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## Sexual Harassment Grievance Procedures

Brigham Young University prohibits Sexual Harassment.<sup>1</sup> The following procedures describe the university's equitable, fair, prompt, and impartial response to allegations of Sexual Harassment prohibited under the [Sexual Harassment Policy](#). These procedures apply only to reports made to the Title IX Coordinator alleging Sexual Harassment of a person in the United States who is participating in or seeking to participate in a BYU Education Program or Activity.

The university will respond to allegations of Sexual Harassment by offering Supportive Measures designed to restore or preserve a Complainant's equal access to BYU Education Programs and Activities. The university will also follow the grievance process outlined in these procedures before imposing any disciplinary sanctions or other actions against a Respondent that are not Supportive Measures.

### I. Informal Reports and Supportive Measures

#### *Informal Reports of Sexual Harassment*

An informal report of Sexual Harassment may be made to the Title IX Coordinator by any person who believes that Sexual Harassment may have occurred that requires BYU's response. The person reporting need not be the individual who is alleged to be the victim of Sexual Harassment (Complainant). To ensure the university has the information necessary to respond appropriately to Title IX complaints, reports of Sexual Harassment must be made to the Title IX Coordinator. Reports, including anonymous reports, may be made at any time, including during nonbusiness hours, as provided in the [Sexual Harassment Policy](#). An informal report of Sexual Harassment will not, however, initiate any kind of grievance process, nor will an informal report result in any disciplinary action against an individual who is alleged to be the perpetrator of Sexual Harassment (Respondent). Only a Formal Complaint filed by a Complainant or the Title IX Coordinator as outlined below will initiate a process that could result in discipline against a Respondent.

#### *Supportive Measures*

Upon receiving an informal report of Sexual Harassment, the Title IX Coordinator will promptly contact the Complainant identified in the report to discuss and provide written information about the availability of Supportive Measures; consider the Complainant's wishes with respect to Supportive Measures; inform the Complainant that Supportive Measures are available with or without the filing of a Formal Complaint; and explain the process for filing a Formal Complaint, including possible sanctions the university may impose after determining the Respondent's responsibility for Sexual Harassment.

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<sup>1</sup> Capitalized terms in these Procedures are defined in the [Sexual Harassment Policy](#) or as indicated herein.



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If the report includes allegations of Sexual Assault, Dating Violence, Domestic Violence, or Stalking, the Title IX Coordinator will also provide the Complainant with written information about the following:

- the importance of preserving evidence as may be necessary to prove a crime or obtain a protective order
- law enforcement options, including the Complainant's option to (a) notify University Police or other local police, with the assistance of the Title IX Office if the Complainant so chooses; or (b) decline to notify law enforcement authorities
- the Complainant's rights regarding protective orders or similar orders issued by a criminal or civil court
- existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims both on-campus and in the community

Supportive Measures will be offered to both the Complainant and Respondent as the Title IX Coordinator deems appropriate and as such measures are reasonably available. The university will maintain as confidential any Supportive Measures provided, to the extent that maintaining such confidentiality would not impair its ability to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

The university may remove a Respondent from its Education Program or Activity on an emergency basis if it determines that an immediate threat to the physical health or safety of any student or other individual arising from the Sexual Harassment allegations justifies immediate removal pending further investigation and disposition. See [Banning Policy](#). In such cases, the university will conduct an individualized safety and risk analysis and will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. See [Banning Procedures](#).

Human Resource Services may also place a staff or administrative non-student employee Respondent on administrative leave, and Faculty Relations may place a faculty or athletic professional Respondent on administrative leave, during the pendency of a formal or informal grievance process under these procedures.

## **II. Formal Complaints of Sexual Harassment**

The grievance process is initiated by the Complainant filing a Formal Complaint document with the Title IX Coordinator, alleging Sexual Harassment by a Respondent and requesting that BYU investigate the Sexual Harassment allegation, or by the Title IX Coordinator signing and issuing a Formal Complaint.



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The Formal Complaint should clearly and concisely describe the incident(s), including the identities of the Parties involved in the incident, if known; the conduct allegedly constituting Sexual Harassment; and the date and location of each alleged incident constituting Sexual Harassment, if known.

