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## Discrimination Complaint Procedures

These procedures are designed to provide for the prompt and equitable resolution of reports of violations of the [Nondiscrimination and Equal Opportunity Policy](#) and the [Accommodation of Persons with Disabilities at BYU Policy](#) and [Accommodation of Persons with Disabilities at BYU Procedures](#) (“Discrimination”). Reports of discrimination resulting from unlawful sexual harassment, sexual violence, or gender-based criminal behavior should be resolved pursuant to the incident reporting and complaint resolution procedures set forth in the [Sexual Harassment Policy](#).

### 1. Reporting Incidents

#### 1.1 Duty to Report

University employees, including faculty, staff, and administrative employees, who become aware of or reasonably suspect any incidents of Discrimination must report the information as directed in these procedures. A dean, director, department chair, manager, supervisor, professor, or any other university employee who receives a report of Discrimination must promptly refer the reporting individual to the Equal Opportunity Manager, and then promptly make his or her own report to the Equal Opportunity Manager. University employees with information regarding an incident of Discrimination who fail to report relevant information or to cooperate in an investigation may be subject to disciplinary action.

The only exceptions to this employee reporting obligation are those situations in which the university employee received the information as part of a confidential communication from another person in the context of a professional or otherwise privileged relationship (i.e., the university employee was the reporting person’s doctor, therapist, lawyer, ecclesiastical leader, or spouse).

#### 1.2 Where to Report

Any person may submit a verbal or written report of Discrimination (“Report”) to the following:

- Discriminatory conduct involving student employees, administrative and staff employees: Equal Opportunity Manager, D-282 ASB, 801-422-5895, [eo\\_manager@byu.edu](mailto:eo_manager@byu.edu)
- Discriminatory conduct involving faculty or athletic professionals: assistant to the academic vice president – faculty relations, D-341 ASB, 801-422-9772, [faculty\\_relations@byu.edu](mailto:faculty_relations@byu.edu)
- Discriminatory conduct involving students (including between students or between students and employees): Office of Belonging, 2400 WSC, 801-422-9162, [officeofbelonging@byu.edu](mailto:officeofbelonging@byu.edu)



- Any discriminatory conduct: EthicsPoint (the university's 24-hour hotline provider, which includes an option to report anonymously), 1-888-238-1062, <https://secure.ethicspoint.com/domain/media/en/gui/17652/index.html>

### **1.3 Retaliation**

Retaliation against an individual who has made a Report or otherwise opposed Discrimination, or who has provided information in connection with a Discrimination investigation or otherwise participated in such an investigation is strictly prohibited. Individuals who participate in a Discrimination investigation should be advised that university policy and federal law prohibit retaliation against them or against individuals closely associated with them and should be assured that the university will take steps to prevent retaliation and will take strong responsive action to any act of retaliation of which it becomes aware. See [Nondiscrimination and Equal Opportunity Policy](#). An individual who feels that he or she has been subjected to retaliation should report the incident to the Equal Opportunity Manager.

## **2. Complaint Resolution Procedures**

The following procedures are designed to provide for the prompt and equitable resolution of reports of Discrimination perpetrated by or against university employees, students, or campus visitors.

### **2.1 Informal Resolution**

Whenever it is reasonably possible and safe to do so, an individual who believes he or she has been subjected to Discrimination ("Complainant") may attempt to resolve the issue privately and constructively with the person responsible for the alleged Discrimination ("Respondent"). However, an attempt at informal resolution is not required and is not appropriate, even on a voluntary basis, when the misconduct involves violence or other criminal behavior, or when acts of Discrimination are severe or have become pervasive.

The goal of informal resolution is to conclude the matter to the satisfaction of both parties quickly and confidentially. Either party may enlist the assistance of the Equal Opportunity Manager in this effort. If satisfactory resolution is not reached after such informal efforts, or if the Complainant believes informal resolution is not possible or may be unsafe, he or she may forego the informal resolution process or discontinue it at any time and address the concern using the formal resolution process described below.

### **2.2 Formal Resolution**

The formal resolution process may be initiated by submitting a Report of Discrimination to the Equal Opportunity Manager. Anyone can submit a Report under this policy; however, the submission of such a Report does not prevent the Complainant from subsequently pursuing informal resolution with the Respondent in appropriate circumstances.



