



# Board of Regents Special Meeting

July 2024

July 22, 2024

10:00 a.m.

Boardroom, McNamara Alumni Center

## BOR - JUL 22, 2024 - Special Meeting

### 1. Resolution Related to Amendments to University Policies Related to Sex Discrimination – Action

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# BOARD OF REGENTS DOCKET ITEM SUMMARY

**Board of Regents**

**July 22, 2024**

**AGENDA ITEM:** Resolution Related to Amendments to University Policies Related to Sex Discrimination

**Review**

**Review + Action**

**Action**

**Discussion**

*This is a report required by Board policy.*

**PRESENTERS:** Tina Marisam, Associate Vice President & Title IX Coordinator, Office for Equity and Diversity  
Carrie Ryan Gallia, Senior Associate General Counsel, Office of the General Counsel

## PURPOSE & KEY POINTS

The purpose of this item is to act on a resolution related to amendments to University policies related to sex discrimination. The proposed amendments will revise University policies, procedures, and rules to comply with new federal Title IX regulations and will be implemented at such time that the regulations take effect at the University.

In April 2024, the U.S. Department of Education issued final Title IX regulations with an August 1, 2024, implementation date. The regulations specify how institutions must respond to reports of sex discrimination that are covered by Title IX.

As the result of a recent federal court decision, the U.S. Departments of Education and Justice are currently enjoined from enforcing the new regulations against the University. The Department of Education has shared that, as of August 1, it plans to enforce the previous 2020 regulations wherever it is enjoined from enforcing the 2024 regulations. Therefore, as long as the injunction is effective, the University must have policies in place (as it does now) that comply with the previous 2020 regulations.

The Departments of Education and Justice are currently appealing the injunction. If their appeal is successful, the University's policies and procedures would be required to comply with the new 2024 regulations. For that reason, the revised policies related to sex discrimination have been updated to comply with the new regulations, and Board approval is requested so that the University can implement the policies at such time that the injunction is lifted and the University is required to comply with the new regulations.

To that end, included in the docket are two resolutions. Both resolutions would approve the proposed amendments. Option 1 would delegate to the President the authority to implement the amended policies and rules immediately when it is permissible to do so under law and Department

of Education policy. Option 2 would hold implementation of the amended policies and rules until the Board directs the President to implement them at a future meeting when the legal landscape changes to require the University to comply with the new 2024 regulations. Based on the discussion, the Board will ultimately act on either Option 1 or Option 2.

### **Summary of Key Policy Changes**

Current Board and Administrative policies on *Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence* cover sexual misconduct. To comply with the new Title IX regulations, the proposed amendments will do the following:

- Expand the scope to cover all forms of sex discrimination. This includes changing the policy titles to *Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*.
- Update grievance processes in related policies and rules to make clear that reports of sex discrimination, including decisions and appeals, will proceed according to the revised Board and Administrative policies.
- Make other policy changes as appropriate to implement the new regulations and maintain consistency with the new policy language.

The resolution will amend the following policies, procedures, and rules, which are included in the docket:

#### *Board of Regents Policies:*

- *Faculty Tenure*
- *Sexual Harassment, Sexual Assault, Stalking and Relationship Violence*
- *Student Conduct Code*

#### *Administrative Policies and Related Procedures:*

- *Conflict Resolution for Faculty, P&A, Civil Service, and Student Workers*
- *Discrimination*
- *Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence*

#### *Civil Service Employment Rules*

Due to the substantial number of changes to Administrative Policy: *Discrimination* and Administrative Policy: *Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence*, a clean version is included in the docket.

### **Policy Changes Since Board Review**

Since the Board reviewed the proposed amendments at the July 2024 meeting, the following changes have been made to the Administrative Policies on *Discrimination* and *Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence* (to be renamed *Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*):

- Added a statement that the revised policies and associated procedures apply to all reports of prohibited conduct, except that definitions from the policies in place at the time the reported prohibited conduct occurred will be used to make the decision on responsibility.
- Added charts containing contact information for campus Title IX and Equal Opportunity offices, law enforcement resources, confidential resources, UReport, and external reporting resources.
- Added that Equal Opportunity & Title IX Office (EOT) oversees the University's compliance with federal and state nondiscrimination laws.
- Added that supervisors must communicate with the University's Sponsored Project Administration about prohibited conduct and related administrative action that may need to be reported to a grant-funding agency under the agency's rules.
- Added that the campus Title IX or Equal Opportunity office, as appropriate, is responsible for the record-keeping requirements set forth in the policies.
- Added that the campus Title IX or Equal Opportunity office, as appropriate, may appoint a designee to hold the process rights accorded to complainants in a grievance process when there is not a participating complainant.
- Other technical corrections.

An additional change was also made to the Administrative Policies on *Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence* (to be renamed *Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*):

- Added Administrative Procedure: *Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence Reported to Have Occurred Between August 15, 2020 and July 31, 2024*.
  - This procedure applies the 2020 regulatory requirements to sex discrimination that is reported to have occurred between August 15, 2020 and July 31, 2024, as is required by the regulations.

### **Anticipated Impact on University Units and Departments**

The policy changes that are most likely to have meaningful impacts on University units and departments include:

- University policy currently requires that employees report sexual misconduct to the campus Title IX office, with some exceptions. Under the revised policies, employees will be required to report all forms of sex discrimination, including sexual misconduct, to the campus Title IX office, with some exceptions.
- Under the new policies, when a student tells an employee that they are pregnant or have a related condition, the employee must inform the student about resources available from the Title IX Coordinator. Current policy does not have any notification requirements related to pregnancy.
- The EOT anticipates that the policy changes may result in shorter timelines in the sex discrimination grievance process.

### **Budget Implications of the Proposed Changes**

The new Title IX regulations create new obligations for the Title IX Coordinator and staff in responding to sex discrimination reports and administering the formal grievance process to adjudicate complaints. Current staffing is sufficient to meet needs.

Implementation of the new regulations will likely result in a small increase in the number of cases that proceed through the grievance process, which may require the hiring of additional advisors to conduct questioning on behalf of any party who does not have their own advisor. The anticipated additional cost is \$5,000–\$30,000 annually to the expenses of the Sexual Misconduct Hearing Committee, depending on the number of complaints filed in any given year.

## **BACKGROUND INFORMATION**

### **Completed Consultations**

The following University stakeholders have been consulted regarding the new regulatory requirements and related proposed policy changes:

- Systemwide Title IX and sexual misconduct prevention professionals
- Systemwide human resource professionals
- Office of the General Counsel
- Senate Consultative Committee
- Faculty Consultative Committee
- Student Senate Consultative Committee
- Civil Service employees (through a public hearing)
- Employee Labor Relations
- Diversity, Inclusion, Justice and Equity Collective
- Lactation Advisory Committee
- Student Parent Help Center
- Systemwide student affairs leaders
- Systemwide student conduct professionals
- The Aurora Center

Members of the following governance committees were invited to attend two consultative sessions at which the Title IX Coordinator presented the regulatory changes and proposed policy changes, and solicited feedback:

- Equity, Access, and Diversity Committee
- Senate Judiciary Committee
- Campus Committee on Student Behavior
- P&A Consultative Committee
- Civil Service Consultative Committee
- Academic Freedom & Tenure Committee
- Student Academic Integrity Committee
- Senate Committee on Student Affairs

In addition, the Title IX Coordinator reached out to systemwide student leaders to offer consultation on regulatory changes and proposed policy changes.

## **Plan for Communicating the Policy Changes**

If and when the updated policies are implemented, EOT plans to communicate about the policy changes in a variety of ways, to include, but not limited to:

- A systemwide email to all University community members when the new policies take effect that includes the new policies and highlights changes and shares resources related to the new employee reporting and pregnancy notification requirements.
- Key policy changes will be included in the online courses on sexual misconduct that employees are required to complete upon hire and students are required to complete at the beginning of their first semester.
- Key policy changes will be included in a course on sex discrimination that will be required for all employees annually, as required by the new regulations.
- All Title IX staff members and decision-makers will be required to complete a course on their revised roles in Title IX compliance and grievance processes.
- Information about the new policies, and the new employee reporting and notification requirements, will be shared through Brief and MyU.
- EOT will also communicate about the new policies in more depth to its EOT Partners Group, System Title IX Team, and other key stakeholders.

## **PRESIDENT'S RECOMMENDATION**

The President recommends approval of a resolution related to amendments to University policies related to sex discrimination.



**REGENTS OF THE UNIVERSITY OF MINNESOTA**

**RESOLUTION RELATED TO**

**Amendments to University Policies Related to Sex Discrimination**

**BE IT RESOLVED** that the Board of Regents (Board) hereby approves the following actions as presented:

- A. Amend Board of Regents Policy: *Faculty Tenure*
- B. Amend Board of Regents Policy: *Sexual Harassment, Sexual Assault, Stalking and Relationship Violence*
- C. Amend Board of Regents Policy: *Student Conduct Code*
- D. Amend the *Civil Service Employment Rules*
- E. Ratification of Administrative Policy: *Conflict Resolution for Faculty, P&A, Civil Service, and Student Workers*
- F. Ratification of Administrative Policy: *Discrimination*
- G. Ratification of Administrative Policy: *Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence*

**BE IT FURTHER RESOLVED** that the Board delegates to the President the authority to implement the amended policies and rules when it is permissible under law and U.S. Department of Education policy to do so and report to the Board when the amended policies and rules are implemented.

**BE IT FURTHER RESOLVED** that the Board delegates to the President the authority to cease (or restart if already ceased) implementation of these policies and rules should legal circumstances change and report to the Board any change to implementation.





**REGENTS OF THE UNIVERSITY OF MINNESOTA**

**RESOLUTION RELATED TO**

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- F. Ratification of Administrative Policy: *Discrimination*
- G. Ratification of Administrative Policy: *Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence*

**BE IT FURTHER RESOLVED** that the amended policies and rules will not be implemented until the Board has concluded that the implementation is permissible under law and U.S. Department of Education policy and acts to direct the President to implement the amended policies and rules at a future meeting.



## BOARD OF REGENTS POLICY: *Faculty Tenure*

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### PREAMBLE

The Board of Regents adopts these regulations with the conviction that a well-defined statement of rules is essential to the protection of academic freedom and to the promotion of excellence at the University of Minnesota. A well-designed promotion and tenure system ensures that considerations of academic quality will be the basis for academic personnel decisions, and thus provides the foundation for academic excellence.

Tenure is the keystone for academic freedom; it is essential for safeguarding the right of free expression and for encouraging risk-taking inquiry at the frontiers of knowledge. Both tenure and academic freedom are part of an implicit social compact which recognizes that tenure serves important public purposes and benefits society. The people of Minnesota are best served when faculty are free to teach, conduct research, and provide service without fear of reprisal and to pursue those activities with regard for long term benefits to society rather than short term rewards. In return, faculty have the responsibility of furthering the institution's programs of research, teaching, and service, and are accountable for their performance of these responsibilities. Additionally, a well-designed tenure system attracts capable and highly qualified individuals as faculty members, strengthens institutional stability by enhancing faculty members' institutional loyalty, and encourages academic excellence by retaining and rewarding the most able people. Tenure and promotion imply selectivity and choice; they are awarded for academic and professional merit, not for seniority. The length and intensity of the review leading to the grant of tenure ensures the retention only of well-qualified faculty committed to the University's mission.

The ideal attributes of the collective faculty of any unit are scholarly creativity, professional competence and leadership, intellectual diversity, the ability and desire to teach effectively and the willingness to cooperate with other units in promoting the work and welfare of the University as a whole. The administration and faculty should ensure, within each unit, not only a proper balance among these activities but also the maintenance of each at the highest level, together with accountability and suitable recognition of individual achievement and service.

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Board of Regents Policy: *Faculty Tenure* contains both footnotes and interpretations. Footnotes are numbered and are indicated in the text with the abbreviation [FN#]. Footnotes are shown at the bottom of each page on which footnote markers appear in the text; these add information about specific terms or phrases in the regulations. Interpretations are numbered and are indicated in the text with the abbreviation [INTERP#]. Interpretations appear at the end of the regulations; these are added to clarify or modify the meaning of a section or subsection.