***Filed by Complainants***

A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by mail, or by email, using the following contact information:

BYU Title IX Office  
1085 WSC  
Provo, UT 84602  
801-422-8692  
[t9coordinator@byu.edu](mailto:t9coordinator@byu.edu)

This information is also located on the Title IX Office’s website:

<https://titleix.byu.edu/titleix/contact-us>. Reports may be made at any time, including during nonbusiness hours, although in-person reports may be made only during regular business hours. In addition, Complainants may file Formal Complaints through EthicsPoint, the university’s 24-hour hotline provider, by telephone at 888-238-1062, or by submitting information online [here](#).

Unlike informal reports of Sexual Harassment, Formal Complaints may not be filed anonymously. A Complainant’s Formal Complaint must contain the Complainant’s physical or digital signature or otherwise indicate that the Complainant is the person filing the Formal Complaint. When filing a Formal Complaint, a Complainant must be participating in or attempting to participate in a BYU Education Program or Activity.

***Signed by Title IX Coordinator***

Generally, the university will honor a Complainant’s request that the university not conduct an investigation. However, if the Complainant is unwilling to file a Formal Complaint and the Title IX Coordinator determines that a failure to investigate would prevent the university from meeting its responsibility to provide students and employees with an environment free from Sexual Harassment, the Title IX Coordinator may initiate an investigation by signing a Formal Complaint. The Title IX Coordinator will inform the Complainant prior to signing a Formal Complaint, and the university will provide the Complainant with all notices required under these procedures. But the Complainant is not required to respond or participate in any manner. However, if the Complainant refuses to submit to cross-examination during the live hearing, the university may not rely on any statement of the Complainant in reaching a



determination as to whether the Respondent is responsible for Sexual Harassment (“Determination Regarding Responsibility”).

When the Title IX Coordinator initiates a grievance by signing a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a Party<sup>2</sup> under these procedures and must comply with the impartiality requirements and all other standards required of individuals involved in administering this grievance process (“Grievance Administrators”) under these procedures.

### **III. Investigation**

The university will conduct an investigation of the allegations in a Formal Complaint as follows:

#### ***Selection of the Investigator***

Upon receiving or signing a Formal Complaint of Sexual Harassment, the Title IX Coordinator will promptly deliver the Formal Complaint to an employee or independent contractor selected by the Title IX Coordinator to investigate the allegations in the Formal Complaint (“Investigator”). The Title IX Coordinator will ensure that any individual selected as an Investigator has received training in the previous 12 months on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as provided in these procedures, and meets all other standards required of Grievance Administrators under these procedures.

#### ***Notice of Allegations***

Upon receipt of a Formal Complaint, the Investigator will promptly collect the information necessary to prepare a written “Notice of Allegations” and will provide the notice to the known Parties at least five business days prior to the Respondent’s initial interview. The Notice of Allegations will include the following:

- notice of the allegations potentially constituting Sexual Harassment, including the identities of the Parties involved in the incident (if known), the conduct allegedly constituting Sexual Harassment, and the date and location of each alleged incident constituting Sexual Harassment (if known)
- notice of the university’s formal and informal grievance resolution processes
- a statement that the Respondent is presumed not responsible for the alleged conduct and that the Determination Regarding Responsibility will be made only after the grievance process is complete
- notice to the Parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney

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<sup>2</sup> The Complainant and the Respondent are sometimes referred to individually as a “Party” and collectively as the “Parties” in these procedures.



- notice to the Parties that they may inspect and review evidence
- the names of the individuals assigned to serve as the Investigator and to make the Determination Regarding Responsibility (“Decision-makers”) in the formal resolution process
- notice prohibiting any Party from knowingly making false statements or knowingly submitting false information during the grievance process, and informing the Parties that providing any such false statements or information constitutes a material violation of the BYU Honor Code commitment to “be honest”
- notice prohibiting any Party from engaging in retaliation (see [Sexual Harassment Policy](#))

If, in the course of an investigation, the Investigator decides to investigate Sexual Harassment allegations about the Complainant or Respondent that are not included in the Notice of Allegations, the Investigator must provide all known Parties with a supplemental Notice of Allegations as to the additional allegations.

### ***Dismissal***

The university will investigate the allegations in a Formal Complaint and will dismiss the Formal Complaint with regard to any alleged conduct that

- would not constitute Sexual Harassment, even if proved;
- did not occur in a BYU Education Program or Activity; or
- did not occur against a person in the United States.

Dismissal for any of the foregoing reasons precludes any subsequent Formal Complaint alleging the same factual allegations. However, a Complainant may file another Formal Complaint against the same Respondent based on new or additional factual allegations. Dismissal of a Formal Complaint does not preclude action against the Respondent under the [Church Educational System Honor Code](#), the [Personnel Conduct Policy](#), the [Faculty Discipline and Termination Policy](#), or other university policies applicable to the conduct.