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### 2.2.1 Selection of the Investigator

Upon receiving a Report, the Employee Relations Office will select a qualified employee to promptly investigate the allegations in the Report (“Investigator”). The Equal Opportunity Manager will, under most circumstances, serve as the Investigator. The Employee Relations Office will consider any conflict of interest, time constraints, or other relevant factors in selecting an Investigator.

### 2.2.2 Confidentiality

Given the sensitive nature of discrimination allegations and the potential for damage to the parties’ personal reputations, all Reports will be investigated as confidentially as reasonably possible. All participants in the investigation—including the Complainant, the Respondent, the Investigator, and individuals interviewed by the Investigator—should keep the allegations and proceedings confidential and should provide information only to those university and governmental employees who are authorized to investigate the Report or who otherwise have a legitimate need to know.

Notwithstanding the foregoing confidentiality provisions, Complainants and any witnesses who participate in a Discrimination investigation should be advised that their confidentiality will be preserved only to the extent it does not interfere with the university's ability to investigate the Report and take corrective action, and that if the investigation results in litigation, the university may be legally required to disclose any information it has received.

If a Complainant requests that his or her identity be kept confidential or asks the university not to pursue an investigation, the Complainant should be notified that (1) the university’s ability to investigate and respond to the Report may be limited by such a request, and (2) under some circumstances the university may not be able to honor such a request. The university will take all reasonable steps to investigate and respond to a Report consistent with the Complainant’s request for confidentiality. However, without conducting a full investigation or disclosing the full nature of the Report (including its source) to the Respondent, the university may be unable to impose any discipline, and its corrective actions might be limited to informing the Respondent that allegations of discriminatory behavior have been made against him or her, preserving a record of the discrimination allegation in the Respondent’s employment or student disciplinary file, and pursuing other steps to limit the effects of the alleged Discrimination and prevent its recurrence, such as training or surveys in the affected area or department. Complainants who require complete confidentiality may be advised that they can address their confidential concerns to ecclesiastical leaders, mental or physical health providers, or their own legal counsel.

The Complainant should also be advised that the university may not be able to honor a request for confidentiality or to forego an investigation if the university determines such a request



would prevent the university from meeting its responsibility to provide students and employees with a safe and nondiscriminatory environment and to provide a thorough and impartial investigation and a prompt and equitable resolution of the Report.

The university will consider the following factors in determining whether to disclose the identity of a Complainant or pursue an investigation contrary to the Complainant's request:

- the seriousness of the allegedly discriminatory behavior
- the age or maturity of the Complainant
- the existence of any previous accusations against the alleged violator
- the existence of independent evidence to substantiate the allegations
- in the case of accusations against a student, the rights of the student under the [Access to Student Records Policy](#) and [Access to Student Records Procedures](#) and corresponding federal and state privacy laws or laws mandating disclosure

If the university determines it cannot honor a Complainant's request for confidentiality or a Complainant's request to forego an investigation, it will inform the Complainant prior to commencing its investigation.

### 2.2.3 Preliminary Assessment

Upon receiving a Report of Discrimination, the Investigator will promptly perform a preliminary assessment based on the facts reported to determine whether they provide reasonable cause to believe Discrimination or other inappropriate discriminatory behavior may have occurred. If there is no reasonable cause to believe Discrimination or another serious policy violation occurred, no further action will be taken and the Complainant will be informed that his or her Report has been considered and will not be investigated. If reasonable cause is found, an investigation will proceed as provided below.

### 2.2.4 Interim Measures

Based on any information acquired in the course of the preliminary assessment or investigation, the Investigator may recommend that interim measures be taken to protect the Complainant or others from further acts of Discrimination or retaliation while the investigation is still pending. This recommendation should be submitted to the office or individual within the university administration authorized to impose discipline on the Respondent (the "Responsible Administrator"). Such interim measures may include actions such as separating the Respondent and the Complainant, providing counseling for the Complainant or the Respondent, and, in situations deemed to be extreme or dangerous, taking interim disciplinary action against the Respondent up to and including a temporary suspension and ban from campus. Other remedial interim measures may also be appropriate, such as special training in the affected department or area, or the dissemination of information about how to report Discrimination.



