

## **ADDENDUM B - EMPLOYEE ADJUDICATION PROCEDURES**

These procedures are adapted from BOR 4.6.5 Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings and the Human Resources Administrative Practice Manual Prohibition on Discrimination and Harassment.

This procedure establishes minimum procedural standards for investigations and resolutions of alleged Sexual Misconduct violations. The purpose of this procedure is to ensure uniformity in the quality of investigations while providing for due process that affords fairness and equity in all Sexual Misconduct investigations.

The Title IX Coordinator will oversee the grievance procedure for all Sexual Misconduct reports and complaints in collaboration with the Chief Human Resources Officer, except for Title VII sexual harassment allegations, which will be overseen by the Equal Opportunity Officer.

In accordance with the USG Human Resources Administrative Practices (HRAP) on Cooperation and Internal Investigations, all employees, both parties and non-parties, are required to cooperate to the fullest extent possible in any internal investigation conducted by the Board of Regents or any institution thereof when directed to do so by the persons who have been given investigative authority.

### **A. Resolution/Hearing**

The Respondent and the Complainant, as parties to the matter, may have the option of selecting informal resolution as a possible resolution in certain cases where the parties agree, and it is deemed appropriate by the institution. However, student allegations of Title IX Sexual Misconduct against an employee may not be resolved informally. Where a case is not resolved through informal resolution the case shall be set for a hearing. All sexual misconduct cases shall be heard by a panel of faculty and/or staff or by a single administrative decision maker (such as the Chief Human Resources Officer, the Chief Academic Officer, or their designee).

In no case shall a hearing to resolve a sexual misconduct allegation take place before the investigation report has been finalized. The investigator may testify as a witness regarding the investigation and findings but shall otherwise have no part in the hearing process and shall not attempt to otherwise influence the proceedings outside of providing testimony during the hearing. All directly related evidence shall be available at the hearing for the parties and their advisors to reference during the hearing.

Relevant facts or evidence that were not known or knowable to the parties prior to the issuance of the final investigation report shall be admissible during the hearing. The institution will determine how the facts or evidence will be introduced. The admissibility of any facts or evidence known or knowable by the parties prior to the issuance of the final investigative report, and which were not submitted during the investigation, shall be determined by the institution in compliance with the obligation to provide both parties an equal opportunity to

present and respond to witnesses and other evidence. Formal civil rules of evidence do not apply to the resolution process and the standard of evidence shall be a preponderance of the evidence.

Notice of the date, time, and location of the hearing as well as the selected hearing panel members shall be provided to the Complainant and the Respondent at least 10 calendar days prior to the hearing. Notice shall be provided via institution email to the parties' institution email. Parties may attend the hearing with their advisor.

Hearings shall be conducted in-person or via video conferencing technology. Where the institution determines that a party or witness is unable to be present in person due to extenuating circumstances, the institution may establish special procedures to permit that individual to provide testimony from a separate location. In doing so, the institution must determine whether there is a valid basis for the individual's unavailability, require that the individual properly sequester in a manner that ensures testimony has not been tainted, and make a determination that such arrangement will not unfairly disadvantage any party. Should it be reasonably believed that the individual presented tainted testimony, the hearing panel will disregard or discount the testimony. Parties may also request to provide testimony in a separate room from the opposing party, so long as no party is unfairly disadvantaged, and they have the opportunity to view the testimony remotely and submit follow-up questions.

At all times participants in the hearing process, including parties, a party's advisor, and institution officials, are expected to act in a manner that promotes dignity and decorum throughout the hearing. Participants are expected to be temperate, respectful to others, and follow procedural formalities outlined by this Policy and the institution. The institution reserves the right to remove any participant from the hearing environment if the participant refuses to adhere to established rules of decorum (Addendum C).

Each institution shall maintain documentation of the investigation and resolution process, which may include written findings of fact, transcripts, audio recordings, and/or video recordings. Any documentation shall be maintained for seven years.

Additionally, the following standards will apply to Title IX and Non-Title IX Sexual Misconduct hearings respectively:

1. Title IX Hearings
  - a. Where a party or a witness is unavailable, unable, or otherwise unwilling to participate in the hearing, including being subject to cross-examination, the hearing panel shall not rely on statements of that party or witness in reaching its determination regarding responsibility. The hearing panel shall not draw an adverse inference against the party or witness based solely on their absence from the hearing or refusal to subject to cross-examination.
  - b. The parties shall have the right to present witnesses and evidence at the hearing.