The Title IX Coordinator may dismiss the Formal Complaint or any of its allegations or may suspend an investigation if at any time during the investigation or hearing

- a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- the Respondent is no longer enrolled at or employed by BYU; or
- specific circumstances prevent the Investigator from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.



Upon a dismissal required or permitted pursuant to this subsection, the Title IX Coordinator will promptly send written notice of the dismissal and reason(s) for the dismissal simultaneously to the Parties. A determination to dismiss allegations of a Formal Complaint may be appealed as provided in these procedures. If a Formal Complaint is dismissed because the Respondent withdraws before the investigation's completion, the university may reopen the investigation if the Respondent enrolls, reenrolls, reapplies, or applies for work at the university or any organization owned, controlled, or sponsored by The Church of Jesus Christ of Latter-day Saints. If a Formal Complaint is reopened, the Title IX Coordinator will promptly notify the Parties, and the Parties will be entitled to the same rights and responsibilities as set out in these procedures.

### ***Consolidating Complaints***

Where the Sexual Harassment allegations arise out of the same facts or circumstances, the Title IX Coordinator may consolidate Formal Complaints against more than one Respondent, by more than one Complainant against one or more Respondents, or by one Party against the other Party.

### ***Information Gathering***

The Investigator will provide an equal opportunity for the Parties to identify witnesses, including fact and expert witnesses, and to provide other information, whether such information tends to show the Respondent's responsibility for Sexual Harassment or tends to show the Respondent is not responsible. The Investigator may ask the Parties to provide this information in a written statement and/or through live interview(s). The Investigator will not restrict the ability of either Party to discuss the allegations under investigation with others or to gather and present relevant information, but the Parties are reminded that such discussions may not violate any protective orders then in force and must not include intimidation, threats, coercion, or discrimination against any person for the purpose of interfering with any right or privilege secured by the [Sexual Harassment Policy](#) or these procedures.

The Investigator will presume that the Respondent is not responsible for the alleged conduct until a Determination Regarding Responsibility is made at the conclusion of the grievance process. The Investigator will seek to collect information sufficient for the Decision-makers to reach a Determination Regarding Responsibility based on the preponderance of the evidence (i.e., evidence sufficient to show that the determination is more likely than not to be true).

The Investigator will consider all relevant information—including information tending to show the Respondent's responsibility for Sexual Harassment and information tending to show the Respondent is not responsible—from the Parties or from other sources, including university records. However, the Investigator will not interview a Party's ecclesiastical leader, physician, psychiatrist, psychologist, lawyer, or other professional or paraprofessional acting or assisting in that capacity; nor will the Investigator access, consider, disclose, or otherwise use records that are made or maintained in connection with the confidential communication with or treatment



by any such person, unless the Investigator obtains that Party's voluntary, written consent to do so for a grievance process under these procedures. The Investigator will not intentionally require, allow, rely on, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the Party holding such privilege has waived the privilege.

### ***Investigation Record***

The Investigator will create a record ("Investigation Record") consisting of all information obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, regardless of whether the Investigator thinks the information is relevant. Prior to completing the investigative report, the Investigator will send the investigation record to each Party and the Party's advisor, if any, through a file-sharing platform that provides the Parties with read-only access and maintains the confidentiality of the transmitted data.

Each Party and advisor must maintain the confidentiality of all information shared with them during the proceedings, must use such information only for purposes of these procedures, and must not further distribute or disclose this information. The university may restrict further access to the Investigation Record and seek appropriate sanctions against a Party or an advisor who violates a confidentiality obligation under these procedures. The Investigation Record will remain available to the Parties and their advisors until a final Determination Regarding Responsibility is made at the conclusion of the grievance process.

### ***Final Written Response***

After the Investigator sends the Investigation Record to the Parties, they will have 10 business days to submit a written response, which the Investigator will consider prior to completing the investigative report. Any written response and any additional evidence provided in connection with a Party's final written response will be added to the Investigation Record.

### ***Investigative Report***

At the conclusion of the investigation, the Investigator will create an investigative report ("Investigative Report") that

- identifies the allegations potentially constituting Sexual Harassment and the Respondent's responses to each allegation;
- describes the procedural steps taken from the receipt of the Formal Complaint through the conclusion of the investigation, including notifications to the Parties, interviews with Parties and witnesses, site visits, and methods used to gather other evidence;
- impartially summarizes the relevant evidence;
- makes any recommendations the investigator deems appropriate; and
- provides the name and contact information of the Decision-makers.