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The tenure regulations provide a comprehensive set of policies dealing with the relationship between the University and its faculty. The regulations classify the faculty as tenured, probationary and term. They provide for annual performance reviews of all faculty, as well as especially thorough reviews before the granting of tenure, on promotion in rank, and when the performance of a tenured faculty member is alleged to be substandard. They provide for the reassignment of faculty in case of the reorganization of the University or changes in its scholarly direction, and for discipline when a faculty member fails to meet prescribed standards of conduct.

**DEFINITIONS**

For the purposes of this policy, the terms defined in this section have the meanings given them.

**(a) Academic Unit.** An *academic unit* is a department or similar unit. A school, college or division that is not further subdivided is also an academic unit.

**(b) Faculty Member.** *Faculty member* means every faculty member employed by the University of Minnesota System.

**(c) Head.** The *head* of an academic unit is the academic administrator immediately responsible for it, such as a chair, head or director.

**(d) Collegiate Unit or College.** a *collegiate unit* or *college* is a major academic entity of the University. It may be a college, school, or campus.

**(e) Dean.** The *dean* of a collegiate unit is the academic administrator immediately responsible for it, such as a dean or director or (on a campus that is not subdivided into colleges) a vice-chancellor.

**(f) Senior Academic Administrator.** A *senior academic administrator* is an officer who has final administrative review authority on academic personnel decisions, and who reports directly to the president and regents, such as a vice president, chancellor, or provost. The president will designate one or more senior academic administrators and define their respective jurisdictions.

**(g) Executive Vice President and Provost.** The *executive vice president and provost* is the officer (of whatever title) holding primary responsibility for the development of University-wide academic policy. This officer may also serve as senior academic administrator for some or all of the University, if so designated by the president.

**(h) Tenured Faculty.** *Tenured faculty* are those faculty who hold indefinite tenure.

**SECTION 1. ACADEMIC FREEDOM**

**1.1. Principles.** Every member of the faculty is entitled to due process and academic freedom as established by academic tradition and the constitutions and laws of the United States and the state of Minnesota and as amplified by resolutions of the Board of Regents. The Board of Regents hereby reaffirms its commitment to academic freedom and tenure as reflected in its resolution of January 28, 1938, in these *Faculty Tenure* regulations, and in its policy on *Academic Freedom and Responsibility*:

The Regents of the University of Minnesota reaffirm the principles of academic freedom and responsibility. These are rooted in the belief that the mind is ennobled by the pursuit of

understanding and the search for truth and the state well served when instruction is available to all at an institution dedicated to the advancement of learning. These principles are also refreshed by the recollection that there is *commune vinculum omnibus artibus* - a common bond through all the arts.

Academic freedom is the freedom, without institutional discipline or restraint, to discuss all relevant matters in the classroom, to explore all avenues of scholarship, research and creative expression and to speak or write on matters of public concern as well as on matters related to professional duties and the functioning of the University.

Academic responsibility implies the faithful performance of professional duties and obligations, the recognition of the demands of the scholarly enterprise, and the candor to make it clear that, when one is speaking on matters of public interest, one is not speaking for the institution.

**1.2. Protection of Faculty.** Denial of faculty appointment or reappointment or removal or suspension from office or censure or other penalty must not be based upon any belief, expression or conduct protected by law or by the principles of academic freedom. Cases of alleged violation of academic freedom may be brought directly to the Judicial Committee in accordance with section 15.

## **SECTION 2. APPLICABILITY OF REGULATIONS TO EMPLOYMENT CONTRACTS**

These regulations govern the relationship between the Board of Regents and faculty members, except as inconsistent with the provisions of collective bargaining agreements. These regulations are part of the contract between the Board of Regents and faculty members.

## **SECTION 3. FACULTY RANKS AND TYPES OF APPOINTMENTS**

**3.1. In General.** The faculty ranks are professor, associate professor, assistant professor, and instructor. Faculty appointment is appropriate only if the person is engaged in teaching or research as defined in subsection 7.11. Appointments at these ranks are either regular tenured or tenure-track appointments or term appointments. An appointment must be designated as a regular or a term appointment when it is made.

**3.2. Regular Appointments.** A regular appointment either is with indefinite tenure or is probationary, leading to a decision concerning indefinite tenure within a specified period of time. A regular appointment may be held only in an academic unit of a degree-granting college or similar unit. A regular appointment must be for at least two-thirds time of the faculty member's contract year [i.e. either an academic year or twelve months].

A faculty member on probationary appointment is entitled to consideration for indefinite tenure in accordance with section 7 and to timely notice of termination in accordance with section 6.

A faculty member with indefinite tenure is entitled to retain that position until retirement in accordance with University regulations or until the appointment is terminated pursuant to the provisions of sections 10 or 11.

**3.3. Term Appointments.** A term appointment is date-specific; that is, the appointment terminates at the end of a period specified in the appointment without further notice to the appointee. The senior academic administrator for the campus or area must give every person appointed to a term faculty position a

statement in writing setting forth the conditions of the appointment, including the fact that it terminates without further notice.

No number of renewals of a term appointment creates a right to further renewals or to a decision concerning tenure. Every renewal of a term appointment for the seventh or succeeding year must be reported to the Tenure Committee with a justification of the reasons for the continuation of term status.

**3.4. Appropriate uses of term appointments.** Term appointments are appropriate and may be used provided one or more of the following conditions is met:

- (a) the duration, the percentage of time, or both require less than service for two-thirds time for the academic year;
- (b) the appointment is designated a visiting appointment because the faculty member is from another educational institution or is a qualified professional from a government or private agency on a leave of absence to accept a temporary appointment at this University;
- (c) the appointment is designated a clinical appointment because the faculty member is a clinician in the community who gives service to the University part-time;
- (d) the appointment concerns a faculty member who principally is engaged in and primarily is supported by clinical activities or by discipline-related service. [FN1]
- (e) the appointment is designated an adjunct appointment because the faculty member's primary employment is outside the University or is in another unit of the University;
- (f) the appointment extends courtesy faculty rank without salary;
- (g) the position is subject to the joint control of the University and another institution;
- (h) the specific funding for the position is subject to the discretion of another agency;
- (i) the funding for the position is for a limited time;
- (j) the appointment is in a unit or program that is experimental or otherwise restricted in duration; and
- (k) the person is enrolled in a University of Minnesota degree program. A regular faculty member on a probationary appointment may transfer to term status during enrollment in such a program if the faculty member and the senior academic administrator agree. This transfer suspends the running of the maximum period of probationary service, but the faculty member retains other rights of regular appointment, including annual review, the right to timely notice and a terminal appointment period as provided in section 6.

**3.5. Administrators' Appointments.** Academic administrators may hold regular or term faculty appointments. Administrative titles and duties are distinct and severable from such individuals' faculty appointments. Removal from an administrative position does not impair any rights the individual holds as a faculty member. Upon leaving an administrative position, the individual returns to faculty status, with salary and term of appointment reduced by the amount of the administrative augmentation, if any.

**3.6. Special Contracts.** These regulations do not bar a faculty appointment pursuant to a special contract specifying terms or conditions of employment which are different from those prescribed in these regulations. All other provisions of these regulations apply to such appointments. Every special contract must be in writing and must state that it is a special contract entered into pursuant to this subsection. It must be signed by the faculty member concerned, by the dean of the collegiate unit in which the faculty member will be employed and by the senior academic administrator and must be authorized by the Board of Regents or its expressly authorized delegate. In addition, the senior academic administrator will annually report to the Tenure Committee the terms of all special contracts and the reasons for their use.

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FN1 "Service" means performance within the faculty member's expertise, other than teaching and research as defined in subsection 7.11.

A special contract may be used to reduce the minimum time of a regular appointment to one-half time in order to permit a faculty member to devote more time to family responsibilities. Such a contract must provide for the mutual responsibilities of the faculty member and the academic unit, including the type and percent time of the appointment, if any, to which the faculty member is entitled at the expiration of the special contract. In the case of a probationary faculty member, the contract will regulate the length of the probationary period, but the total probationary period may be extended by no more than a total of three years pursuant to this subsection and subsection 5.5.

#### **SECTION 4. TERMS OF FACULTY EMPLOYMENT**

**4.1. Written Notice of Appointment.** Each faculty appointment or change of status is specified in a written notice of appointment issued by or on behalf of the Board of Regents. The notice must include the following:

- (a) Whether the appointment is regular or term;
- (b) Whether it is full or part-time and the percentage of time involved;
- (c) If for a fixed term, its expiration date;
- (d) If regular, whether it is probationary or with indefinite tenure;
- (e) Whether it is on a twelve-month, academic year or other specified annual basis;
- (f) The rank of appointment;
- (g) The academic unit or units to which the individual is being appointed;
- (h) The recurring salary; and
- (i) Additional salary as described in subsection 4.4.

The notice is only evidence of the appointment; clerical or computer errors in a notice of appointment do not affect the terms of the appointment unless the faculty member reasonably relied upon the mistake and suffered an injustice because of that reliance. Notices required by this section should be delivered before the effective date of the appointment or change of status, or as soon thereafter as is administratively feasible. A probationary appointee must also be given notice of the applicable maximum probationary period.

**4.2. Action by the Board of Regents.** Faculty appointments and renewals or changes of status become effective when approved by the Board of Regents or its authorized delegate.

**4.3. Changes in Terms of Appointment Other than Faculty Compensation.** Except for raises in rank and except for action expressly authorized by these regulations, no changes of (a) through (g) items listed in subsection 4.1 may be made during the term of an appointment except with the agreement of the faculty member and the Board of Regents or its authorized delegate.

**4.4. Faculty Salaries.** [INTERP 1] Each faculty member shall receive a recurring salary, and may also receive an additional salary which may be for special awards or for activities in addition to regular faculty responsibilities such as clinical practice, administrative service, overload duties, summer school teaching and summer research support and similar activities.

Recurring salary will not be decreased except by action expressly authorized in this section or in sections 7a, 10, 11, or 14 of these regulations or with the agreement of the faculty member. If a faculty member's recurring salary is decreased, the amount of the decrease and the reason therefore shall be set forth in a written notice and provided to the faculty member. No decrease in recurring salary shall occur in violation of the academic freedom of the faculty member.

At the time an appointment is made, the offer and written notice of appointment shall separately state the recurring salary and any additional salary, as described above, that the faculty member will receive. In each subsequent year, the faculty member shall be provided with a written notice separately stating any changes in recurring salary and any changes in additional salary for the following academic year. A faculty member's recurring salary shall consist of the initial recurring salary adjusted by any subsequent increase or decrease in recurring salary provided for in a subsequent written notice. Increases will be presumed to be in recurring salary unless otherwise identified. For a faculty member employed when this section takes effect, the initial recurring salary will be the faculty member's recurring salary at the time this section takes effect, exclusive of any additional salary designated as special awards or designated as being for activities in addition to regular faculty responsibilities such as clinical practice, administrative service, overload duties, summer school teaching, summer research support and similar activities.

A faculty member whose recurring salary has been decreased may petition for review of that action under section 15 of these regulations.

**4.5. Reduction or Postponement of Compensation.** If the University or a collegiate unit is faced with financial stringency that does not amount to a fiscal emergency, the president may propose a temporary reduction or postponement in compensation to be allocated to faculty in accordance with a mathematical formula or similar device. If approved by the Faculty Senate or the appropriate collegiate assembly, respectively, and the Board of Regents, the recurring salary of all faculty members in the University or in the designated collegiate units shall be reduced temporarily in accordance with the formula or device. The reduction may not continue for longer than two years, unless renewed by the same procedure. [INTERP 2]

## **SECTION 5. MAXIMUM PERIOD OF PROBATIONARY SERVICE**

**5.1. General Rule.** To give the University ample opportunity to determine the qualifications of those faculty members whom it is considering for regular appointments with indefinite tenure, the maximum period of probationary service of a faculty member is normally six academic years, whether consecutive or not. The faculty assembly of a collegiate unit may propose to alter the maximum probationary period for all of that college, or for certain units within it, to no more than nine years. The tenured faculty of a college, by simple majority vote taken by secret ballot, may adopt such a change, with the approval of the dean and of the senior academic administrator. Any such change in the maximum probationary period applies to all probationary faculty hired in that college (or those units) after the decision, but any incumbent probationary faculty member may choose to be considered under the new rule. At the end of this probationary period, the faculty member must either be given a regular appointment with indefinite tenure or a one-year terminal appointment.

