation, then the Equity Officer or Title IX Coordinator (depending on the nature of the Complaint) will promptly appoint a trained Investigator or a team of trained investigators to investigate. Within ten (10) business days after commencement of the formal investigation, the Investigator(s) will provide the Parties with written notice identifying the nature of the allegation(s) against the Respondent and

stating that an investigation has commenced, either: (1) in person, (2) by email only to the Party's University-issued email account if the Party has consented in writing to receipt of all notifications by email; or (3) mailed to the mailing address of the respective Party as indicated in the official University records and emailed to the Party's University-issued email account. If there is no local address on file, mail will be sent to the Party's permanent address. Notice is presumptively deemed delivered, when: 1) provided in person 2) emailed to the individual (when prior consent – whether electronically or in writing – has been given to receipt of all notifications by email) or 3) when mailed and emailed.

The Parties are allowed to have an Advisor of their choice present with them for all Equity Resolution Process interviews, meetings and proceedings in which they participate. All investigations will be thorough, reliable and impartial. The Investigator(s) will make reasonable efforts to include the interviews with the Parties and relevant witnesses, obtain available evidence and identify sources of expert information, if necessary. The Investigator(s) will provide an investigative report to the Equity Officer or Title IX Coordinator (depending on the nature of the Complaint). This report may contain the Investigator's observations regarding the credibility of the complainant, the Respondent, and any witnesses interviewed.

The investigation of reported misconduct should be completed expeditiously, normally within thirty (30) business days of the Equity Officer or Title IX Coordinator's decision to accept the complaint for formal investigation. Investigation of a Complaint may take longer based on the nature and circumstances of the complaint. A delay may also occur when criminal charges on the basis of the same behaviors that invoke this process are being investigated, to allow for evidence collection by the law enforcement agency. University action will not typically be altered or precluded on the grounds that civil cases or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

12. **Summary Resolution.** During or upon the completion of investigation, the Equity Officer or Title IX Coordinator will review the investigation, which may include meeting with the Investigator(s). The investigative report is not provided to the Parties during the Summary Resolution, but is provided to the Parties at either the Administrative Resolution or Hearing Panel Resolution. Based on that review, the Equity Officer or Title IX Coordinator will make a summary determination whether, based on the evidence gathered, there is a sufficient basis to proceed with the Complaint that the Respondent is responsible for violating the University's Anti-Discrimination Policies.

If the Equity Officer or Title IX Coordinator determines there is a sufficient basis to proceed with the Complaint, then the Equity Officer or Title IX Coordinator will direct the process to continue. The Complaint will then be resolved through one of three processes: Conflict Resolution, Administrative Resolution, or Hearing Panel Resolution. There is no right to request reconsideration or appeal the summary determination to continue the process.

If the Equity Officer or Title IX Coordinator determines that there is an insufficient basis to proceed with the Complaint, then the process will end and the Complainant and Respondent will be sent written notification of the determination. The Equity Officer or Title IX Coordinator may counsel and suggest monitoring or training opportunities to correct for inappropriate behavior that does not rise to the level of a violation.

The Complainant may request that the Chancellor (or Designee) reconsider the summary determination ending the process by filing a written request with the Chancellor within five (5) business days of notice of the summary determination. If the Chancellor (or Designee) decides there is a sufficient basis to proceed with the Complaint, the Chancellor (or Designee) will reverse the determination ending the process and direct the process to continue. The Complaint will then be resolved through one of three

processes: Conflict Resolution, Administrative Resolution, or Hearing Panel Resolution. This determination to continue the process lies in the sole discretion of the Chancellor (or Designee) and such determination is final. Further appeal of such determination is not permitted.

If the Chancellor (or Designee) agrees with the summary determination ending the process by the Equity Officer or Title IX Coordinator and that there is not a sufficient basis to proceed with the Complaint, then the process will end and the Complainant and the Respondent will be sent written notification of the determination. This determination to end the process lies in the sole discretion of the Chancellor (or Designee) and such determination is final. Further appeal of such determination is not permitted.