The Investigator will simultaneously send the Investigative Report to the Title IX Coordinator and to each Party and the Party's advisor, if any, and will include the Investigative Report as part of the Investigation Record.

The Investigator will, in good faith, attempt to conclude the investigation and issue an Investigative Report within 60 calendar days of receiving the Formal Complaint of Sexual Harassment. If, as a result of the complexity of a case or other good cause—including considerations such as the absence of a Party, a Party's advisor, or a witness; ongoing law enforcement activity; or the need for language assistance or accommodation of disabilities—the investigation cannot reasonably be concluded within the 60-day period, the Investigator will provide the Complainant and the Respondent with written notice of the delay and the reason for the delay or extension.

#### **IV. Hearing**

After receiving the Investigative Report, the Title IX Coordinator will schedule a live hearing and will provide written notice of the time and place of the hearing to each Party and the Party's advisor, if any. The hearing must take place at least 10 business days after the Investigative Report is delivered to the Parties and should take place within 45 calendar days after the Investigative Report is delivered unless it is delayed by unavoidable circumstances, such as the unavailability of the Parties, Decision-makers, Investigator, or key witnesses.

##### ***Live Hearings***

The Decision-makers will ensure that the hearing is conducted impartially. Live hearings will normally be conducted with all Parties physically present in the same room. However, at the request of either Party or the Decision-makers, the Title IX Coordinator will provide for the live hearing to occur with the Parties located in separate rooms with technology enabling the Decision-makers and Parties to simultaneously see and hear the Party or the witness answering questions. In the Decision-makers' discretion, witnesses and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. In these circumstances, the Decision-makers may impose conditions on the person appearing virtually to ensure the integrity of the process.

Any Party wishing to be physically separated from the other Party during the hearing, or any Party requesting that any witness be permitted to appear virtually at a live hearing, must submit their written request to the Title IX Coordinator at least 10 business days before the date of the hearing so the Title IX Coordinator can make the appropriate arrangements.

The Title IX Office will arrange for an audio or audiovisual recording, or transcript, of the hearing to be made and will make the recording or transcript available within the Investigation Record for the Parties' inspection and review after the hearing.





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### ***Decision-makers***

The hearing will be held before a Decision-maker designated by the Title IX Coordinator (the “Presiding Decision-maker”) and, if the Respondent is a student or employee of the university, an additional Decision-maker designated as follows:

- for a student Respondent, an associate dean of students or a designee authorized by an associate dean of students to impose all sanctions provided under these procedures
- for a faculty Respondent, the academic vice president or a designee authorized by the academic vice president to impose all sanctions provided under these procedures
- for an administrative or staff employee or athletic professional Respondent, the responsible vice president or a designee authorized by the vice president to impose all sanctions provided under these procedures

Neither the Title IX Coordinator nor the Investigator may serve as a Decision-maker.

The Decision-makers must unanimously agree on all points in the written Determination Regarding Responsibility, however, the Presiding Decision-maker may independently decide questions of relevance or other procedural questions. The Title IX Coordinator will ensure that any individual designated as a Decision-maker receives training or has received training in the previous 12 months on any technology to be used at a live hearing and on issues of relevance of questions and evidence—including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant—and meets all other standards required of Grievance Administrators under these procedures.

### ***Written Submissions***

After receiving the investigative report and no fewer than 10 business days before the hearing, the Parties must provide a written submission to the Decision-makers that includes the following:

- the Party’s written response, if any, to the Investigative Report
- the name and contact information of any witnesses the Party intends to call at the hearing and the substance of the witnesses’ anticipated statements
- the name and contact information of the Party’s chosen advisor for the hearing

If any Party does not identify their chosen advisor in their written submission, the Title IX Coordinator will, without fee or charge to the Party, appoint an advisor for that Party and, at least five working days prior to the hearing, provide the advisor’s name and contact information to the Parties.



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The Decision-makers will review the Parties' written submissions and, at least five business days prior to the hearing, forward the written submissions to the other Party.

### ***Opening and Closing Statements***

The Decision-makers may ask the Complainant and the Respondent to make a brief statement at the opening and/or closing of the hearing. The Decision-makers may limit the time for these statements but will give each Party an equal opportunity to make any statements at the hearing.