**5.2. Early Decisions Permitted.** These regulations do not prevent the granting of indefinite tenure prior to the expiration of the maximum period of probationary service and do not prevent a decision to terminate an appointee's probation prior to the end of the appointee's maximum probationary service, if timely notice is given.

**5.3. Crediting of Academic Year.** A faculty member is considered to have served an academic year if the faculty member serves at least two-thirds time during the faculty member's contract year [i.e. either an academic year or twelve months].

Unless otherwise agreed in writing, periods during which a faculty member is on a single-semester or other paid professional-development leave or is on leave to teach or conduct research at another academic

institution, count as probationary service. Periods in which the faculty member is on sick or disability leave, or is on leave in some non-faculty capacity, do not count as probationary service.

If a faculty member transfers to a position outside of the regular faculty, the time spent in the other position does not count as probationary service for the purpose of section 5.

#### **5.4. Prior Service.**

*5.41. In This University.* Every academic year during which a faculty member has previously served at least two-thirds time under a regular appointment at this University reduces the maximum period of probationary service by one year.

*5.42. Elsewhere.* If a faculty member has previously served in regular faculty positions, as defined in these regulations, in one or more accredited universities or colleges, every academic year of such service (not exceeding three) reduces the maximum period of probationary service by one year.

*5.43. Exceptions Permitted.* If the prior service was in a different discipline, was in an academic unit or institution with teaching or research goals not comparable to those of the present appointment, or was too long ago to provide good evidence of the appointee's current professional development, the Board of Regents or its expressly authorized delegate may make an exception in writing at or near the beginning of the probationary period.

**5.5. Extension of Maximum Probationary Period for New Parent or Caregiver, or for Personal Medical Reasons.** Upon the written request of a probationary faculty member, the maximum period of that faculty member's probationary service will be extended by one year at a time for each request:

- (a) On the occasion of the birth of the faculty member's child or placement of an adoptive/foster child with the faculty member. Such a request for extension will be granted automatically if the faculty member notifies the unit head, dean, and executive vice president and provost in writing that the faculty member is eligible for an extension under subsection 5.5 because of the birth or adoption/foster placement; or
- (b) If the faculty member is a major caregiver for a family member with an extended serious illness, injury, or debilitating condition and the executive vice president and provost determines that the circumstances have had or are likely to have a substantial negative impact on the faculty member's ability to work over an extended period of time;
- (c) If the faculty member has an extended serious illness, injury, or debilitating condition, and the executive vice president and provost determines that the circumstances have had or are likely to have a substantial negative impact on the faculty member's ability to work over an extended period of time. If the faculty member's illness, injury, or debilitating condition reduces the faculty member's ability to work to less than two-thirds time during the faculty member's contract year [i.e., the academic year or twelve months], the probationary period is automatically extended by one year in accordance with subsection 5.3.

"Family member" means a faculty member's spouse or domestic partner, child, or other relative. "Child" includes a biological child, an adopted or foster child, and the child of a spouse or domestic partner.

The probationary period may be extended for no more than three years total, except that the extension may be for no more than one year total for (1) an instructor with a probationary appointment under subsection 6.22 or (2) an associate professor or professor with a three-year probationary appointment under subsection 6.21.



The notification of birth or adoption/foster placement for provision (a) and the request for extension for provisions (b) and (c) in this subsection must be made in writing within one year of the events giving rise to the claim and no later than June 30 preceding the year a final decision would otherwise be made on an appointment with indefinite tenure for that faculty member.

A request for an extension under provision (b) or (c) will not be denied without first providing the faculty member making the request with an opportunity to discuss the request in a meeting with an administrator designated by the executive vice president and provost. A claim that a request for an extension under provision (b) or (c) was improperly denied may be considered in any subsequent review by the Senate Judicial Committee of a termination under subsection 7.7.

## **SECTION 6. TENURE AND PROMOTION FOR PROBATIONARY FACULTY MEMBERS**

**6.1. In General.** A regular probationary appointee is a candidate for indefinite tenure. A probationary appointment continues until it is superseded by an appointment with indefinite tenure or until terminated by timely notice or by resignation. Regular probationary appointments are normally made at the rank of assistant professor, but may be made at the rank of instructor, associate professor, or professor.

**6.2. Requirements for Notice Requirements of Termination.** Except as provided below, a probationary appointment may be terminated at the end of any academic year by giving the faculty member notice of termination (in the form provided in section 17) not later than May 15 of the preceding academic year. The notice must inform the faculty member of the right to request a hearing before the Judicial Committee and must advise the faculty member of the applicable time limit for making such a request.

*6.21. Associate Professors and Professors on Probationary Appointments.* An initial probationary appointment at the rank of associate professor or professor may specify in writing that it is for a minimum period of three years. In such a case, the probationary period is three years and the appointment may not be terminated before the end of the third year except as otherwise provided in these regulations; notice for such a termination must be given to the faculty member not later than May 15 of the second year of service, to take effect at the end of the third year of service.

*6.22. Instructors on Probationary Appointments.* An initial probationary appointment at the rank of instructor may be made only if the candidate has not yet received the terminal degree necessary for appointment as an assistant professor in the unit.

A probationary appointment at the rank of instructor may be for no more than two years. A one-year appointment may be terminated at the end of the first year by notice given not later than March 1 of that year. A two-year appointment may be terminated at the end of the second year by notice given not later than December 15 of that year. In all other respects such appointments are governed by the notice provisions specified in subsection 6.2.

The duration of the appointment as an instructor with probationary status counts toward the appointee's maximum period of probationary service under subsection 5.1. At the end of the probationary period as an instructor, the faculty member must be promoted to the rank of assistant professor or receive notice of termination.

**6.3. Relation Between Tenure and Promotions.** Only regular faculty members at the ranks of associate professor and professor may hold indefinite tenure. [INTERP 7]

The granting of indefinite tenure to an assistant professor on a probationary appointment must be accompanied by promotion to associate professor. The promotion of an assistant professor on a probationary appointment to the rank of associate professor must be accompanied by an appointment with indefinite tenure. The choice whether to award tenure and to promote is presented as a single question for faculty vote.

An associate professor with a probationary appointment may be granted indefinite tenure without a promotion in rank.

The promotion of an associate professor on a probationary appointment to the rank of professor must be accompanied by an appointment with indefinite tenure.

Promotion of an instructor to the rank of assistant professor is not accompanied by an appointment with indefinite tenure.

**6.4. Effect of Procedural Errors.** A probationary faculty member is not entitled to an appointment with indefinite tenure merely because the University failed to give timely written notice of termination of an appointment or because the appointment was extended for any reason beyond the maximum probationary period. In such a case, the University may in its sole discretion:

- (a) Grant an appointment with indefinite tenure;
- (b) Grant a further probationary appointment, if this would not exceed the maximum probationary period; or
- (c) Grant a terminal appointment ending at the end of the first full academic year which follows the May 15th after proper notice is given.

## **SECTION 7. PERSONNEL DECISIONS CONCERNING PROBATIONARY FACULTY**

### **7.1. Criteria for Decisions.**

*7.11. General Criteria.* What the University of Minnesota seeks above all in its faculty members is intellectual distinction and academic integrity. The basis for awarding indefinite tenure to the candidates possessing these qualities is the determination that each has established and is likely to continue to develop a distinguished record of academic achievement that is the foundation for a national or international reputation or both [FN2]. This determination is reached through a qualitative evaluation of the candidate's record of scholarly research or other creative work, teaching, and service [FN3].

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FN2 "Academic achievement" includes teaching as well as scholarly research and other creative work. The definition and relative weight of the factors may vary with the mission of the individual campus.

FN3 The persons responsible and the process for making this determination are described in subsections 7.3 through 7.6.

"Scholarly research" must include significant publications and, as appropriate, the development and dissemination by other means of new knowledge, technology, or scientific procedures resulting in innovative products, practices, and ideas of significance and value to society.

"Other creative work" refers to all forms of creative production across a wide range of disciplines, including, but not limited to, visual and performing arts, design, architecture of structures and environments, writing, media, and other modes of expression.

"Teaching is not limited to classroom instruction. It includes extension and outreach education, and other forms of communicating knowledge to both registered University students and persons in the extended community, as well as supervising, mentoring, and advising students.

The relative importance of these criteria may vary in different academic units, but each of the criteria must be considered in every decision [FN4]. Demonstrated scholarly or other creative achievement and teaching effectiveness must be given primary emphasis; service alone cannot qualify the candidate for tenure.

Interdisciplinary work, public engagement, international activities and initiatives, attention to questions of diversity, technology transfer, and other special kinds of professional activity by the candidate should be considered when applicable. The awarding of indefinite tenure presupposes that the candidate's record shows strong promise of the candidate's achieving promotion to professor.

*7.12. Departmental Statement.* [FN5] Each department or equivalent academic unit must have a document that specifies (1) the indices and standards that will be used to determine whether candidates meet the threshold criteria of subsection 7.11 ("General Criteria" for the awarding of indefinite tenure); (2) the indices and standards that will be used to determine whether candidates meet the threshold criteria of subsection 9.2 ("Criteria for Promotion to Professor"); and (3) the goals and expectations to be used in evaluating faculty members' performance under subsection 7a ("Review of the Performance of Faculty Members"). The document must contain the text and footnotes of subsections 7.11 and 9.2, and must be consistent with the criteria given there but may exceed them. Each departmental statement must be approved by a faculty vote (including both tenured and probationary members), the dean, and other appropriate academic administrators, including the executive vice president and provost. The chair or head of each academic unit must provide each probationary faculty member with a copy of the Departmental Statement at the beginning of the probationary service. [INTERP 3]

**7.2. Annual Review.** The tenured faculty [FN6] of each academic unit annually reviews the progress of each probationary faculty member toward satisfaction of the criteria for receiving tenure. The head of the unit prepares a written summary of that review and discusses the candidate's progress with the candidate, giving a copy of the report to the candidate.

**7.3. Formal Action by the Faculty.** The tenured faculty of the academic unit may recommend that a probationary faculty member be granted indefinite tenure or that the appointment be terminated. If it does neither, it is presumed to recommend a renewal of the appointment. In the final probationary year, if the tenured faculty does not recommend an appointment with indefinite tenure, it must recommend termination of the appointment. The recommendation is made by a vote of the regular faculty with indefinite tenure in the unit. The presiding officer is not disqualified from voting merely because of office.

**7.4. Procedures for Taking Formal Action.** The academic unit must observe University procedures established as provided in subsection 16.3. These procedures will provide the following:

- (a) A good faith effort is made to gather all relevant information necessary to the decision. The academic units have the primary obligation to assemble the file, but the faculty member also has the right to add any material the faculty member considers relevant.

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"Service" may be professional or institutional. Professional service, based on one's academic expertise, is that provided to the profession, to the University, or to the local, state, national, or international community. Institutional service may be administrative, committee, and related contributions to one's department or college, or the University. All faculty members are expected to engage in service activities, but only modest institutional service should be expected of probationary faculty.

FN4 Indefinite tenure may be granted at any time the candidate has satisfied the requirements. A probationary appointment must be terminated when the appointee fails to satisfy the criteria in the last year of probationary service and may be terminated earlier if the appointee is not making satisfactory progress within that period toward meeting the criteria.

FN5 "Departmental" refers to an academic department or its equivalent, such as division, institute, or unit.

FN6 As used in this policy, "tenured faculty" means those members of the faculty who hold indefinite tenure.