13. **Conflict Resolution.** Either Party may request Conflict Resolution at any time during the Equity Resolution Process, including during the preliminary investigation. Upon receiving such a request, or of their own accord, the Equity Officer or Title IX Coordinator will determine if conflict resolution is appropriate, based on the willingness of the Parties, the nature of the conduct at issue and the susceptibility of the conduct to the Conflict Resolution. Conflict Resolution is often used for less serious, yet inappropriate behaviors and is encouraged as an alternative to the Administrative and Hearing Panel Resolution processes to resolve conflicts. Mediation is never utilized in cases involving allegations of nonconsensual sexual intercourse or nonconsensual sexual contact. It is not necessary to pursue Conflict Resolution prior to pursuing either the Administrative or Hearing Panel Resolution Process and either party can stop the Conflict Resolution process at any time and request either the Administrative Resolution or Hearing Panel process.

In a Conflict Resolution meeting, a neutral, University-assigned facilitator will foster a dialogue with the Parties to an effective resolution, if possible. The Complainant's and the Respondent's Advisor may attend the Conflict Resolution meeting. The Equity Officer or Title IX Coordinator will keep records of any resolution that is reached, and failure to abide by the agreed upon resolution may result in sanctions. In the event the Parties are unable to reach a mutually agreeable resolution, the investigation will be referred to the Administrative Resolution or Hearing Panel Process as appropriate. The content of the Parties' discussions during the conflict Resolution Process will be kept confidential in the event the matter proceeds to the Administrative Resolution or Hearing Panel Processes. The Parties' agreement to participate in, refusal to participate in, or termination of participation in Conflict Resolution shall not be factors in any subsequent decisions regarding whether a policy violation occurred.

14. **Procedural Details for Administrative Resolution and Hearing Panel Resolution.** For both the Administrative Resolution and Hearing Panel Resolution, which are described in more detail below, the following will apply:
1. The standard of proof will be "preponderance of the evidence," defined as determining whether evidence shows it is more likely than not that a policy violation occurred.
  2. The decision maker (i.e., the Investigator, Provost or Designee and/or Hearing Panel Chair) has the discretion to determine the relevance of any witness or documentary evidence and may exclude information that is irrelevant, immaterial, cumulative, or more prejudicial than informative. In addition, the following rules shall apply to the introduction of evidence:
    1. Questioning or evidence about the Complainant's prior sexual conduct is not permitted, though the decision maker may grant a limited exception in regards to the sexual history between the Parties, if deemed relevant.
    2. Character evidence is information that does not directly relate to the facts at issue, but instead reflects upon the reputation, personality, or qualities of an individual, including honesty. Such evidence regarding either the Complainant or the Respondent's character is of limited utility and shall not be admitted unless deemed relevant by the decision maker.

3. Incidents or behaviors of the Respondent not directly related to the possible violation(s) will not be considered unless they show a pattern of related misconduct. History of related misconduct by the Respondent that shows a pattern may be considered only if deemed relevant by the decision maker.
3. The Respondent may not directly question the Complainant and the Complainant may not directly question the Respondent. However, if both Complainant and Respondent request the opportunity, direct questioning between the Parties will be permitted in the Hearing Panel Resolution Process. Otherwise written questions will be directed to the Chair in the Hearing Panel Resolution Process, and those questions deemed appropriate and relevant will be asked on behalf of the requesting Party.
4. In the Administrative Resolution Process, the Respondent and the Complainant may provide a list of questions for the Provost to ask the other Party. If those questions are deemed appropriate and relevant, they may be asked on behalf of the requesting Party.
5. The Administrative Resolution process may be used when both Parties elect to resolve the Complaint using the Administrative Resolution Process.
6. At any time prior to the deadline in the Notice of Administrative Resolution, the Complainant and/or the respondent may request that the Complaint shift from the Administrative Resolution process to the Hearing Panel Resolution process. Upon receipt of such timely request from either Party, the Complaint will shift to the Hearing Panel Resolution Process.
7. The Resolution Processes will proceed regardless of whether the Respondent chooses to participate in the investigation, the finding or the hearing.
8. The Administrative Resolution or Hearing Panel Resolution Process will normally be completed within sixty (60) business days of the Equity Officer or Title IX Coordinator's decision to accept the Complaint for formal investigation. Deviations from this timeframe will be promptly communicated to both Parties.
9. For good cause, the Provost in the Administrative Resolution Process and the Chair of the Hearing Panel Resolution Process may, in their discretion, grant reasonable extensions to the time frames and limits provided.