### ***Investigation Record***

The Investigation Record will be available to the Decision-makers and the Parties during the hearing, and each Party will be given equal opportunity to refer to information in the Investigation Record during the hearing, including for purposes of cross-examination. Physical or documentary information not included in the Investigation Record will not be admissible during the hearing unless the Presiding Decision-maker determines that the information was not reasonably available to the Party seeking its admission during the investigation.

### ***Witnesses***

The Decision-makers and the Parties may ask the Investigator and any witness who has provided a statement to the Investigator in the Investigation Record to answer questions at the hearing. The university will make reasonable allowance for BYU students and employees to participate in a Sexual Harassment hearing, if necessary, during regular school or work hours. However, the university will not compel any Party or witness to participate in a hearing.

If a Party or witness does not attend or does not submit to cross-examination at the hearing, the Decision-maker must not rely on any statement of that Party or witness in reaching a Determination Regarding Responsibility. However, the Decision-makers cannot draw an inference about the Determination Regarding Responsibility based solely on a Party's or witness's absence from the hearing or refusal to answer cross-examination or other questions, including any inference that a Respondent's absence or refusal to answer questions implies his or her responsibility for the Sexual Harassment alleged or that a Complainant's absence or refusal to answer implies that the Respondent is not responsible for the Sexual Harassment alleged by the Complainant.

### ***Direct and Cross-examination of Parties and Witnesses***

The Decision-makers may ask any relevant questions of any Party or witness at the hearing, including the Investigator. The Decision-makers will permit each Party's advisor to ask the Parties and any witnesses all relevant questions and follow-up questions, including questions challenging credibility. Any cross-examination at the live hearing will be conducted directly, orally, and in real time by the Party's advisor and never by a Party personally. If a Party does not



have an advisor present at the live hearing, the university, without fee or charge to that Party, will provide an advisor of the university's choice to conduct cross-examination on behalf of that Party.

### ***Relevance***

Only relevant questions may be asked of a Party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Presiding Decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

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

### ***Determination Regarding Responsibility***

The Decision-makers will objectively evaluate all evidence relevant to the allegations in the Notice of Allegations—including both information tending to show the Respondent's responsibility for Sexual Harassment and information tending to show the Respondent is not responsible—and must unanimously determine, based on the preponderance of the evidence (i.e., whether it is more likely than not), whether the Respondent is responsible for Sexual Harassment. The Decision-makers will not require, allow, rely on, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived it. The Decision-makers will presume that the Respondent is not responsible for the alleged conduct until a Determination Regarding Responsibility is made at the conclusion of the grievance process and will not base any credibility determinations on a person's status as a Complainant, Respondent, or witness. It is the Decision-makers' responsibility to ensure that the burden of proof is met with regard to any Determination Regarding Responsibility of Respondent.

Within 10 business days of the hearing, the Decision-makers will issue a written Determination Regarding Responsibility to the Parties. The Determination Regarding Responsibility must include the following:

- identification of the allegations potentially constituting Sexual Harassment and the Respondent's responses to each allegation
- description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held



- findings of fact supporting the determination
- conclusions regarding the application of the [Sexual Harassment Policy](#) to the facts
- a statement of, and rationale for, the result as to each allegation, including
  - a Determination Regarding Responsibility
  - any disciplinary sanctions the university imposes on the Respondent
  - whether remedies designed to restore or preserve equal access to BYU's Education Program or Activity will be provided to the Complainant
- the procedures and permissible bases for the Complainant and Respondent to appeal and the date the determination becomes final

Remedies provided by the Decision-makers may include Supportive Measures and any of the following disciplinary sanctions against the Respondent.

- Possible sanctions for a student Respondent include notice, warning, probation, suspension withheld, short suspension, suspension, restriction on officially representing the university, expulsion, and a ban from campus. Any disciplinary sanction imposed on a student Respondent and the reason for the sanction may also be noted on the student's academic transcript and Honor Code file. Any sanction imposed on a student Respondent should include an educational action plan prescribed and administered through the Honor Code Office. If the Respondent is a student employee, possible sanctions include all sanctions applicable to students and all sanctions applicable to employees.
- Possible sanctions for a faculty, athletic professional, staff, or administrative employee Respondent include verbal counseling, written warning, final written warning, probation, reassignment, demotion, reduction in pay, suspension, restriction on officially representing the university, termination of employment, and a ban from campus. Any disciplinary sanction imposed on an employee Respondent and the reason for the sanction may also be noted on the employee's employment record.

The Title IX Coordinator is responsible for effectively implementing any remedies in conjunction with university units and management personnel authorized to implement such remedies.