- (b) The decision is made by vote, by written unsigned secret ballot, at a meeting of the regular faculty who have indefinite tenure in the academic unit. The rules may provide for absentee ballots by informed absent faculty members.
- (c) Persons who have or have had a family or similar relationship to the candidate do not participate in the decision. The procedures may establish methods for raising and ruling on such questions in advance of the decision.
- (d) Action is to be taken by majority vote. An academic unit may adopt a uniformly applicable rule that a motion to recommend tenure must achieve a specified exceptional majority in order to constitute an affirmative recommendation of that unit. In such case a motion which achieves a majority, but not the required exceptional majority, must be sent forward for review by the appropriate review process despite the absence of the unit's affirmative recommendation.
- (e) The unit shall report the vote of the faculty, together with the reasons for the action taken. This statement of reasons must take the form of a summary of both majority and minority views which have substantial support which were expressed in the course of formal consideration of the action. All statements must be made without personal attribution. A preliminary draft is open to members of the faculty eligible to vote so they may comment and suggest changes. The final draft is sent to the affected faculty member and is open to the faculty eligible to vote.
- (f) Before submitting a formal recommendation for an appointment with indefinite tenure or for termination of a probationary appointment, the head of the academic unit informs the appointee of the recommendation and gives the appointee a copy of the final report. The appointee may submit any comments upon the report to the academic administrator who will review the report, with a copy to the head of the academic unit.

**7.5. Nondisclosure of Grounds for Recommendation of Termination.** The reasons for a recommendation to terminate a probationary appointment may not be disclosed, except as part of the review process, unless the faculty member requests such disclosure or makes a public statement concerning the reasons for termination.

**7.6. Review of Recommendations.** Recommendations of academic units to grant indefinite tenure or to terminate probationary appointments are reviewed at the collegiate and university levels.

*7.61. Procedures.* The review must be conducted according to University procedures, established as provided in subsection 16.3. These procedures must provide for review and recommendations by the head of the academic unit, by the dean of the collegiate unit, by faculty committees at the collegiate or University level, and, when appropriate, by other academic administrators. The review must be conducted on the basis of the standards and criteria established by subsections 7.11. and 7.12. and the applicable rules and procedures. The rules may permit an administrator to refer the matter back to the unit for reconsideration, but if the administrator and the unit do not agree after such reconsideration, both the recommendation and the administrator's comments must be sent forward for final administrative action. A copy of each review or recommendation must be supplied to the faculty member. The faculty member may comment thereon in writing to those who will review the matter further.

*7.62. Conflict of Interest.* No one may participate both in an initial recommendation by an academic unit and in a subsequent review of that recommendation, except that the head of the academic unit may make the initial administrative review. No one who has participated in a recommendation or review may thereafter serve as a member of the Judicial Committee in further consideration of that case.

Members of the Judicial Committee may not serve on collegiate or University review committees. Members of the Judicial Committee may participate in initial recommendations by their own academic units, but are disqualified from thereafter participating in Judicial Committee consideration of those decisions.

**7.63. Final Administrative Action.** The University may not act contrary to the recommendation of the academic unit which made the initial recommendation except for substantive reasons which must be stated in writing by the senior academic administrator to the faculty member, to the members of the academic unit which made the recommendation, and to the president. The fact that participants in the review process have recommended against the unit's initial recommendation is not, by itself, a substantive reason.

The senior academic administrator takes the steps necessary to make the necessary appointment or to give notice of termination.

**7.7. Improper Termination of Probationary Appointments.** A person holding a regular probationary appointment who has been given notice of termination may petition the Judicial Committee to review that action. The Judicial Committee will not base its ruling on the merits of the decision itself, but will review allegations that the decision was based in significant degree upon any of the following:

- (a) Personal beliefs, expressions or conduct which fall within the liberties protected by law or by the principles of academic freedom as established by academic tradition and the constitutions and laws of the United States and the state of Minnesota;
- (b) Factors proscribed by applicable federal or state law regarding fair employment practices;
- (c) Substantial and prejudicial deviation from the procedures prescribed in subsections 7.4 and 7.6 and the procedural rules promulgated pursuant to those subsections;
- (d) Failure to consider data available at the time of decision bearing materially on the faculty member's performance;
- (e) Demonstrable material prejudicial mistakes of fact concerning the faculty member's work or conduct;
- (f) Other immaterial or improper factors causing substantial prejudice; or
- (g) Other violation of University policies or regulations.

Such proceedings are governed by section 15.

## **SECTION 7a. REVIEW OF FACULTY PERFORMANCE**

**7a.1. Goals and Expectations.** The faculty of each academic unit must establish goals and expectations for all faculty members, including goals and expectations regarding teaching, scholarly productivity, and contributions to the service and outreach functions of the unit. The factors to be considered will parallel those used by the unit in the granting of tenure, but will take into account the different stages of professional development of faculty. The goals and expectations will be established in accordance with standards established by the University Senate. They can provide for flexibility, so that some faculty members can contribute more heavily to the accomplishment of one mission of the unit and others to the accomplishment of other missions. The goals and expectations shall not violate the individual faculty member's academic freedom in instruction or in the selection of topics or methods for research. They shall include reasonable indices of acceptable performance in each of the areas (e.g., teaching contributions and evaluations, scholarly productivity, service, governance and outreach activities). The dean reviews the goals and expectations of each unit and may request changes to meet the standards of the University and of the collegiate unit.

**7a.2. Annual Review.** Each academic unit, through its merit review process (established in accordance with the standards adopted by the senate), annually reviews with each faculty member the performance of that faculty member in light of the goals and expectations of the academic unit established under subsection 7a.1. This review is used for salary adjustment and faculty development. The faculty member

will be advised of the evaluation and, if appropriate, of any steps that should be taken to improve performance and will be provided assistance in that effort. If the head of the unit and a peer merit review committee elected for annual merit review within that unit both find a faculty member's performance to be substantially below the goals and expectations adopted by that unit, they shall advise the faculty member in writing, including suggestions for improving performance, and establish a time period (of at least one year) within which improvement should be demonstrated.

**7a.3. Special Peer Review in Cases of Alleged Substandard Performance by Tenured Faculty.** If, at the end of the time period for improvement described in the previous paragraph, a tenured faculty member's performance continues to be substantially below the goals and expectations of the unit and there has not been a sufficient improvement of performance, the head of the academic unit and the elected peer merit review committee may jointly request the dean to initiate a special peer review of that faculty member. Before doing so, the dean shall independently review the file to determine that special peer review is warranted. (in the case of an academic unit that is also a collegiate unit, the request shall be made to and the review conducted by the responsible senior academic administrator.) The special peer review shall be conducted by a panel of five tenured faculty members of equal or higher rank, selected to review that individual. The faculty member under review shall have the option to appoint one member. The remaining members shall be elected by secret ballot by the tenured faculty of the unit. The members of the special review panel need not be members of the academic unit. The special review panel shall provide adequate opportunity for the faculty member to participate in the review process and shall consider alternative measures that would assist the faculty member to improve performance. The tenure subcommittee may adopt rules and procedures regulating the conduct of such reviews. The special review panel shall prepare a report on the teaching, scholarship, service, governance, and (when appropriate) outreach performance of the faculty member. It will also identify any supporting service or accommodation that the University should provide to enable the faculty member to improve performance. Depending on its findings, the panel may recommend:

- (a) that the performance is adequate to meet standards and that the review be concluded;
- (b) that the allocation of the faculty member's expected effort among the teaching, research, service and governance functions of the unit be altered in light of the faculty member's strengths and interests so as to maximize the faculty member's contribution to the mission of the University;
- (c) that the faculty member undertake specified steps to improve performance, subject only to future regular annual reviews as provided in subsection 7a.2;
- (d) that the faculty member undertake specified steps to improve performance subject to a subsequent special review under subsection 7a.3, to be conducted at a specified future time;
- (e) that the faculty member's performance is so inadequate as to justify limited reductions of salary, as provided in subsection 7a.4;
- (f) that the faculty member's performance is so inadequate that the dean should commence formal proceedings for termination or involuntary leave of absence as provided in sections 10 and 14; or
- (g) some combination of these measures.

The panel will send its report to the dean, the head of the academic unit, and the faculty member. Within 30 work days of receiving the report, the faculty member may appeal to the Judicial Committee, which shall review the report in a manner analogous to the review of tenure decisions (see subsection 7.7).

**7a.4. Salary Reductions.** If the special review panel recommends that the faculty member's performance is so inadequate as to justify limited reductions of recurring salary, the head of the academic unit, with the approval of the dean, may reduce the faculty member's recurring pay, subject to the following limitations:

- (a) the amount of the decrease will not exceed 10% of the faculty member's recurring salary on the basis of any one special review;
- (b) recurring salary may not be reduced by more than 25% from the highest level of recurring pay ever held by the faculty member;
- (c) at least six months' notice of the decrease must be given;
- (d) any decrease in recurring salary may be restored by the annual review process provided in subsection 7a.2.

Within 30 work days of notice of the decrease, the faculty member may appeal this action to the Judicial Committee, which shall review the action and the recommendation leading to it in a manner analogous to the review of tenure decisions (see subsection 7.7). This review may not reconsider matters already decided by the Judicial Committee under subsection 7a.3. Any decrease in recurring pay beyond the limits specified in this subsection can only be imposed pursuant to sections 4.5, 10, 11, and 14.

**7a.5. Peer Review Option.** Upon application to it by the dean and faculty (or the elected faculty assembly) of a collegiate unit, the Faculty Senate may adopt a system of peer review of performance of faculty of that unit different from the system set forth in sections 7a.1 through 7a.4 if in the Faculty Senate's judgment so proceeding is in the University's interest.

## **SECTION 8. IMPROPER REFUSAL OF A NEW APPOINTMENT TO A TERM FACULTY MEMBER**

A person holding a term faculty appointment who has been refused a renewal of that appointment or has applied for and been refused a regular or a different term faculty appointment within six months of the end of that appointment may petition the Judicial Committee to review the refusal, but only on the ground that the decision was based in significant degree upon one or more of the following:

- (a) Personal beliefs, expressions or conduct which fall within the liberties protected by law or by the principles of academic freedom as established by academic tradition and the constitutions and laws of the United States and the state of Minnesota;
- (b) Factors proscribed by applicable federal or state law regarding fair employment practices;
- (c) Essential and substantial written misrepresentation of the nature of the original appointment; or
- (d) Other violation of University policies or regulations.

Such proceedings are governed by section 15.

## **SECTION 9. PERSONNEL DECISIONS FOR ASSOCIATE PROFESSORS AND PROFESSORS**

**9.1. Appointment of Associate Professors and Professors with Indefinite Tenure.** Initial appointments with indefinite tenure may only be made at the rank of associate professor or professor. Such appointments may be made only after receiving the recommendation of the regular faculty holding indefinite tenure in the academic unit concerned.

**9.2. Criteria for Promotion to Professor.** The basis for promotion to the rank of professor is the determination that each candidate has (1) demonstrated the intellectual distinction and academic integrity expected of all faculty members, (2) added substantially to an already distinguished record of academic achievement, and (3) established the national or international reputation (or both) ordinarily resulting from such distinction and achievement [FN7]. This determination is reached through a qualitative

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FN7 "Academic achievement" includes teaching as well as scholarly research and other creative work. The definition and relative weight of the factors may vary with the mission of the individual campus. Not being promoted to the rank of professor will not in itself result in special post-tenure review of a tenured associate professor.

evaluation of the candidate's record of scholarly research or other creative work, teaching, and service [FN8]. The relative importance of these criteria may vary in different academic units, but each of the criteria must be considered in every decision. Interdisciplinary work, public engagement, international activities and initiatives, attention to questions of diversity, technology transfer, and other special kinds of professional activity by the candidate should be considered when applicable. But the primary emphasis must be on demonstrated scholarly or other creative achievement and on teaching effectiveness, and service alone cannot qualify the candidate for promotion.