#### **15. Administrative Resolution:**

1. Administrative Resolution by the Provost (or Designee) can be pursued for any behavior that falls within the University's Anti-Discrimination Policies. Administrative Resolution may be used when both Parties elect to resolve the Complaint using the Administrative Resolution Process.
2. The Administrative Resolution process consists of:
  1. A prompt, thorough and impartial investigation;
  2. A finding by the Provost (or Designee) on each of the alleged policy violations; and
  3. A finding by the Provost on sanctions for findings of responsibility.
3. At least fourteen (14) business days prior to meeting with the Provost (or Designee) or if no meeting is requested, at least fourteen (14) business days prior to the Provost (or Designee) rendering a finding(s) (or as far in advance as is reasonably possible if an accelerated resolution process is scheduled with the consent of the Parties), the Provost (or Designee) will send a letter (Notice of Administrative Resolution) to the Parties with the following information:
  1. A description of the alleged violation(s) and applicable policy or policies that are alleged to have been violated.
  2. Reference to or attachment of the applicable procedures.
  3. A copy of the investigative report.

4. The option and deadline of ten (10) business days from the date of the notice to request a meeting with the Provost (or Designee).
  5. An indication that the Parties may have the assistance of an Advisor of their choosing at the meeting, though the Advisor's attendance at the meeting is the responsibility of the respective Parties.
  6. The option and the deadline of ten (10) business days from the date of the notice to request in writing that the matter be referred to the Hearing Panel Resolution process. If neither Party requests the Hearing Panel Resolution Process within the required time period, the matter will be decided through the administrative Resolution Process and the right to the Hearing Panel Resolution Process is waived.
4. Within ten (10) business days from the date of the Notice of Administrative Resolution, the Parties have the right to have the matter referred to the Hearing Panel Resolution Process. If neither Party requests the Hearing Panel Resolution Process within the required time period, the matter will be decided through the Administrative Resolution Process and the right to the Hearing Panel Resolution Process is waived.
  5. The Investigator(s) will provide an investigative report to the Provost (or Designee) and Parties. This report may include the Investigator's observations regarding the credibility of the Complainant, the Respondent, and any witnesses interviewed.
  6. The Provost (or Designee) can, but is not required to, meet with and question the Investigator and any identified witnesses. The Provost (or Designee) may request that the Investigator conduct additional interviews and/or gather additional information. The Provost (or Designee) will attempt to meet separately with the Complainant and the Respondent to review the alleged policy violations and the investigative report. The Respondent may choose to admit responsibility for all or part of the alleged policy violations at any point in the process. If the Respondent admits responsibility, in whole or in part, the Provost (or Designee) will render a finding that the individual is in violation of University policy for the admitted conduct. For any disputed violations, the Provost (or Designee) will render a finding utilizing the preponderance of the evidence standard. The Provost's Designee may recommend appropriate sanctions and remedial actions but only the Provost will find sanctions or remedial actions. The findings and sanctions are subject to appeal.
  7. The Provost (or Designee) will inform the Respondent and the Complainant of the finding of each of the alleged policy violations and the finding on sanctions, if applicable, in writing within five (5) business days of the findings, without significant time delay between notifications. The Notification will be made in writing and will be delivered either: (1) in person, (2) by email only to the Party's University-issued email account if the Party has consented in writing to receipt of all notifications by email; or (3) mailed to the mailing address of the respective Party as indicated in the official University records and emailed to the Party's University-issued email account. If there is no local address on file, mail will be sent to the Party's permanent address. Notice is presumptively deemed delivered, when: 1) provided in person; 2) emailed to the individual (when prior consent – whether electronically or in writing – has been given to receipt of all notifications by email) or 3) when mailed and emailed.