The Presiding Decision-maker will promptly and simultaneously send a copy of the written Determination Regarding Responsibility to the Parties and their advisors and will provide copies to the Title IX Coordinator and the Investigator. The Determination Regarding Responsibility becomes final 31 calendar days after it is delivered to the Parties, unless an appeal is filed within 30 calendar days of the Parties receiving the written determination. If an appeal is timely filed, the Determination Regarding Responsibility becomes final on the date that the appeal decision is provided to the Parties. The Parties' access to the Investigation Record will terminate



as soon as the Determination Regarding Responsibility becomes final, and any further access will be only as permitted by the [Access to Student Records Policy](#) or as required by law.

## V. Appeal

Either Party may appeal from a Determination Regarding Responsibility and from the dismissal of a Formal Complaint or any of its allegations.

The appealing Party must submit a written appeal to the Title IX Office within 10 business days of receiving the Determination Regarding Responsibility. The written appeal is limited to five pages, exclusive of exhibits, and must identify at least one of the following grounds as the basis for the appeal:

- A procedural irregularity affected the outcome of the matter.
- New evidence that was not reasonably available at the time the Determination Regarding Responsibility or dismissal was made, that could affect the outcome of the matter. This new evidence and an explanation of both why it was unavailable at the time the determination and its potential impact must be included in the appeal.
- The Title IX Coordinator, Investigator, or any Decision-maker had a conflict of interest, a bias for or against Complainants or Respondents generally, or a preexisting bias against the individual Complainant or Respondent that affected the outcome of the matter.

The Title IX Coordinator will send a copy of the written appeal to the other Party, who may file a written opposition to the appeal. The opposition must be sent to the Title IX Office within 10 business days of receiving the written appeal and is limited to five pages, exclusive of exhibits. The Title IX Coordinator will send a copy of the opposition to the appealing Party for reference, as no further opposition or statements will be accepted.

The Title IX Coordinator will send the Determination Regarding Responsibility, written appeal, and any written opposition to a designated appeal reviewer (“Reviewer”) for review and will provide the Reviewer with access to the Investigation Record. Neither the Title IX Coordinator nor any person designated as an Investigator or Decision-maker in a matter may be designated as a Reviewer of the same matter. The Reviewer will be determined as follows:

- The Reviewer of a determination involving a student Respondent, including a student employee, will be an associate dean of students. However, if the associate dean of students was a Decision-maker or if the sanction imposed by the Decision-maker is suspension withheld, suspension, or expulsion, the Reviewer will be the dean of students.
- The Reviewer of a determination involving a faculty Respondent will be the academic vice president or an associate academic vice president designated by the academic vice president. However, if the academic vice president was a Decision-maker or if the



sanction imposed by the Decision-maker is for the involuntary termination of a faculty member with continuing faculty status (CFS) or in a CFS-track position, the university president will be the Reviewer and will make the decision after a hearing before a Termination Hearing Committee (see [Faculty Discipline and Termination Policy](#)).

- The Reviewer of a determination involving an athletic professional Respondent will be the advancement vice president or a director or managing director designated by the advancement vice president. However, if the advancement vice president was a Decision-maker or if the sanction imposed by the Decision-maker is for the involuntary termination of an athletic professional, the university president will be the Reviewer and will make the decision after a hearing before a Termination Hearing Committee. See [Faculty Discipline and Termination Policy](#).
- The Reviewer of a determination involving an administrative or staff employee Respondent will be the employee's responsible vice president. However, if the employee's responsible vice president was a Decision-maker or if the sanction imposed by the Decision-maker was for the employee's involuntary termination, the Human Resources Committee (HRC) will be the Reviewer. Any HRC members who were involved in the Determination Regarding Responsibility or dismissal will be recused from the HRC's review of the appeal.

Except as provided in the [Faculty Discipline and Termination Policy](#) for the appeal and hearing of a decision terminating the employment of a CFS or CFS-track faculty member or athletic professional, the Reviewer will not interview the Parties or consider any information outside the Investigation Record and the written appeal and opposition of the Parties.

Within 30 business days of receiving the appeal, the Reviewer will simultaneously provide the Parties and the Title IX Coordinator with a written Determination Regarding Responsibility upholding, reversing, or amending all or part of the original Determination Regarding Responsibility and providing the Reviewer's rationale for the result. If the Reviewer cannot reasonably consider and resolve the appeal within 30 calendar days, the Reviewer will advise the Parties as to when the appeal decision will be provided. The Reviewer's Determination Regarding Responsibility is final, and no further review will be allowed.