**SECTION 10. UNREQUESTED LEAVE OF ABSENCE FOR DISABILITY AND DISCIPLINARY ACTION**

**10.1. Unrequested Leave of Absence for Disability.** A faculty member who is physically or mentally unable to perform reasonably assigned duties may be placed on unrequested leave of absence. The faculty member is entitled to sick pay and disability insurance payments in accordance with University policy. The faculty member has a right to return to the faculty upon termination of the disability or upon cessation of disability payments.

**10.2. Disciplinary Action.** [INTERP 4]

*10.21. Termination or Suspension of a Faculty Appointment Before its Expiration.* A faculty appointment may be terminated or suspended before its ordinary expiration only for one or more of the following causes:

- (a) sustained refusal or failure to perform reasonably assigned duties adequately;
- (b) unprofessional conduct which severely impairs a faculty member's fitness in a professional capacity;
- (c) egregious or repeated misuse of the powers of a professional position to solicit personal benefits or favors;
- (d) sexual harassment or any other egregious or repeated unreasonable conduct destructive of the human rights or academic freedom of other members of the academic community; or
- (e) other grave misconduct manifestly inconsistent with continued faculty appointment.

*10.22. Minor Disciplinary Actions.* Minor sanctions, such as a letter of reprimand in the faculty member's file, or the like, may be imposed for significant acts of unprofessional conduct. For minor sanctions, the dean may impose the sanction after providing the faculty member notice of the proposed action and of the reason that it has been proposed and giving the faculty member an opportunity to respond. If the faculty member files a grievance under the University grievance policy to challenge a minor disciplinary matter, the sanction shall be held in abeyance until the conclusion of the proceeding. The grievance panel shall have jurisdiction to consider all claims raised by the faculty member, and if the case goes to arbitration, the arbitrator shall be an individual with experience in academic matters.

**10.3. Procedures.** A faculty member may be placed on unrequested leave of absence or a faculty appointment may be terminated or suspended for these the reasons specified in subsection 10.21 only in accordance with the procedures set forth in section 14.

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FN8 The persons responsible for this determination are the full professors in the unit who are eligible to vote. The outcome of the vote is either promotion to the rank of professor or continuation in rank as an associate professor. The procedures for voting are identical to those outlined in subsection 7.4 for the granting of indefinite tenure, the nondisclosure of grounds for the decision (subsection 7.5), and the review of recommendations (subsection 7.6). In addition, a petition to the Judicial Committee for review of a recommendation of continuation in rank as an associate professor follows the procedures specified in subsection 7.7 for decisions about promotion to associate professor and conferral of indefinite tenure. See the definitions of "scholarly research," "other creative work," "teaching," and "service" in footnote [3]. A greater contribution in the area of institutional service is expected of candidates for the rank of professor than was expected for the award of tenure.



**10.4. Sexual Harassment, Sexual Assault, ~~Stalking, and Relationship Violence~~ and Other Forms of Sex Discrimination.** Notwithstanding other provisions in these regulations, the process for decisions and appeals regarding disciplinary action in response to complaints against faculty for alleged violation of Board of Regents Policy: *Sexual Harassment, Sexual Assault, ~~Stalking, and Relationship Violence~~ and Other Forms of Sex Discrimination* will be conducted under Administrative Policy: *Sexual Harassment, Sexual Assault, ~~Stalking, and Relationship Violence~~ and Other Forms of Sex Discrimination* and related Administrative procedures. The Administrative policy will provide that there will be a faculty member on the hearing panel for any case in which a faculty member is a party.

## SECTION 11. FISCAL EMERGENCY

**11.1. Faculty Rights.** The Board of Regents, if faced with the necessity of drastic reduction in the University budget, has the power to suspend or abolish positions, or even entire departments, divisions, or other administrative units. If confronted with such adverse contingency, the board will consult with and secure the advice of faculty representatives, as provided in this section. Faculty members have the right to full access to information about the situation and the alternatives being considered. In effecting retrenchment because of financial necessity, the regents will make reductions in faculty positions only to the extent that, in their judgment, is necessary after exploring various alternative methods of achieving savings. The regents fully intend that the tenure system as a whole and the tenure rights of each individual faculty member be protected in every feasible manner during periods of such retrenchment.

**11.2. General Principles of Priority.** The following general principles of priority apply in any financial crisis.

- (a) first, the University must fully utilize all means consistent with its continued existence as an institution of high academic quality to reduce expenses or to increase income which do not involve the termination of faculty positions or the impairment of faculty rights.
- (b) second, the University may consider alternatives which involve only the temporary reduction or postponement of faculty compensation or the reduction of fringe benefits.
- (c) only thereafter may the University suspend or terminate faculty positions in accordance with the section.

**11.3. First Stage: Alternative Approaches.** If there has been a serious reduction in the University's income, the president will report the matter to the Senate Consultative Committee. The president will identify the magnitude of the shortfall, the measures which might be taken to alleviate it (which must not involve impairment of faculty rights), and alternative measures which have been rejected. The president will give the committee full access to all available information and will respond specifically to additional proposals suggested by the committee. At this stage, the University will consider reductions in other expenses. It will also consider increases in tuition, sales of assets, and borrowing. These steps will be implemented by the president or the Board of Regents as is appropriate.

**11.4. Second Stage: Reduction Or Postponement Of Compensation.** If the University has implemented all of the measures which are required to be considered in the first stage, which are consistent with its continued operation as an institution of high academic quality, and they are inadequate to meet the shortfall, the president may, after consultation with the Faculty Consultative Committee, propose the temporary reduction or postponement of faculty compensation for a predetermined period not to exceed one year, according to a mathematic formula or similar device. The Faculty Consultative Committee will report on the adequacy of the steps taken in the first stage and make its recommendations on the proposal. If the Faculty Senate approves the proposed action (or any modification of it) by an absolute majority of its

membership or by a two-thirds vote of the members present and voting (a quorum being present), the Board of Regents may take that action (or any less stringent action) and, to that extent, modify the terms of the appointments of all faculty members. The Board of Regents may rescind the action at any time thereafter. Such action may be repeated by the same procedures.

**11.5. Third Stage: Fiscal Emergency.** If there has been a reduction of the University's income which is so drastic as to threaten its survival, and this threat cannot be alleviated by the measures specified above, the Board of Regents may declare a fiscal emergency. During such an emergency, the Board of Regents may terminate or suspend faculty appointments as provided in this section.

*11.51. Preliminary Procedures.* Before recommending to the Board of Regents that it declare a fiscal emergency, the president must meet with the Senate Consultative Committee to examine alternatives to and consequences of such a declaration. The president must provide the committee access to all available information. The president must provide a written report identifying the dollar amount to be saved by reducing faculty positions. This report must also identify the dollar amount proposed to be saved by any other measures to be taken, including the level of any concurrent reductions in non-faculty staff during the emergency. The Faculty Consultative Committee will prepare a written report on the president's proposal, to which the Senate Consultative Committee may add additional comments. The Faculty Senate will first consider and act on the proposal and reports. Thereafter, the University Senate may consider them. The president must attend both senate meetings to explain the proposal and to answer questions.

After receiving the president's recommendation and the resolutions of the senates, the Board of Regents may declare a state of fiscal emergency. Before action contrary to the recommendation of the University Senate is subsequently taken, the president must report in writing and in person the reasons for this action to the Senate Consultative Committee. The Board of Regents' resolution states the maximum amount to be realized from termination or suspension of faculty appointments.

*11.52. Duration.* A fiscal emergency lasts no longer than 12 months unless renewed by the same procedure. A fiscal emergency may be rescinded at any time by the Board of Regents.

*11.53. Allocation of Shortfall.* After consultation with the Faculty Consultative Committee and the Senate Consultative Committee, the president proposes an initial allocation of the shortfall to the various collegiate units, which need not be prorated. The committee must obtain the views of the faculty in the affected units and must hold an open meeting at which anyone may comment upon the proposed action. It may also request the assistance of other University or Senate committees in studying all or particular aspects of the educational policies and priorities involved in the action. The colleges and campuses then allocate the shortfall to the various academic units after similar consultation with the representative bodies and academic units in the colleges and similar open meetings. The plans must reflect the principles and priorities established in subsection 11.6. The colleges and campuses return their plans to the executive vice president and provost, who prepares a comprehensive plan for the University, including a list of the persons whose appointments will be suspended or terminated. This plan is submitted to the University Senate and the Faculty Senate for their recommendation. The recommendations of the senate and the executive vice president and provost's plan will be presented to the president and the Board of Regents for action.

## **11.6. Principles Governing Termination or Suspension.**

*11.61. General Principles.*

- (a) Savings achieved through resignations, retirements, renegotiations of contracts, inloading or other measures must be credited to the assigned shortfall before terminating or suspending faculty appointments.
- (b) A good faith effort should be made to use temporary suspensions or voluntary furloughs rather than terminations. In this third stage, the Board of Regents may impose the temporary or permanent reduction of faculty compensation or the reduction of fringe benefits, in excess of those approved in the second stage. Suspensions without pay for no more than one-third of the annual appointment in any year may be ordered in accordance with objective criteria, provided that faculty members are given at least six months notice.
- (c) Terminations may not be used in case of a short-term financial crisis, but only if the circumstances are such that the shortfall is reasonably expected to continue over a substantial number of years.
- (d) A good faith effort must be made to cover as much of the shortfall as possible by allowing non-regular appointments to lapse and by giving notice to probationary faculty in accordance with the terms of their appointments.
- (e) A good faith effort must be made to cover as much of the shortfall as possible by transferring faculty members to other positions for which they are qualified or by offering them retraining for available positions.
- (f) The selection of faculty members within an academic unit for termination must be made on objective criteria. It may not involve a comparative evaluation of the relative merits of individuals or a repetition of the tenure-granting process.

*11.62. Priorities.*

- (a) Unless the unit can demonstrate that essential functions could not otherwise be performed:
  - 1. all non-regular faculty within an academic unit must be suspended or terminated before any regular faculty may be suspended or terminated in that unit; and
  - 2. all probationary faculty within an academic unit must be suspended or terminated before any tenured faculty may be suspended or terminated in that unit.
- (b) Care must be taken to protect the employment of women and minorities entitled to affirmative action. The executive vice president and provost must insure that for the University as a whole the plan which is submitted does not reduce the proportion of appointments with indefinite tenure held by women or minorities entitled to affirmative action, and does not reduce the proportion of non-regular appointments held by women or minorities entitled to affirmative action.

*11.63. Notice and Severance Pay.* A faculty member whose appointment is to be terminated or suspended is entitled to a minimum of one full academic year's notice or to one year's salary as severance pay in lieu of notice, unless the appointments would otherwise expire earlier.

*11.64. Reemployment Rights.* The University will not fill any faculty position for which a faculty member with indefinite tenure who has been terminated is qualified for five years after notice of termination, unless it first offers the position to each such faculty member and gives a reasonable time for the faculty member to accept or reject it.

**11.7. Judicial Committee Report.** A faculty member whose appointment is terminated or suspended may make a written request for review by the Judicial Committee. The review will be conducted in accordance with section 15. The Judicial Committee will not reexamine the determination that a fiscal emergency exists, nor will it reexamine the educational policies and priorities pursued unless it finds a substantial failure to follow the procedures established in this section. It will only examine whether the action was taken in accordance with the procedures and standards set forth in this section, whether the action was

based on a violation of academic freedom or constitutional or legal rights, or was substantially based on immaterial or improper factors. It may consolidate cases involving common issues for a single hearing.

## **SECTION 12. PROGRAMMATIC CHANGE**

**12.1. Programmatic Change.** The University and faculty recognize that changes in academic programs are an essential part of the development and growth of the institution. These changes should be based on academic considerations and on long-term policy and planning, and may be undertaken only after consultation with the faculty, including the appropriate governance structure.

**12.2. Faculty Rights and Duties.** In the event that programmatic change leads to discontinuation of a program in which a member of the faculty is employed, the University recognizes its obligation to continue the employment of regular faculty in accordance with the terms of their employment, and to continue the employment of non-regular faculty for the term of appointment. In case of fiscal emergency, the provisions of section 11 apply.