### 2.2.5 The Complainant's Written Complaint, Supporting Documentation, and Evidence

If a Complainant has not already submitted a sufficient written statement in connection with the initial Report, the Investigator will ask the Complainant to prepare and sign a written statement of the facts alleged ("Complaint"). The Complaint should clearly and concisely describe the incident(s), including when and where the alleged Discrimination occurred. The Complaint may also include an explanation as to why the Complainant believes the Respondent's behavior was unlawful or in violation of university policy, corroborating facts and evidence, the names of other individuals who may have information relevant to the Complaint, other materials or evidence in support of the Complaint, and a proposal for an appropriate resolution. The Complaint may not exceed ten pages in length, exclusive of attached documents and supporting materials, and must be submitted within two weeks of receiving the Investigator's request.

If the Complainant refuses or fails to submit a timely Complaint, the Equal Opportunity Manager may terminate the investigation. However, if the Equal Opportunity Manager determines it is necessary to continue the investigation without a Complaint to determine what occurred and take appropriate remedial steps, the Investigator may prepare a summary of the facts reported and ask the Complainant to review the summary, make any necessary corrections, and affirm it with a signature. If the Complainant refuses to sign the Investigator's summary of the Report, the Investigator may either (a) note that the allegations have been withdrawn and terminate the investigation, or (b) note that the Complainant has refused to sign the summary of the allegations, but that the investigation will nevertheless proceed to determine what occurred and to protect the university's interest in maintaining an environment free from Discrimination. In such a case, the Investigator's summary of the allegations will be treated as the Complaint under these procedures, and a copy of the Investigator's summary with its notation will be delivered to the Complainant.

A copy of the Complaint will be provided to the Respondent at a point in the investigation when the Investigator deems it advisable. The Investigator may redact the Complaint copy before providing it to the Respondent to protect the identity or safety of the Complainant or any witnesses or for any other reason as the Investigator deems advisable.

### 2.2.6 The Respondent's Written Response, Supporting Documentation, and Evidence

The Respondent may prepare and submit a signed written statement in response to the Complaint ("Response"). The Response should indicate whether the Respondent admits or denies the allegations in the Complaint and should provide any exculpatory facts or evidence, including the names of other individuals who may have information relevant to the allegations, and other materials in response to the Complaint. The Response may also include an explanation as to why the Respondent believes any admitted conduct was lawful or was not in violation of university policy and whether any resolution proposed by the Complainant is or is



not appropriate. The Response may not exceed ten pages in length, exclusive of attached documents and supporting materials, and must be submitted within two weeks of the Respondent receiving the Complaint.

A copy of the Response will be provided to the Complainant at a point in the investigation when the Investigator deems it advisable. The Investigator may redact the Response copy before providing it to the Complainant to protect the identity or safety of any witnesses or for any other reason as the Investigator deems advisable.

### 2.2.7 Concurrent Investigations or Processes

A Discrimination investigation conducted under these procedures will be conducted independent of any associated criminal investigation or any other university investigation or procedures. If the university determines the issues raised in the Discrimination investigation may be relevant to its determination in another non-criminal investigation or another process that is simultaneously pending at the university, it may direct that one of the investigations or processes be suspended until the other investigation and any appeals or administrative reviews are concluded. While the findings and conclusions of one investigation will not determine the outcome of any other, any evidence or findings developed in any university or non-university investigation may be shared with and considered in any other university investigation.

### 2.2.8 Cooperation with University Investigations

Employees or students who fail to cooperate in the investigation, including those who knowingly or recklessly misrepresent any facts or who withhold pertinent information, may be subject to disciplinary action up to and including suspension or dismissal from the university or termination of university employment. The knowing or reckless reporting of false charges of Discrimination will be treated as a material breach of the [Church Educational System Honor Code](#), subjecting the individual making the false accusations to similar disciplinary action.

### 2.2.9 The Investigation

The investigation should be thorough, prompt, adequate, reliable, and impartial. The Investigator will, in good faith, attempt to conclude the investigation within sixty days of receiving the Complaint. If, as a result of the complexity of the case or other extenuating facts and circumstances, the investigation cannot reasonably be concluded within the sixty-day period, the Complainant and the Respondent will be provided periodic updates at reasonable intervals regarding the status of the investigation.