- c. The parties shall have the right to confront any witness, including the other party, by having their advisor ask relevant questions directly to the witness. The Hearing Officer shall limit questions raised by the advisor when they are irrelevant to determining the veracity of the allegations against the Respondent(s). In any such event, the Hearing Officer shall err on the side of permitting all the raised questions and must document the reason for not permitting any particular questions to be raised.
- d. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, shall be deemed irrelevant, unless such questions and evidence are offered to prove that someone other than the Respondent committed the alleged conduct or consent between the parties during the alleged incident.
- e. The hearing panel shall not access, consider, disclose, or otherwise use a party's records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional made in connection with the party's treatment unless the party has provided voluntary written consent. This also applies to information protected by recognized legal privilege.
- f. Following a hearing, the parties shall be simultaneously provided a written decision via institution email of the hearing outcome and any resulting sanctions or administrative actions. The decision must include the allegations, procedural steps taken through the investigation and resolution process, findings of facts supporting the determination(s), determination(s) regarding responsibility, and the rationale for any sanction or other administrative action. The decision must include a discussion of the substantial evidence relied upon in determining that an employee is responsible for violating the Sexual Misconduct Policy. For purposes of this procedure substantial evidence means evidence that a reasonable person might accept to support the conclusion. The institution shall also notify the parties of their right to appeal as outlined herein.

## 2. Non-Title IX Sexual Misconduct Hearings

- a. The parties shall have the right to present witnesses and evidence at the hearing. Witness testimony, if provided, shall pertain to knowledge and facts directly associated with the case being heard.
- b. The parties shall have the right to confront any witnesses, including the other party, by submitting written questions to the Hearing Officer for consideration. Advisors may actively assist in drafting questions. The Hearing Officer shall ask the questions as written and will limit questions only if they are irrelevant to determining the veracity of the allegations against the Respondent(s). In any such event, the Hearing Officer shall err on the side of asking all submitted questions and must document the reason for not asking any particular questions.
- c. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, shall be deemed irrelevant, unless such questions and evidence are offered to prove that someone other than the Respondent committed the alleged conduct or consent between the parties during the alleged incident.

- d. The hearing panel shall not access, consider, disclose, or otherwise use a party's records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional made in connection with the party's treatment unless the party has provided voluntary written consent. This also applies to information protected by recognized legal privilege.
- e. Following a hearing, the parties shall be simultaneously provided a written decision via institution email of the hearing outcome and any resulting sanctions or administrative actions. The decision must include the allegations, procedural steps taken through the investigation and resolution process, findings of facts supporting the determination(s), determination(s) regarding responsibility, and the rationale for any sanction or other administrative action. The decision must also include a discussion of the substantial evidence relied upon in determining that the Respondent is responsible for violating the Sexual Misconduct Policy. For purposes of this procedure substantial evidence means evidence that a reasonable person might accept to support the conclusion. institution shall also notify the parties of their right to appeal, as outlined herein.

#### B. Possible Sanctions

In determining the severity of sanctions or corrective actions the following should be considered: the frequency, severity, and/or nature of the offense; history of past conduct; an offender's willingness to accept responsibility; previous institutional response to similar conduct; strength of the evidence; and the wellbeing of the university community. The institution will determine sanctions and issue notice of the same, as outlined above.

The broad range of sanctions includes: termination, administrative leave with pay, administrative leave without pay, removal of tenure, demotion, community service, training.

#### C. Appeals

The Complainant and the Respondent shall have the right to appeal the outcome on any of the following grounds: (1) to consider new information, sufficient to alter the decision, or other relevant facts not brought out in the original investigation(or hearing), because such information was not known or knowable to the person appealing during the time of the investigation (or hearing); (2) to allege a procedural error within the investigation or hearing process that may have substantially impacted the fairness of the process, including but not limited to whether any hearing questions were improperly excluded or whether the decision was tainted by a conflict of interest or bias by the Title IX Coordinator, investigator(s), or administrative decision maker(s), or (3) to allege that the finding was inconsistent with the weight of the information.

The appeal must be made in writing, must set forth one or more of the bases outlined above, and must be submitted within five University business days of the date of the final written decision. The appeal should be made to the President of the institution solely on the three

grounds set forth. The appeal shall be a review of the record only, and no new meeting with the Respondent or the Complainant is required.

The President may affirm the original finding and sanction, affirm the original finding but issue a new sanction of greater or lesser severity, remand the case back to the decision maker to correct a procedural or factual defect, or reverse or dismiss the case if there was a procedural or factual defect that cannot be remedied by remand. The President's decision shall be simultaneously issued in writing to the Complainant, the Respondent within a reasonable time period. The President's decision shall be the final decision of the institution.

Should the Respondent or Complainant wish to appeal the President's decision, they may request review by the Board of Regents in accordance with the Board of Regents' Policy on Discretionary Review.