Regular faculty members who are so retained have the responsibility to accept teaching or other assignments for which they are qualified, and to accept training to qualify them for assignment in other fields. The University has the responsibility to assign such faculty members to responsibilities as closely related to their original field of tenure as is practicable, to allow them time in which to continue scholarship in their original field if they wish, and to recognize scholarly contributions in that field as valuable in assessing their contribution to the University for pay, promotion and other purposes.

In addition to the steps mentioned above, the University has the right to offer inducements to faculty members voluntarily to change fields of study, to seek employment elsewhere, or to accept early retirement.

**12.3. Reassignments.** In cases of programmatic change, an officer designated by the president will make the reassignment or offer of training. The officer will consult with the faculty member and the receiving unit and will seek a mutually satisfactory assignment. If agreement cannot be reached, the University officer will assign new responsibilities after consultation with the individual.

The University may give the faculty member other assignments only if assignments to teaching in the faculty member's discipline are not feasible. For example, faculty might be assigned

- to teach in another field in which the individual is qualified
- to perform professional or administrative duties, including professional practice in a field in which the individual is qualified.
- to transfer effort, by assignment in a suitable professional capacity, at another educational institution or similar entity, while retaining University tenure, compensation, and benefits.

A faculty member must accept any reasonable reassignment or offer of retraining. Following the assignment, any dispute about the reasonableness of reassignment may be taken to the Judicial Committee, as provided in section 15. The faculty member shall perform the reassignment pending resolution of the dispute, unless the president on the recommendation of the chair of the Judicial Committee determines that provisional measures are appropriate.

**12.4. Termination of Appointment.** A faculty member who chooses not to accept a reasonable reassignment or retraining opportunity shall receive:

- (a) Assistance in locating other employment;
- (b) A minimum of one full academic year's notice or one year's salary as severance pay in lieu of notice, unless the appointment would otherwise expire earlier.
- (c) Continuation of the University's contribution to health benefits for one year after the date of the termination of the appointment.

In place of the severance payment provided by this section, a faculty member may select another severance program for which the faculty member is otherwise eligible at the time the appointment is terminated.

### **SECTION 13. JUDICIAL COMMITTEE**

**13.1. Membership.** The Judicial Committee is composed of at least nine members of the regular faculty. The number of members and manner of appointment is governed by the Faculty Senate bylaws.

**13.2. Procedures.** The Judicial Committee applies and interprets this tenure code in complaints that come before it. The Judicial Committee has its own Rules of Procedure and may adopt additional rules with the approval of the Tenure Committee, as provided in section 16.3.

In every case before the Judicial Committee the senior academic administrator may designate the academic administrator who will represent the University as respondent. If the case involves two or more campuses or areas, the president or the executive vice president and provost may designate the respondent.

**13.3. Duty to Testify.** Faculty members and administrators have an obligation to appear before the Judicial Committee if asked to give testimony in matters pending before it.

**13.4. Panels.** The Judicial Committee may sit in panels to hear individual cases. In cases under sections 10 and 14, the panel must consist of at least five members. In all other cases, the panel must consist of at least three members. The rules of the Judicial Committee will establish the respective functions of the committee as a whole and of the individual panels.

**13.5. Legal Officer.** The Judicial Committee shall have its own legal officer, appointed by the Judicial Committee with the approval of the president. The Judicial Committee also may, with the approval of the president, appoint a deputy legal officer, or a substitute legal officer for a particular case, as necessary. At the direction of the committee, the legal officer may preside at hearings of Judicial Committee panels or regulate the procedure in Judicial Committee cases. The legal officer may be present and participate in the deliberation of a panel, but shall have no vote.

### **SECTION 14. PROCEDURES IN CASES OF UNREQUESTED LEAVE OF ABSENCE OR TERMINATION OR SUSPENSION OF A FACULTY APPOINTMENT FOR CAUSE [INTERP 5]**

**14.1. Preliminary Proceedings.** Only a dean or an academic administrator specially designated by the executive vice president and provost or by the senior academic administrator may initiate preliminary proceedings under this section leading to unrequested leave of absence or to suspension or removal or to temporary or permanent reduction in rank. The dean [FN9] must first attempt to discuss and resolve the matter with the faculty member involved.

The dean must then submit the matter to the tenured faculty of the academic unit involved for their recommendation.

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FN9 Throughout this section the word "dean" means the dean of the collegiate unit or other equivalent officer or an academic administrator specifically designated for this purpose by the senior academic administrator or by the executive vice president and provost.

If the executive vice president and provost and the Faculty Senate have expressly approved the submission of allegations of the violation of a specified policy to another body for preliminary recommendation, in place of submission to the tenured faculty of the academic unit, the dean must submit the matter to that body for its recommendation.

Both the dean and the faculty member may submit their views, in person or in writing, to the body making the recommendation, but neither of them may participate in the deliberation or vote. The body making the recommendation does so by secret ballot and makes a written report to the dean within 40 work days of submission of the issue to it, indicating the number of votes for and against the proposed action and the reasons articulated. A copy of the report shall be sent to the senior academic administrator and to the faculty member.

**14.2. Formal Action.** Within 40 work days after receiving the recommendation of the tenured faculty or other body, the dean must decide whether to proceed with formal action. Before taking formal action, the dean must consult with the senior academic administrator. If the dean does not proceed within 40 work days, the charges are dropped and the faculty member and the academic unit are so notified in writing. If the dean decides to proceed with formal action, the dean must give written notice to the faculty member. The notice must specify the action proposed, identify the specific ground upon which it has been taken, and summarize the evidence in support. It must inform the faculty member of the right to request a hearing before the Judicial Committee and advise the faculty member of the applicable time limit for making such a request.

If the faculty member does not request a hearing within 30 work days, the president may take the action proposed in the dean's notice, without further right to a hearing.

**14.3. Judicial Committee Hearing.** The faculty member may request a hearing before the Judicial Committee by written request to the chair of the committee, filed within 30 work days of the notice. The Judicial Committee may extend the 30 day period for good cause. The dean will be responsible for presenting the case. The dean has the burden of proving the case for the proposed action by clear and convincing evidence and also has the burden of demonstrating the appropriateness of the proposed action, rather than some lesser measure.

The Judicial Committee makes written findings of fact, conclusions, and a recommendation for the disposition of the case. If the committee finds that action is warranted, it may recommend action that is less severe than that requested in the written notice, including but not limited to, permanent or temporary reduction in salary or rank. It may not recommend more severe measures than those proposed in the dean's notice.

The Judicial Committee sends its report to the president with copies to the faculty member, the dean and the senior administrator.

**14.4. Action by the President.** The president shall give the faculty member and the dean the opportunity to submit written comments on the report. In determining what action to take, the president may consult privately with any administrators, including attorneys, who have had no previous responsibility for the decision at issue in the case and have not participated in the presentation of the matter to the Judicial Committee. The president may not discuss the case with any administrator who was responsible for the decision at issue in the case or who participated in the presentation of the matter to the senate Judicial Committee. Such administrators may communicate with the president in writing, but only if the full text of

the communication is given to the faculty member and the faculty member is given a reasonable opportunity to respond to it.

The president shall not take action materially different from that recommended by the panel unless, prior to the action, the president has consulted with the committee. Parties and their representatives shall not be present at any meeting between the president and the committee nor shall their consent be required for such meeting.

In addition, the president may request the Judicial Committee to make further findings of fact, to clarify its recommendation or to reconsider its recommendation. The reconsideration will be made by those who have heard of all of the evidence in the case, but the full Judicial Committee may consult with them on questions of general policy.

The president may impose the action recommended by the committee, or any action more favorable to the faculty member. The president may impose action less favorable to the faculty member only for important substantive reasons, which must be stated in writing, with specific detailed reference to the report of the Judicial Committee, the evidence presented, and the policies involved. The president's written statement must be given to the parties and to the Judicial Committee. If the Judicial Committee decides that the president has imposed an action that is less favorable to the faculty member than it had recommended, it shall inform the faculty by publication of the president's action in the docket of the Faculty Senate. If the faculty member waives rights to confidentiality, the full text of the statement will be published. Otherwise a summary of the statement will be published without identification of the faculty member or information that may indirectly identify the faculty member.

**14.5. Appeal to the Board of Regents.** If the action involves removal or if the action involves a sanction more severe than that recommended by the Judicial Committee, the faculty member may appeal to the Board of Regents. In cases in which the president imposes a sanction more severe than that recommended by the Judicial Committee, the faculty member and the president may present to the board evidence with respect to issues on which the president differs from the recommendation of the Judicial Committee. The request for a hearing must be made to the secretary of the board within ten work days of the president's action.

**14.6. Temporary Suspension During Proceedings.** The dean may temporarily suspend a faculty member during the proceedings, but only if there is clear evidence that the faculty member is likely to cause serious harm or injury or is not available for work. The suspension will be with full pay, unless the faculty member is not available for work. Before ordering such suspension, the dean must present the evidence to a special panel of the Faculty Consultative Committee and receive their written report. The faculty member must be given the opportunity to contest the suspension before the panel.

If no final decision has been rendered one year after the commencement of formal proceedings, the faculty member shall be temporarily suspended without pay, unless the parties agree otherwise, or unless the hearing panel of the Judicial Committee extends the time period because of undue delays in the procedure attributable to the action of the University. This provision applies only in a case in which the majority of the tenured faculty of the academic unit concurred in the recommendation to terminate the appointment. If the faculty member is reinstated or if the president determines that the temporary suspension without pay was not warranted, then the president shall order the repayment of back pay to the faculty member with interest thereon from the date it would originally have been paid.

In case of any suspension under this section, the faculty member shall continue to receive full medical insurance and disability benefits without regard to the suspension.

**14.7. Resignation During Proceedings.** A faculty member may submit a written notice of resignation to the president at any time during Judicial Committee proceedings pursuant to this section. Upon the effective date of such resignation, the proceedings will be discontinued unless the faculty member concurrently files a written request with the Judicial Committee that they be carried to completion.

**SECTION 15. APPEALS TO THE JUDICIAL COMMITTEE [INTERP 6]**

**15.1. Right to Review.** Any faculty member who claims that the faculty member's rights or status under these regulations have been adversely affected without the faculty member's consent may seek review before the Judicial Committee. Cases arising under sections 1, 4, 7, 7a, 8, 10, 11 or 12 must be brought directly to the Judicial Committee. In these cases, that is, the Judicial Committee has original jurisdiction. In other cases, the faculty member must exhaust all other available University remedies before bringing the case to the Judicial Committee; the Judicial Committee will not proceed with such a case until the appropriate University body has either decided it or has refused to consider it. In such cases, the Judicial Committee has appellate jurisdiction.

**15.2. Procedure for Securing Review.** A written request for review must be filed with the chair of the Judicial Committee within 30 work days of written notice of the action challenged. The request must specify the action complained of and the remedial action the individual seeks. Within 30 work days of filing, the chair of the Judicial Committee must send copies of the request to the head of the academic unit concerned and to the senior academic administrator.

The Judicial Committee, however, may extend the time for filing for review for reasons that seem compelling to the committee, such as mental or physical illness, or serious personal or family problems, or doubt concerning when final action was taken.

**15.3. Hearings Before the Judicial Committee.** The person seeking review has the burden of proving by the preponderance of the evidence that the action complained of was improper unless the Judicial Committee, for good cause, otherwise directs.

The Judicial Committee does not itself decide whether the faculty member is professionally worthy of a faculty position, but only determines whether the action was based in significant degree upon any of the factors specified in subsection 7.7 or section 8.

In cases involving sections 7, 8, or 11, the Judicial Committee hears the merits of the case, as provided in those sections. In other cases, if there is an appropriate University body to review the matter, the Judicial Committee will only determine whether that body has given the faculty member due process and whether, on the basis of the facts found by that body, there has been a violation of these regulations or of the faculty member's academic freedom. If there is no appropriate University body to hear such a case, or if the Judicial Committee finds that the body which heard the case did not provide due process, the Judicial Committee may hear the merits or may appoint an ad hoc tribunal to hear them.

**15.4. Action by the Judicial Committee.** The Judicial Committee makes written findings of fact, conclusions, and a recommendation for the disposition of the case.