## 16. Hearing Panel Resolution

1. **Equity Resolution Hearing Panelist Pool.** The University will create and annually train a pool of not less than ten (10) faculty and ten (10) administrators and/or staff to serve as hearing panel members in the Hearing Panel Resolution Process. The faculty hearing panel members selected by the Chancellor (or Designee) shall be selected from a list of no less than twenty (20) faculty members proposed by the faculty council/senate. Panelists are selected by the Chancellor (or Designee) and serve a renewable one-year term. Panelist selections should be made with attention to representation of groups protected by the University's Anti-Discrimination Policies. The Chancellor (or Designee) will select a Hearing Panelist Pool Chair ("Pool Chair"). The Pool chair assigns and coordinates the hearing panel members to serve on the Hearing Panel for a specific

Complaint and designates the Chair of the Hearing Panel for a specific Complaint. The Pool Chair may serve as a panel member or the chair of the Hearing Panel for a specific Complaint.

Administrators, faculty, and staff will be removed from the Hearing Panelist Pool if they fail to satisfy the annual training requirements, as determined by the Equity Officer or Title IX Coordinator. Under such circumstances, the Equity Officer or Title IX Coordinator will notify the chancellor (or Designee), who will inform the administrator, faculty, or staff member of the discontinuation of their term.

2. **Equity Resolution Hearing Panel (“Hearing Panel”).** When a Complaint is not resolved through the Administrative Resolution Process, the Hearing Panelist Pool Chair will assign three (3) members from the Hearing Panelist Pool to serve on the specific Hearing Panel and will also designate the Chair of the Hearing Panel. The Hearing Panel will include at least one faculty member and one administrator or staff member. Up to two (2) alternates may be designated to sit in throughout the process as needed. The Chair of the Hearing Panel helps ensure that the process adheres materially to the procedural elements of the Hearing Panel Resolution Process. The institution reserves the right to have its attorney or attorneys present during the hearing.
3. **Notice of Hearing.**
  1. At least fourteen (14) business days prior to the hearing, or as far in advance as is reasonably possible if an accelerated resolution process is scheduled with the consent of the Parties, the Provost (or Designee) will send a letter to the Parties with the following information:
    - (1) A description of the alleged violation(s) and applicable policy or policies that are alleged to have been violated.
    - (2) Reference to or attachment of the applicable procedures.
    - (3) An indication that the Parties may have the assistance of an Advisor of their choosing, at the hearing, though the Advisor’s attendance at the hearing is the responsibility of the respective Parties.
    - (4) The time, date and location of the hearing.
    - (5) A list of the names of each of the Hearing Panel members and alternates.
    - (6) A copy of the preliminary investigative report or summary.
  2. This Notice of Hearing letter will be made in writing and will be delivered either: (1) in person, (2) by email only to the Party’s University-issued email account if the Party has consented in writing to receipt of all notifications by email; or (3) mailed to the mailing address of the respective party as indicated in the official University records and emailed to the Party’s University-issued email account. If there is no local address on file, mail will be sent to the Party’s permanent address. Notice is presumptively deemed delivered, when: 1) provided in person 2) emailed to the individual (when prior consent – whether electronically or in writing – has been given to receipt of all notifications by email) or 3) when mailed and emailed.
4. **Pre-Hearing Witness List and Documentary Evidence.**
  1. At least seven (7) business days prior to the hearing, the Complainant and Respondent will provide to the Investigator a list of the names of the proposed witnesses and copies of all proposed documentary evidence. At least five (5) business days prior to the hearing, the Investigator will have the names of proposed witnesses, copies of all pertinent documentary evidence and a copy of the investigative report available for the Complainant and the Respondent, and a copy of the same will be sent to the Hearing Panel Chair.