During the investigation, the Investigator will consider the Complaint and Response, conduct interviews, and review any other documents or evidence submitted by the parties or discovered during the investigation. A Discrimination investigation under these procedures is an internal university employment or student disciplinary matter. While any party is free to engage



legal counsel or seek legal advice, attorneys for the parties will not be permitted to attend or otherwise participate in any employee or student interview, meeting, or other proceeding that may take place under these procedures.

At any time during the investigation, either of the parties or the Investigator may propose a resolution of the matter. If both the Complainant and the Respondent are satisfied with this proposed resolution, and if the Equal Opportunity Manager and the Responsible Administrator are also satisfied that the university's interests are protected, the matter may be resolved as proposed.

At the conclusion of the investigation, the Investigator will determine, based on the preponderance of the evidence (i.e., whether it is more likely than not), whether the Respondent has in fact engaged in Discrimination or other behavior in violation of university policy. The Investigator will promptly communicate this outcome simultaneously and in writing to the Complainant and the Respondent. The Investigator will also report the outcome to the Responsible Administrator and may provide the Responsible Administrator with a report of findings describing the evidence and reasoning supporting the Investigator's findings and the outcome.

#### 2.2.10 Resolution and Disciplinary Sanctions

Within fourteen days of receiving the Investigator's determination of the outcome and any report of findings, the Responsible Administrator will determine the resolution of the Complaint, including the imposition of any disciplinary sanctions, as provided in the applicable disciplinary policy. Any person found in violation of the university's Discrimination policies may be subject to discipline up to and including termination of employment, suspension, dismissal, and a ban from campus, depending on the circumstances and the severity of the violation.

The Responsible Administrator(s) and the applicable disciplinary policy will be determined as follows:

- The Responsible Administrators for a Complaint against a faculty member are the faculty member's dean and chair or director, who shall administer any discipline consistent with the applicable provisions of the [Faculty Discipline and Termination Policy](#). If the dean and the chair or director conclude there may be adequate cause for involuntary termination of the faculty member's employment, the Academic Vice President will be consulted and must give final approval for the termination.
- The Responsible Administrator for a Complaint against a non-faculty employee is the director over the employee's area, who shall administer any discipline in consultation with the Manager of Employee Relations and consistent with the applicable provisions of the [Administrative and Staff Employee Discipline Policy](#) and procedures.





- The Responsible Administrator for a Complaint against a student is the Honor Code Office, which will administer any discipline consistent with the [Honor Code Investigation and Administrative Review Process](#). The Honor Code Office may conduct its own investigation of the Complaint, or it may accept part or all of the Investigator's outcome determination and any report of findings in lieu of an independent honor code investigation. If the student is also an employee of the university, the Investigator will provide a copy of the outcome and any report of findings to the student employee's manager, who will administer any discipline affecting the student's employment status in consultation with the Manager of Employee Relations and consistent with the applicable provisions of the [Administrative and Staff Employee Discipline Policy](#) and procedures.
- The Responsible Administrators for a Complaint against a visitor to campus who is neither a student nor an employee are the vice president over the university unit that originally invited the visitor to campus, or the vice president's designee, and, if a violation is found, the University Banning Committee. If the visitor was not invited to campus, the Responsible Administrator is the University Banning Committee.

Complaint resolution shall include, in addition to any discipline imposed, reasonable steps designed to correct any discriminatory effects on the Complainant and on others who may have been affected, and to prevent the recurrence of any discriminatory or otherwise inappropriate actions.

The resolution will be communicated in writing to both the Complainant and the Respondent simultaneously. However, the Responsible Administrator may choose not to disclose the discipline imposed by the resolution, and will not disclose the discipline imposed on a student except under one of the following circumstances:

- the discipline directly affects the other party—such as when the student is ordered to stay away from the other party, is transferred to another job, worksite, class, or residence hall, or is suspended or dismissed from the university;
- the Complainant alleged discriminatory conduct involving a crime of violence or a non-forcible sex offense; or
- the student gives his or her written permission to disclose the discipline.

The university may also report findings of criminal misconduct to the police and may report criminal or other serious misconduct to an individual's ecclesiastical leaders as it deems appropriate in its absolute discretion.