If the Judicial Committee finds that the action complained of was improper, it also specifies the respects in which it finds the action to have been improper and recommends appropriate remedial action.



If it recommends reconsideration, it may specify the manner in which reconsideration will be undertaken to avoid the influence of improper factors. If a probationary faculty member has reached the maximum probationary period, the committee may recommend a non-regular appointment for an additional academic year to provide for reconsideration.

The Judicial Committee sends its report to the president with copies to the faculty member and the administrator who appeared as respondent.

**15.5. Action by the President.** The president must give the faculty member and the administrator the opportunity to submit written comments on the report. In determining what action to take, the president may consult privately with any administrators, including attorneys, who have had no previous responsibility for the decision at issue in the case and have not participated in the presentation of the matter to the Judicial Committee. The president may not discuss the case with any administrator who was responsible for the decision at issue in the case or who participated in the presentation of the matter to the senate Judicial Committee. Such administrators may communicate with the president in writing, but only if the full text of the communications is given to the faculty member and the faculty member is given a reasonable opportunity to respond to it.

The president shall not take action materially different from that recommended by the panel unless, prior to the action, the president has consulted with the committee. The parties and their representatives shall not be present at any meeting between the president and the committee nor shall their consent be required for such meeting.

In addition, the president may request the Judicial Committee to make further findings of fact, to clarify its recommendation or to reconsider its recommendation. The reconsideration will be made by those who have heard all of the evidence in the case, but the full Judicial Committee may consult with them on questions of general policy.

The president may impose the action recommended by the committee or any action more favorable to the faculty member. The president may impose action less favorable to the faculty member only for important substantive reasons, which must be stated in writing, with specific detailed reference to the report of the Judicial Committee, the evidence presented, and the policies involved. The president's written statement must be given to the parties and to the Judicial Committee. If the Judicial Committee decides that the president has imposed an action that is less favorable to the faculty member than it had recommended, it shall inform the faculty by publication of the president's action in the docket of the Faculty Senate. If the faculty member waives rights to confidentiality, the full text of the statement will be published. Otherwise a summary of the statement will be published without identification of the faculty member or information that may indirectly identify the faculty member. The president's written statement must be given to the parties and to the Judicial Committee.

**15.6. Actions Requiring Reconsideration.** If the Judicial Committee recommends reconsideration of an action, that reconsideration will be undertaken under the supervision of the senior academic administrator, unless otherwise specified. The Judicial Committee may retain provisional jurisdiction of the matter to review allegations that the reconsideration itself was improper, and may make supplementary findings, conclusions, and recommendations in this regard.

**15.7. Recommendations for Changes in University Policies and Procedures.** As a result of Judicial Committee proceedings, the Judicial Committee, the Tenure Committee or the executive vice president and provost may initiate steps to clarify or improve University rules or policies involved. The changes will not affect the outcome of the case before the committee.

**SECTION 16. ACADEMIC FREEDOM AND TENURE COMMITTEE**

**16.1. Membership.** The Academic Freedom and Tenure Committee (referred to elsewhere in these regulations as the Tenure Committee) is composed of at least seven members of the faculty and such other persons as the Faculty Senate bylaws shall provide. The manner of appointment is governed by the Faculty Senate bylaws.

**16.2. Interpretations.** The executive vice president and provost and the Tenure Committee may propose formal interpretations of these regulations, consistent with their terms. Such interpretations must be reported to the Faculty Senate and the Board of Regents. If adopted by the Board of Regents, such interpretations will be binding in all cases subsequently arising.

**16.3. Procedures.** The executive vice president and provost and the Tenure Committee may jointly adopt the procedures provided by subsections 7.4 and 7.61, and jointly approve the procedures proposed by the Judicial Committee under subsection 13.2. Such procedures must be reported to the Faculty Senate and the Board of Regents before they go into effect.

**16.4. Additional Functions.** The Tenure Committee also advises the University and makes recommendations concerning the interpretation and amendment of these regulations.

**SECTION 17. WRITTEN NOTICE**

Notices of termination of a probationary appointment, of suspension or termination of an appointment, or of placement on unrequested leave of absence for disability, must be sent by registered or certified mail to the last known residence address of the faculty member concerned and also by campus mail to the faculty member's campus address, if any. The written notice satisfies the applicable time requirement if it is postmarked at or before midnight of the applicable date.

Failure to comply fully with this section is immaterial if, in fact, the faculty member was not prejudiced by such failure.

**SECTION 18. PUBLICATION**

These regulations, and the interpretations referred to in section 16, will be published and made available to all faculty members. Every faculty member who holds a regular or non-regular appointment, except for courtesy faculty appointments without salary, must be given a copy of the current regulations and copies of subsequent amendments or published interpretations.

**SECTION 19. AMENDMENT**

These regulations are subject to amendment by the Board of Regents. Proposed amendments from any source will be submitted to the Faculty Senate for its advice and recommendation before final action by the Board of Regents. The Faculty Senate will solicit the recommendations of the Faculty Affairs Committee, the Judicial Committee, and the Tenure Committee, before giving its advice and recommendation.

**REVISION HISTORY**

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**Adopted:** February 9, 1945

**Amended:** November 22, 1963; April 10, 1964; January 13, 1967; December 8, 1972; March 13, 1981; February 8, 1985; September 13, 1991; March 12, 1993; November 10, 1994; October 10, 1995; November 7, 1996; December 13, 1996; June 13, 1997; September 12, 1997; June 9, 2000; March 9, 2001; June 8, 2007; June 10, 2011; July 30, 2020

**Technical Correction:** March 31, 2016; December 17, 2021

**Last Comprehensive Review:** 2019

**Supersedes:** Regents' Policies Statement dated February 8, 1974; and Authority to Correct Policies dated July 8, 1983.

**INTERPRETATIONS**

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Dated April 12, 1985; September 8, 1988; March 12, 1993 and October 13, 1985; June 9, 2000; June 10, 2011.

**1. Interpretation of Subsection 4.4: Definition of Recurring Salaries.**

It is expected that any salary increases normally will be added to recurring salary if recurring funds are available for that purpose. Subsection 4.4 does not give any specific faculty member a legal entitlement or right to an increase in recurring salary.

**2. Interpretation of Subsection 4.5: Financial Stringency.**

Financial stringency in subsection 4.5 is understood to mean financial difficulties that are unusual in extent and require extraordinary rather than ordinary responses. Section 11 may be invoked if the regents are "faced with the necessity of drastic reduction in the University budget," reductions so severe that they may "threaten [the] survival" of the University. It is understood that the financial difficulty that would permit the president to propose temporary reductions or postponements in compensation under subsection 4.5 is less severe than the "fiscal emergency" outlined in section 11, but it is also understood that "financial stringency" should not be invoked to respond to foreseeable fluctuations in the University's budget and finances.

**3. Interpretation of Subsection 7.12: Review of Departmental Statements. June 9, 2000**

The faculty of an academic unit are expected to periodically review their criteria for awarding indefinite tenure and for promotion in rank and reflect any new criteria in a revision of their subsection 7.12 Statement. The new criteria and subsection 7.12 Statement must be adopted in accordance the established procedures of the University, after consultation as required by those procedures. Current probationary faculty in the unit may elect to be evaluated on the criteria for tenure and promotion in the previous subsection 7.12 Statement or on the new criteria. This option is also available to current tenured faculty in their evaluation for promotion to the next level. Probationary or tenured faculty must make this decision within one year of the date of administrative approval of the new criteria.

**4. Interpretation of Amendment to Subsection 10.2: Faculty Assignments.**

Faculty members are free to choose topics for research or outreach and to discuss all relevant matters in the classroom, in accordance with the principles of academic freedom and responsibility. The head of the academic unit will assign individual faculty members to teach specific courses in accordance with the

academic workload statement and other policies adopted by the faculty of that unit. A faculty member may challenge an assignment by showing that it is unreasonable. An assignment is unreasonable if: (a) taken as a whole, it exceeds the workload expected in the workload statement of that unit, (b) the faculty member lacks the basic qualifications to teach the course, or (c) the assignment was made in violation of the faculty member's academic freedom or in violation of another specific university policy. The faculty member should carry out the teaching assignment pending resolution of any grievance, unless the responsible grievance or hearing officer or panel indicates that provisional measures are appropriate.

**5. Interpretation of Amendments to Subsections 14.1 and 14.2: Timely Responses in Cases of Unrequested Leave of Absence, Termination, or Suspension.**

The timelines for responses by either the involved faculty member or administrator may be extended by agreement of the parties to the proceeding or for extraordinary circumstances. An agreement of the parties to extend the time limit shall be in writing, signed by both parties or their representatives. If the parties do not agree, either party may apply to the chair of the Senate Judicial Committee for an extension of the time in which to take the steps required in this section. If the faculty member has failed to act within the time limits prescribed in these sections, the responsible administrator may request the chair of the Senate Judicial Committee to set a specific date by which the faculty member must take action; if the faculty member fails to do so, the petition for review will be dismissed without further proceedings and the requested disciplinary action (or any lesser sanction) may be taken. If the responsible administrator has failed to act within the time limits prescribed in these sections, the faculty member may request the chair of the Senate Judicial Committee to set a specific date by which the administrator must take action; if the administrator fails to do so, the proceedings shall be dismissed and further action can be taken only by reinitiating the entire proceedings.

**6. Interpretation of Section 15: Judicial Committee Review of Decisions on Promotions.**

As stated in the Preamble, the tenure regulations "provide a comprehensive set of policies dealing with the relationship between the University and its faculty," including decisions regarding promotions in rank that may or may not involve questions of tenure. When a faculty member's request for promotion is not approved, the Judicial Committee shall conduct a review in a manner analogous to the review of tenure decisions (see subsection 7.7). Such cases may be brought directly to the Judicial Committee without a requirement that the faculty member exhaust all other available University remedies before bringing the case to the Judicial Committee.

**7. Interpretation of Subsection 6.3: Relation Between Tenure and Promotion.**

Regular faculty with appointments as assistant professors with indefinite tenure at the time of the adoption of this interpretation in 2011 will continue to hold these appointments until they retire, subject to the review provisions of subsection 7a and as otherwise provided in these regulations.



## BOARD OF REGENTS POLICY:

# *Sexual Harassment, Sexual Assault, ~~Stalking and Relationship Violence~~ and Other Forms of Sex Discrimination*

### SECTION I. SCOPE.

This policy governs the University of Minnesota's (University) commitment to preventing and addressing sexual harassment, sexual assault, ~~stalking, relationship violence and related retaliation~~ and other forms of sex discrimination ("prohibited conduct").

### SECTION II. DEFINITIONS.

#### Subd. 1. Prohibited Conduct.

*Prohibited conduct* shall mean sexual harassment, sexual assault, stalking, relationship violence ~~and related retaliation~~, sex-based harassment, differential treatment sex discrimination, and retaliation related to all forms of sex discrimination.

#### Subd. 2. ~~Sexual~~Sex-Based Harassment.

*Sexual*~~Sex-based~~ harassment shall mean ~~unwelcome~~ conduct based on ~~the basis of~~ sex under the following conditions:

- (a) *Quid pro quo sexual harassment*: When a University member explicitly or impliedly conditions the provision of a University aid, benefit, or service on an individual's participation in conduct of a sexual nature~~sexual conduct~~.
- (b) *Hostile environment sexual harassment*: When, based on the totality of the circumstances, unwelcome conduct based on sex~~When conduct is severe, persistent or pervasive and:~~
  - (1) is (i) subjectively and objectively offensive, and (ii) so severe or pervasive that it limits or denies an individual's ability to participate in, or benefit from, the University's programs or activities; or unreasonably interferes with an individual's employment or educational performance;
  - (2) is so severe, persistent, or pervasive that it creates an employment environment that an individual finds, and a reasonable person would find, to be intimidating, hostile, or offensive.~~creates a work or educational environment that an individual finds, and a reasonable person would find, to be intimidating, hostile or offensive, or~~

~~effectively denies an individual equal access to a University program or activity.~~

- ~~(c) Title IX sexual harassment is a subset of sexual harassment that occurs in the United States and: (1) on campus; (2) as part of the University's operations; (3) in locations, events or circumstances over which the University exercised substantial control over both the respondent and the context in which the prohibited conduct occurred; and/or (4) in buildings owned or controlled by a student organization that is officially recognized by the University. Title IX sexual harassment occurs when:~~
- ~~• a University employee conditions the provision of a University aid, benefit, or service on an individual's participation in unwelcome sexual conduct; or~~
  - ~~• unwelcome conduct is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.~~

Sex-based harassment includes sexual harassment and harassment based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, gender identity, and gender expression.