2. No employee or student, directly or through others, should take any action which may interfere with the investigation or hearing procedures. Employees and students are prohibited from attempting to or actually intimidating or harassing any potential witness. Failure to adhere to these requirements may lead to disciplinary action, up to and including expulsion or termination.

**5. Objection to or Recusal of Hearing Panel Member.**

1. In addition, the Parties will be given a list of names of each of the Hearing Panel members at least fourteen (14) business days in advance of the hearing. Should any Complainant or Respondent object to any panelist, they must raise all objections, in writing, to the Hearing Panelist Chair at least seven (7) business days prior to the hearing.
2. Upon receipt, the investigator will forward to the Hearing Panelist Pool Chair any written objection by the Complainant or the Respondent to any hearing panel member. Hearing Panel members will only be unseated and replaced if the Hearing Panelist Pool Chair concludes that good cause exists for the removal of a panel member. Good cause may include, but is not limited to, bias that would preclude an impartial hearing or circumstances in which the panel member's involvement could impact the Party's work or learning environment due to current or potential interactions with the panel member (e.g., a panel member being in the same department as either Party). Additionally, any panel member or Chair of the Hearing Panel who feels they cannot make an objective determination must recuse themselves from the proceedings in advance of the hearing.

**6. Request for Alternative Attendance or Questioning Mechanisms.** The Chair of the Hearing Panel, in consultation with the Parties and investigators, may decide in advance of the hearing that certain witnesses do not need to be physically present if their testimony can be adequately summarized by the Investigator(s) in the investigative report or during the hearing. All Parties will have ample opportunity to present facts and arguments in full and question all present witnesses during the hearing, though formal cross-examination is not used between the Parties. If alternative attendance or questioning mechanisms are desired (e.g., screens, Skype, questions directed through the Chair, etc.), the Parties should request them from the Chair at least two (2) business days prior to the hearing. The University will make reasonable accommodations for both Parties in keeping with the principles of equity and fairness.

**7. Requests to Reschedule the Hearing Date.** For good cause, the Chair of the Hearing Panel may grant requests to reschedule the hearing date.

**8. Conduct of Hearing.** The Chair of the Hearing Panel ("Chair" in this subsection) shall preside at the hearing, call the hearing to order, call the roll of the Hearing Panel and alternates in attendance, ascertain the presence or absence of the Investigator, the Complainant and the Respondent, confirm receipt of notice of hearing, report any extensions requested or granted and establish the presence of any Advisors. Formal rules of evidence shall not apply.

1. **Investigator's Report and Testimony.** The Investigator(s) will first present the written investigative report and may give a narrative report of the investigation, and then be subject to questioning by the Complainant, the Respondent and the Hearing Panel. The Investigator(s) may also call witnesses who will be subject to questioning by the Investigator, the Complainant, the Respondent and the Hearing Panel. The Investigator may also submit documentary evidence. The investigator(s) will remain present during the entire hearing process.
2. **Complainant's Evidence.** The Complainant may give testimony and be subject to questioning by the Investigator, the Respondent (through the chair as discussed in Section 600.040.N.6 above) and the Hearing Panel. The Complainant may also call and question witnesses who may also then be questioned by the Respondent, the Investigator and the Hearing Panel. The Complainant may also submit documentary evidence.

3. **Respondent's Evidence.** The Respondent may give testimony and be subject to questioning by the Investigator, the Complainant (through the Chair as discussed in Section 600.040.N above) and the Hearing Panel. The Respondent may also call and question witnesses who may also then be questioned by the Complainant, the Investigator and the Hearing Panel. The Respondent may also submit documentary evidence.
4. **Record of Hearing.** The Chair of the Hearing Panel shall arrange for recording of the hearing, whether by audio, video, digital or stenographic means. The recording of the hearing will become part of the Record of the Case in the Section 600.040 Process.