## **VI. Informal Resolution**

The Parties may resolve the grievance through an informal resolution process that allows the Parties to forego all or some of the formal grievance process. The goal of informal resolution is to conclude the matter to the satisfaction of the Parties quickly and confidentially and to protect the safety of all Parties and the university's educational environment.



Either Party may ask the Title IX Coordinator to facilitate an informal resolution process at any time before a Determination Regarding Responsibility becomes final; however, the Title IX Office will not offer or facilitate an informal resolution process until

- a Formal Complaint has been filed;
- all Parties have received a written Notice of Allegations; and
- all Parties have provided their voluntary, written consent to the informal resolution process.

Informal resolution may encompass a broad range of conflict resolution strategies, including but not limited to arbitration, mediation, restorative justice, or any other process acceptable to the Parties and the university.

Participation in an informal resolution process is never required as a condition of enrollment or employment or as a precondition to any Party's right to an investigation and adjudication of Sexual Harassment allegations or any other right provided as part of the formal resolution provisions set forth in these procedures. At any time prior to signing a written agreement of informal resolution, the Complainant or Respondent may withdraw from the informal resolution process and resume the Formal Complaint resolution process described in these procedures. The university will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Parties who reach an informal resolution must sign a written agreement documenting the terms and conditions for dismissing the Complainant's Formal Complaint and releasing the Parties' claims against each other and against the university based on the allegations in the Formal Complaint and Notice of Allegations. The written agreement of informal resolution must also be approved and signed by the Title IX Coordinator or by her or his designee.

The Title IX Coordinator will ensure that any person who facilitates an informal resolution process meets all standards required of Grievance Administrators under these procedures.

## **VII. General Provisions**

### ***Standards Required of Grievance Administrators***

Grievance Administrators—including the Title IX Coordinator, Investigators, Decision-makers, Reviewers, or any person designated to facilitate an informal resolution process—will presume the Respondent is not responsible for the alleged conduct until a Determination Regarding Responsibility is made at the conclusion of the grievance process. Grievance Administrators will strive to objectively evaluate all relevant evidence, including both information tending to show the Respondent's responsibility for Sexual Harassment and information tending to show the Respondent is not responsible. No Grievance Administrator may participate in the grievance





process if he or she has a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. Determinations regarding any person's credibility may not be based on the person's status as a Complainant, Respondent, or witness.

The Title IX Coordinator will ensure that all Grievance Administrators receive training on the definition of Sexual Harassment in the [Sexual Harassment Policy](#); the scope of BYU's Education Program or Activity; how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable; and how to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias. Materials used to train Grievance Administrators must not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment.

### ***Confidentiality***

Parties to the investigation of a Formal Complaint are not restricted from discussing the allegations under investigation, especially as necessary to gather and present relevant evidence. However, given the sensitive nature of Sexual Harassment allegations and the potential for damage to the Parties' personal reputations, all participants in the grievance process, including individuals who have made a report of Sexual Harassment, Complainants, Respondents, advisors, and witnesses, are requested to keep the allegations and investigation proceedings confidential insofar as possible. Any use or dissemination of information relating to the allegations or investigation that is intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by the [Sexual Harassment Policy](#) or these procedures is prohibited retaliation.

The university will keep confidential the identity of all participants, except under the following circumstances: as required by law, as necessary to carry out the purposes of the [Sexual Harassment Policy](#) and these [Sexual Harassment Grievance Procedures](#) (including the conduct of any investigation, hearing, or judicial proceeding arising hereunder), or as permitted by the [Access to Student Records Policy](#). Further, the Title IX Office will not share the identity of a Complainant or witness with the Honor Code Office unless requested by such a person or a person's health or safety is at risk.

Records kept by the university relating to Sexual Harassment allegations are not publicly available, but in the event the university is required to make any records publicly available, any identifying information about the Parties will be redacted, to the extent permissible by law, to protect the Parties' confidentiality.

### ***Advisors***

An investigation under these Procedures is an internal university student or employment disciplinary matter. Nevertheless, Parties may invite an advisor of their choice to accompany



them to any meeting or proceeding related to the investigation or resolution of a Formal Complaint. The advisor may be a friend, mentor, family member, attorney, or any other person selected by the individual to provide advice and support. The university will not typically change scheduled meetings to accommodate an advisor's inability to attend. Individuals may elect to change their advisor during the investigative process and are not required to use the same advisor throughout the process.