### **2.3 Review Process**

A faculty member, full-time administrative or staff employee, or a student who remains unsatisfied with the resolution of the Complaint may request an administrative review or appeal (“Review”) of the outcome, the resolution, or both, as provided in the applicable policy. A Review should be initiated and conducted pursuant to the applicable university policy or procedure, as follows:

- A faculty member may appeal the involuntary termination of his or her employment pursuant to the “Appeal of Disciplinary Action and Termination” provisions of the [Faculty Discipline and Termination Policy](#). A faculty member may appeal disciplinary sanctions short of termination to the Academic Vice President pursuant to the [Faculty Grievance Policy](#).
- Full-time administrative and staff employees may submit a grievance or, in the case of termination, a request for an administrative review, pursuant to the [Administrative and Staff Employee Grievance Policy](#).
- When the resolution includes disciplinary sanctions affecting a student’s honor code standing, the student may seek a Review pursuant to the “Administrative Review” provisions of the [Honor Code Investigation and Administrative Review Process](#).

The party requesting a Review must identify at least one of the following grounds on which such a Review may be based:

- The outcome of the investigation is clearly contrary to the preponderance of the evidence.
- A procedural error occurred that significantly impacted the outcome or resolution of the investigation (for example, a substantiated bias or material deviation from these procedures).
- New evidence, unavailable to the party during the original investigation, has been discovered that could substantially impact the original outcome or resolution (this new evidence and an explanation of its potential impact must be included in the notice of appeal).
- The discipline imposed in the resolution is substantially disproportionate to the severity of the violation.

Both parties will have the same opportunity to be accompanied by another individual at any Review proceedings as permitted under the applicable appeal or review provisions. However,



no attorneys will be permitted to attend or otherwise participate in any university meeting, hearing, or other proceeding of any kind that may take place under these Review procedures, except that attorneys from the university's Office of the General Counsel may participate for the purpose of advising the person or body hearing the Review on the applicable policy, procedures, and law governing the hearing. If requested by any party or by the university, an electronic recording of a hearing may be made, and a copy of the recording will be provided to both the Complainant and Respondent at the conclusion of the hearing.

Unless otherwise provided in the applicable policy or procedure, the original outcome and resolution will be presumed to have been decided reasonably and appropriately, and the party requesting appeal bears the burden of establishing, by clear and convincing evidence, that the outcome of the investigation or the resolution of the complaint was reached in error.

#### ***2.4 Exhaustion of Remedies***

A student or employee may not initiate civil litigation or civil administrative remedies against the university or its employees, agents, officers, or trustees until all the remedies provided by these procedures have been exhausted.

#### ***2.5 Waiver of Claims***

Failure to submit a Complaint or to pursue a Review within the stated deadlines or to exhaust the remedies provided by these procedures within the time provided will constitute a waiver of the student's or employee's right to pursue any claim against the university in the matter, unless the right to pursue a statutory claim is preserved by law or the university waives this clause in writing.

**APPROVED:** 14 Sep 2022

**PRIOR VERSION:** 7 Apr 2014

**APPLICABILITY:** These procedures apply to all university students, faculty, administrative and staff employees, volunteers and representatives, and campus visitors.

**POLICY OWNER:** Academic Vice President, Administration Vice President and CFO, Student Life Vice President

**RESPONSIBLE OFFICE:** Dean of Students Office, Faculty Relations, Human Resource Services

**RELATED POLICIES:**

- [Access to Student Records Policy](#)



- [Accommodation of Persons with Disabilities at BYU Policy](#)
- [Accommodation of Persons with Disabilities at BYU Procedures](#)
- [Administrative and Staff Employee Discipline Policy](#)
- [Administrative and Staff Employee Grievance Policy](#)
- [Church Educational System Honor Code](#)
- [Faculty Discipline and Termination Policy](#)
- [Faculty Grievance Policy](#)
- [Honor Code Investigation and Administrative Review Process](#)
- [Nondiscrimination and Equal Opportunity Policy](#)
- [Personnel Conduct Policy](#)
- [Sexual Harassment Grievance Procedures \(Non-Title IX Sexual Violence\)](#)
- [Sexual Harassment Grievance Procedures \(Title IX\)](#)
- [Sexual Harassment Policy](#)
- [Web Accessibility Policy](#)