#### **9. Rights of the Hearing Panel.**

1. The relevancy and admissibility of any evidence offered at the hearing shall be determined by the Chair, whose ruling shall be final unless the Chair shall present the question to the Hearing Panel at the request of a member of the Hearing Panel, in which event, the ruling of the Hearing Panel by majority vote shall be final.
2. To question witnesses or evidence introduced by the Investigator, the Complainant or the Respondent at any time during the hearing process.
3. To call additional witnesses and submit documentary evidence.
4. To exclude a witness proposed by the Investigator, the Complainant or the Respondent if it is determined their testimony would be redundant or not relevant.
5. To dismiss any person from the hearing who interferes with or obstructs the hearing or fails to abide by the rulings of the Chair of the Hearing Panel ("Chair" in this subsection).
6. To arrange for alternative attendance or questioning mechanisms for either Party or any witness at the hearing (e.g.: screens, Skype, questions directed through the Chair, etc.).
7. To have present a legal advisor to the Hearing Panel, who shall be designated by the Office of the General Counsel.
8. To have the names of witnesses that may be called by the Investigator, the Complainant and the Respondent, all pertinent documentary evidence that may be introduced by those Parties, and a complete copy of the investigative report at least five (5) business days prior to the hearing.

Procedural questions which arise during the hearing and which are not covered by these general rules shall be determined by the Chair, whose ruling shall be final unless the Chair shall present the question to the Hearing Panel at the request of a member of the Hearing Panel, in which event, the ruling of the Hearing Panel by majority vote shall be final.

#### **10. Findings.**

1. The Hearing Panel will deliberate with no others present, except any legal advisor to the Hearing Panel, to find whether the Respondent is responsible or not responsible for the policy violation(s) in question. The panel will base its finding on a preponderance of the evidence (i.e., whether it is more likely than not that the Respondent committed each alleged violation). If a Respondent is found responsible by a majority of the panel, the panel will recommend appropriate sanctions.
2. The Hearing Panel Chair will prepare a written panel report and deliver it to the Provost (or Designee) detailing the finding, how each member voted, the information cited by the panel in support of its finding and any information the Hearing Panel excluded from its consideration and why. If the Respondent is found responsible, the report should

conclude with recommended sanctions. This report should be submitted to the Provost (or Designee) within five (5) business days of the end of deliberations. Deviation from the five-day period will be communicated to the Parties, and the Provost (or Designee), along with an expected time for completion.

3. The Provost (or Designee) will inform the Respondent and the Complainant of the hearing panel report and the Provost's finding of sanctions, if applicable, within five (5) business days of receipt of the panel report, without significant time delay between notifications. Notification will be made in writing and will be delivered either: (1) in person, (2) by email only to the Party's University-issued email account if the Party has consented in writing to receipt of all notifications by email; or (3) mailed to the mailing address of the respective Party as indicated in the official University records and emailed to the party's University-issued email account. If there is no local address on file, mail will be sent to the Party's permanent address. Notice is presumptively deemed delivered, when: 1) provided in person 2) emailed to the individual (when prior consent – whether electronically or in writing – has been given to receipt of all notifications by email) or 3) when mailed and emailed.

## 17. Sanctions.

1. If the Respondent is found responsible for a violation of the University's Anti-Discrimination Policies, the Hearing Panel (or Designee when used in the Administrative Resolution Process) will recommend sanctions and remedial actions. The Provost will make and enforce the finding of sanctions and remedial actions.
  1. Factors Considered When Finding Sanctions/Remedial Actions include but are not limited to:
    - (1) The nature, severity of, and circumstances surrounding the violation;
    - (2) The disciplinary history of the Respondent;
    - (3) The need for sanctions/remedial actions to bring an end to the discrimination, harassment and/or retaliation;
    - (4) The need for sanctions/remedial actions to prevent the future recurrence of discrimination, harassment and/or retaliation; and
    - (5) The need to remedy the effects of the discrimination, harassment and/or retaliation on the Complainant and the University community.
  2. **Types of Sanctions.** The following sanctions may be imposed upon any Faculty Member found to have violated the University's Anti-Discrimination Policies. Multiple sanctions may be imposed for any single violation. Sanctions include but are not limited to:
    - (1) Warning - verbal or written;
    - (2) Performance Improvement Plan;
    - (3) Required counseling;
    - (4) Required training or education;
    - (5) Loss of annual pay increase;
    - (6) Loss of supervisory responsibility;
    - (7) Recommendation of discipline in a training program, including recommendation of termination, suspension or other corrective or remedial actions;
    - (8) For Non-Regular Faculty, immediate termination of term contract and employment;
    - (9) For Regular, Untenured Faculty, immediate termination of term contract and employment. Notice of not reappointing would not be required;
    - (10) Suspension without pay (while the appeal is pending this is a suspension with pay);