An advisor may attend for purposes of observation but will not be permitted to represent a Party, to respond to questions posed to the Party they advise, or to otherwise participate in any meeting or proceeding that may take place under these procedures, except during live hearings as provided in these procedures. Advisors are subject to campus rules and are expected to refrain from interference with the university investigation and resolution. Advisors are not permitted to contact or ask the other Party or any witness questions other than as permitted during the live hearing.

While all Parties have the same opportunity to have an advisor present during any grievance proceeding, the university cannot guarantee equal advisory rights when it comes to advisors (e.g., if one Party selects an attorney as their advisor, but the other Party does not have or cannot afford an attorney, the university is not obligated to provide one). However, if a Party does not have an advisor present at the live hearing, the university will provide, without fee or charge to that Party, an advisor of the university's choice to conduct cross-examination of the other Party and witnesses on behalf of that Party. If the advisor provided by the university is an attorney, he or she will not have an attorney-client relationship with the Party, and their communications will not be subject to an attorney-client privilege. However, the university will treat the communications as confidential.

### ***Notice, Delivery of Documents, and Extensions of Time***

Grievance Administrators will provide any Party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the Party to prepare to participate.

Delivery of notice occurs when a Party receives documents in person, when they are sent by email to the Party's email address on file with the university, or three days after they are posted by U.S. Mail to the Party's residential address on file with the university.

A Party may ask the Title IX Coordinator or designee for an extension of any deadline imposed by these procedures. The Title IX Office will grant the extension only for good cause with written notice to the other Party of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a Party, a Party's advisor, or a witness; ongoing law enforcement activity; or the need for language assistance or accommodation of disabilities.



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***Concurrent Investigations or Processes***

An investigation or resolution of a Formal Complaint under these procedures will not be suspended pending the conclusion of a criminal investigation or any other investigation, including another university investigation. However, the fact-finding portion of the investigation may be delayed temporarily to comply with a law enforcement request for cooperation (e.g., to allow for criminal evidence collection) when the criminal charges are based on the same allegations that are being investigated under these procedures. In addition, if the university determines the issues raised in a Formal Complaint may be relevant to its determination in another investigation or another process that is simultaneously pending at the university, the other investigation or process may be suspended until this process and any appeal are concluded.

Although the findings and conclusions of one investigation will not determine the outcome of any other, any information or findings developed in any university or nonuniversity investigation may be shared with and considered in any other university investigation.

***Record Keeping***

The university will maintain the following records for a period of at least seven years:

- records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Sexual Harassment. In each instance, the university must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to its Education Program or Activity. If the university does not provide a Complainant with Supportive Measures, then the university must document the reasons why the response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the university in the future from providing additional explanations or detailing additional measures taken.
- records of any informal resolution, including any written agreement of informal resolution
- records of each Sexual Harassment investigation, including any Determination Regarding Responsibility and any audio or audiovisual recording or transcript created during the live hearing, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the BYU Education Program or Activity
- records of any appeal and the result therefrom
- all materials used to train Grievance Administrators (The university will make its training materials publicly available on the Title IX website.)



**APPROVED:** 14 Aug 2020

**PRIOR VERSION:** 6 Apr 2020

**APPLICABILITY:** This policy applies to all university students and all university personnel (including faculty, athletic professionals, administrative and staff employees, and volunteers), and all visitors to the university (including, but not limited to, independent contractors, vendors, visiting lecturers, and visiting students) participating in or facilitating a BYU program or activity.

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

**RESPONSIBLE OFFICE:** Title IX Office

**RELATED POLICIES:**

- [Access to Student Records Policy](#)
- [Administrative and Staff Employee Discipline Policy](#)
- [Administrative and Staff Employee Discipline Procedures](#)
- [Administrative and Staff Employee Grievance Policy](#)
- [Campus Crime Awareness, Prevention, and Reporting Policy](#)
- [Campus Security Timely Warning Notice Policy](#)
- [Child Protection Policy](#)
- [Church Educational System Honor Code](#)
- [Discrimination Complaint Procedures](#)
- [Faculty Discipline and Termination Policy](#)
- [Faculty Grievance Policy](#)
- [Honor Code Investigation and Administrative Review Process](#)
- [Nondiscrimination and Equal Opportunity Policy](#)
- [Sex Offender Investigation and Review Process](#)
- [Sex Offender Policy](#)
- [Sexual Harassment Policy](#)