(11) Non-renewal of appointment; and

(12) For Regular, Tenured Faculty, suspension without pay (while the appeal is pending, but not for the duration of the dismissal for cause proceedings, this is a suspension with pay), removal from campus and referral to the Chancellor to initiate dismissal for cause as detailed in Section 310.060 of the Collected Rules and Regulations.

3. **Remedial Actions.** The following remedial actions may also be imposed to address the effects of the violation(s) of the University's Anti-Discrimination Policies on the Complainant. Such remedial actions will vary depending on the circumstances of the policy violation(s), but may include:

(1) Where the Complainant is a student:

- (a) Permitting the student to retake courses;
- (b) Providing tuition reimbursement;
- (c) Providing additional academic support;
- (d) Removal of a disciplinary action; and
- (e) Providing educational and/or on-campus housing accommodations.

(2) Where the Complainant is an employee:

- (a) Removal of a disciplinary action;
- (b) Modification of a performance review;
- (c) Adjustment in pay;
- (d) Changes to the employee's reporting relationships; and
- (e) Workplace accommodations.

In addition, the University may offer or require training and/or monitoring as appropriate to address the effects of the violation(s) of the University's Anti-discrimination Policies.

4. **When Implemented.** Sanctions and remedial actions are implemented immediately by the Provost unless the Chancellor stays their implementation pending the outcome of the appeal. Suspension without pay is automatically a suspension with pay during the appeal but immediately converts to a suspension without pay upon the conclusion of an appeal upholding the sanction.

## 18. Appeal.

1. **Grounds for appeal.** Both Complainant and Respondent are allowed to appeal the findings in the Administrative Resolution Process or the finding in the Hearing Panel Resolution Process. Appeals are limited to the following:

- 1. A procedural error occurred that significantly impacted the outcome of the Administrative or Hearing Panel Resolution Process (e.g., substantiated bias, material deviation from established procedures, etc.).
- 2. To consider new evidence, unavailable during the original resolution process or investigation that could substantially impact the original finding or sanction.
- 3. The sanctions fall outside the range typically imposed for this offense, or for the cumulative disciplinary record of the Respondent.

2. **Requests for Appeal.** Both the Complainant and the Respondent may submit a request for appeal to the Chancellor. All requests for appeal must be submitted in writing to the Chancellor within three (3) business days of the delivery of the findings. When any Party requests an appeal, the other Party (Parties) will be notified and receive a copy of the request for appeal.
3. **Response to Request for Appeal.** Within three (3) business days of the delivery of the notice and copy of the request for appeal, the non-appealing Party (Parties) may file a response to the request for appeal. The response can address that sufficient grounds for appeal have not been met and/or the merits of the appeal.
4. **Review of the Request to Appeal.** The Chancellor (or Designee) will make an initial review of the appeal request(s). The Chancellor (or Designee) will review the request for appeal to determine whether:
  1. The request is timely;
  2. The appeal is on the basis of the any of the three (3) articulated grounds listed above; and
  3. When viewed in the light most favorable to the appealing Party, the appeal states grounds that could result in an adjusted finding or sanction.

The Chancellor (or Designee) will reject the request for appeal if any of the above requirements are not met. The decision to reject the request for appeal is final and further appeals and grievances are not permitted. The Chancellor (or Designee) will render a written decision whether the request for appeal is accepted or rejected within fourteen (14) business days from receipt of the request for appeal. If no written decision is provided to the Parties within fourteen (14) business days from receipt of the request, the appeal will be deemed accepted.

5. **Review of the Appeal.** If all three requirements for appeal listed above are met, the Chancellor will accept the request for appeal and proceed with rendering a decision on the appeal applying the following additional principles:
  1. Appeals are not intended to be full re-hearings of the Complaint and are therefore deferential to the original findings. In most cases, appeals are confined to a review of the written documentation and record of the Administrative Resolution or Hearing Panel Resolution, and pertinent documentation regarding the grounds for appeal. Appeals granted based on new evidence should normally be remanded to the original decision maker for reconsideration.
  2. Sanctions and remedial actions are implemented immediately unless the Chancellor stays their implementation pending the outcome of the appeal. Suspension without pay is automatically a suspension with pay during the appeal but immediately converts to a suspension without pay upon the conclusion of an unfavorable appeal.
  3. The Chancellor will normally render a written decision on the appeal to all Parties within ten (10) business days from accepting the request for appeal. In the event the Chancellor is unable to render a written decision within ten (10) business days from accepting the request for appeal, the Chancellor will promptly notify the Parties in writing of the delay.
  4. Once an appeal is decided, the outcome is final. Further appeals and grievances are not permitted.

6. **Extensions of Time.** For good cause, the Chancellor (or Designee) may grant reasonable extensions of time (e.g.: 7-10 business days) to the deadlines in the appeal process. The Chancellor (or Designee) will notify the Parties in writing if such extensions are granted.

19. **Failure to Complete Sanctions/Comply with Interim and Long-term Remedial Actions.** All Respondents are expected to comply with all sanctions, remedial actions and corrective actions within the time frame specified. Failure to follow through on these

sanctions, remedial actions and corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions and remedial/corrective actions through the applicable process.

20. **Records.** In implementing this policy, records of all Complaints, resolutions, and hearings will be kept by the Equity Officer or Title IX Coordinator (depending on the nature of the Complaint). An audio, video, digital, or stenographic record of the hearings will be maintained and will be filed in the office of the Provost or Title IX Coordinator and, for the purpose of review or appeal, be accessible at reasonable times and places to the Respondent and the Complainant. The “Record of the Case in the Section 600.040 Process” includes, when applicable: letter(s) of notice, exhibits, hearing record (an audio, video, digital or stenographic record of the hearing); the findings on each of the alleged policy violations by either the Hearing Panel (or Provost’s Designee); the finding of sanctions by the Provost; and the decision on the appeal, if applicable. The Record of the Case in the Section 600.040 Process will be kept for seven (7) years following final resolution.
21. **Dismissal for Cause Referral.** If the recommended sanction for a Regular, Tenured Faculty member is referral to the Chancellor to initiate Dismissal for Cause, the Record of the Case will be forwarded to the appropriate Faculty Committee on Tenure. Because the Dismissal for Cause proceeding is not a re-hearing of the complaint, the Record of the Case will be included as evidence and the findings will be adopted for proceeding as detailed in Section 310.060: Procedures in Case of Dismissal for Cause in the Collected Rules and Regulations.
22. **Retaliation.** Retaliation is any adverse action taken against a person because of that person’s participation in protected activity. The University strictly prohibits retaliation against any person for making any good faith report of discrimination, harassment, or sexual misconduct or for filing, testifying, assisting, or participating in any investigation or proceeding involving allegations of discrimination, harassment, or sexual misconduct. Any person who engages in such retaliation shall be subject to disciplinary action, up to and including expulsion or termination, in accordance with applicable procedures. Any person who believes they have been subjected to retaliation is encouraged to promptly notify the Equity Officer or Title IX Coordinator. The University will promptly investigate all complaints of retaliation.