### Subd. 3. Sexual Assault.

*Sexual assault shall mean:* (1) actual or attempted sexual contact without affirmative consent; or (2) a threat to engage in contact that would be, if the threat were carried out, sexual contact without affirmative consent.

- (a) *Sexual contact* is intentional sexual touching with an object or body part. Depending on the context, it may include, but is not limited to: (1) intentionally touching the breasts, buttocks, groin, or genitals of another individual; (2) intentionally touching another individual with any of these body parts; and (3) making an individual touch another individual or themselves with, or on, any of these body parts. Sexual contact can occur whether or not an individual's body parts are covered by clothing.
- (b) *Affirmative consent* is freely and affirmatively communicated words or actions given by an informed individual that a sober reasonable person under the circumstances would believe communicate a willingness to participate in the sexual contact.
- ~~(c) Title IX sexual assault is a subset of sexual assault that occurs in the United States and: (1) on campus; (2) as part of the University's operations; (3) in locations, events or circumstances over which the University exercised substantial control over both the respondent and the context in which the prohibited conduct occurred; and/or (4) in buildings owned or controlled by a student organization that is officially recognized by the University. Title IX sexual assault occurs when there is actual or attempted:~~
- ~~• penetration, no matter how slight, of the vagina or anus with any body part or object without affirmative consent;~~
  - ~~• oral penetration by a sex organ of another person without affirmative consent; or~~
  - ~~• the touching of the private body parts of another person without affirmative consent and for the purpose of sexual gratification.~~

### Subd. 4. Relationship Violence.

*Relationship violence shall mean:* (1) actual, attempted, or threatened violence by one individual against another individual with whom they are, or have been, in a social relationship of a romantic or intimate nature; or (2) conduct that would constitute a felony or misdemeanor crime of violence by an

individual **against**: (i) a current or former spouse or intimate partner; (ii) an individual with whom they share a child; (iii) an individual similarly situated to a spouse under the Minnesota state domestic or family violence laws; or (iv) any adult or youth who is protected from the individual's acts under the Minnesota state domestic or family violence laws.

~~(a) Title IX relationship violence is a subset of relationship violence that occurs in the United States and: (1) on campus; 2) as part of the University's operations; (3) in locations, events or circumstances over which the University exercised substantial control over both the respondent and the context in which the prohibited conduct occurred; and/or (4) in buildings owned or controlled by a student organization that is officially recognized by the University.~~

**Subd. 5. Stalking.**

*Stalking* shall mean a course of conduct directed at a specific individual that would cause a reasonable person to: (1) fear for their safety or the safety of others; or (2) suffer substantial emotional distress. A course of conduct is multiple acts including, but not limited to, acts in which an individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another individual, or interferes with another individual's property.

~~(a) Title IX stalking is a subset of stalking that occurs in the United States and: (1) on campus; (2) as part of the University's operations; (3) in locations, events or circumstances over which the University exercised substantial control over both the respondent and the context in which the prohibited conduct occurred; and/or (4) in buildings owned or controlled by a student organization that is officially recognized by the University.~~

**Subd. 6 Differential Treatment Sex Discrimination.**

Differential treatment sex discrimination shall mean conduct that subjects an individual to differential treatment based on sex (including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, gender identity, and gender expression) and causes harm to the individual. Such harm must be genuine and objectively non-trivial as assessed from the perspective of a reasonable person in the individual's position.

**Subd. 6Z. Retaliation.**

*Retaliation* shall mean taking an adverse action against an individual: (1) for the purpose of interfering with any right or privilege secured by this policy or Title IX; (2) for refusing to participate in any manner in an informal ~~problem-solving or response, grievance, or alternative resolution~~ process relating to a report of prohibited conduct allegation; (except this provision does not apply to the University's requirement that individuals participate as witnesses in response processes when required to do so); or (3) because of the individual's good faith participation in:

- (a) reporting ~~suspected information~~ or alleged making a complaint about conduct that may reasonably constitute prohibited conduct;
- (b) expressing opposition to ~~suspected or alleged conduct that may reasonably constitute prohibited conduct~~;
- (c) testifying, assisting, or participating in an informal ~~problem-solving, investigation, or response, grievance, or alternative resolution~~ process related to a prohibited conduct ~~allegation report~~;
- (d) accessing the Office for Conflict Resolution (OCR) to resolve a conflict related to conduct that may reasonably constitute prohibited conduct.

**Subd. 78. Member of the University Community.**

*Member of the University community shall mean any:*

- (a) University student;
- (b) University employee; or
- (c) ~~third party~~other individuals who is engagedare participating or attempting to participate in any University program or activity or program, or who is otherwise interacting with, including any person authorized by the University, including, but not limited to, volunteers, contractors, vendors, visitors and guests to provide an aid, benefit, or service under the University's program or activity.

**SECTION III. GUIDING PRINCIPLES.**

The following principles shall guide the University's commitment to preventing and addressing prohibited conduct:

- (a) Consistent with its academic mission and standards, the University is committed to achieving excellence by working to create an educational, employment and residential living environment that is free from prohibited conduct.
- (b) The University is committed to preventing and addressing prohibited conduct through education and prompt, thorough and procedurally fair investigative procedures.
- (c) As a community of faculty, staff and students engaged in research, scholarship, artistic activity, teaching and learning, and activities that support them, the University seeks to foster an environment that is equitable, humane and responsible and where all are treated with dignity and respect.

**SECTION IV. IMPLEMENTATION.**

The University shall:

- (a) prohibit members of the University community from engaging in, or assisting or abetting another's engagement in, prohibited conduct;
- (b) require employees to take timely and appropriate action when they know or should know that prohibited conduct is occurring or has occurred;
- (c) adopt an Administrative policy which includes procedures on each campus for investigating and resolving complaints of prohibited conduct in coordination with ~~either the director of the Office of Equal Opportunity and Affirmative Action or, with regard to stalking of a non-sexual nature, the director of the office for investigation of non-sexual Board of Regents Policy; Student Conduct Code complaints or the campus human resources department; the Equal Opportunity and Title IX Office;~~
- (d) ~~adopt procedures on each campus for making~~make training on prohibited conduct available to students, employees, and volunteers; and
- (e) address violations of this policy through disciplinary or other responsive action up to and including termination of employment or academic dismissal.

**SECTION V. MONITORING.**



The president or delegate shall address complaints of prohibited conduct consistent with this policy and law and remedy any practice that deviates from this policy.

**REVISION HISTORY**

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**Adopted:** October 13, 2017

**Amended:** July 30, 2020

**Last Comprehensive Review:** 2018

**Supersedes:** Sexual Harassment dated May 11, 2012; Sexual Harassment dated September 11, 1998



## **BOARD OF REGENTS POLICY: *Student Conduct Code***

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### **SECTION I. SCOPE AND PURPOSE.**

This policy applies to all students and student groups at the University of Minnesota (University), whether or not the University is in session. The purpose of the *Student Conduct Code* is to convey behavioral expectations that embody the University's learning mission while supporting students' individual career and life goals. The student conduct process is primarily educational, while also serving to protect the University's unique learning environment and the safety and success of the larger campus communities.

### **SECTION II. GUIDING PRINCIPLES.**

- (a) The University seeks an environment that promotes academic achievement and integrity, that is protective of free inquiry, and that serves the educational mission of the University.
- (b) As stated in Board of Regents Policy: *Diversity, Equity, Inclusion, and Equal Opportunity*, the University shall establish and nurture an environment for faculty, staff, students, and visitors that actively acknowledges and values equity and diversity and is free from racism, sexism, ageism, homophobia, and other forms of prejudice, intolerance, or harassment.
- (c) The University seeks a community that is free from violence, threats, and intimidation; that is respectful of the rights, opportunities, and welfare of students, faculty, staff, and guests of the University; and that does not threaten the health or safety of members of the University community.
- (d) The University is dedicated to responsible stewardship of its resources and to protecting its property and resources from theft, damage, destruction, or misuse.
- (e) The University supports and is guided by state and federal law while also setting its own standards of conduct for its academic community.
- (f) The University is dedicated to the fair and equitable resolution of conflict at the lowest level possible.
- (g) The University is committed to safeguarding the free expression rights of all University community members and will strive to engage in student development conversations when messages are contrary to the University values of equity, diversity, and inclusion. Students are entitled to the rights and responsibilities of other citizens with regard to freedom of speech, peaceable assembly, and the right to petition. Students are entitled to exercise their rights to inquire and dissent, speak freely, and peaceably assemble and protest to the extent permissible under both the First Amendment of the United States Constitution and the *Student Conduct Code*.

- (h) Students are entitled to due process and procedural fairness protections, including the prompt notification of charges, the opportunity to respond, the right to an advocate of choice, and the right to the resolution of a case within a reasonable period of time.

**SECTION III. DEFINITIONS.**

**Subd. 1. Academic Environment.**

*Academic environment* shall mean any setting where a student is engaged in work toward academic credit, satisfaction of program-based requirements, or related activities, including but not limited to classrooms, laboratories, online courses, learning support and testing platforms, learning abroad, and field work.

**Subd. 2. Assists or Abets.**

A student or student group *assists or abets* prohibited conduct when the student or student group: (a) helps any other person engage in prohibited behaviors as defined by the *Student Conduct Code*; and (b) intends the prohibited behavior to occur or knows that their actions are significantly likely to help the other person to engage in the prohibited behavior.

**Subd. 3. Campus.**

*Campus* shall mean all University premises, including all land, buildings, facilities, and other property owned, possessed, leased, used, or controlled by the University, and adjacent streets and sidewalks.

**Subd 4. Learning Support and Testing Platforms.**

*Learning support and testing platforms* shall mean tools including online tools identified by the instructor for use in a course or learning activity.

**Subd. 5. Plagiarism.**

*Plagiarism* shall mean representing the words, creative work, or ideas of another person as one's own without providing proper documentation of source. Examples include, but are not limited to, the following:

- copying information word for word from a source without using quotation marks and giving proper acknowledgement by way of footnote, endnote, or in-text citation;
- representing the words, ideas, or data of another person as one's own without providing proper attribution to the author through quotation, reference, in-text citation, or footnote;
- producing, without proper attribution, any form of work originated by another person such as a musical phrase, a proof, a speech, an image, experimental data, laboratory report, graphic design, or computer code;
- paraphrasing, without sufficient acknowledgment, ideas taken from another person that the reader might reasonably mistake as the author's; and
- borrowing various words, ideas, phrases, or data from original sources and blending them with one's own without acknowledging the sources.

Instructors are expected to provide clear standards regarding academic work expectations in the course syllabus. It is the responsibility of all students to understand the standards and methods of proper attribution and to clarify with each instructor the standards, expectations, and reference techniques appropriate to the subject area and class requirements, including group work and internet use. Students

are encouraged to seek out information about these methods from instructors and other resources and to apply this information in all submissions of academic work.<sup>1</sup>

**Subd. 6. Protected Characteristics.**

As defined by Board of Regents Policy: *Diversity, Equity, Inclusion, and Equal Opportunity*, *protected characteristics* shall mean race, color, creed, religion, national origin, sex, gender, age, marital status, familial status, disability, public assistance status, membership or activity in a local commission created for the purpose of dealing with discrimination, veteran status, sexual orientation, gender identity, or gender expression.

**Subd. 7. Student.**

*Student* shall mean any person taking courses at the University or enrolled in a University academic program; any person who has taken courses or enrolled in a University academic program within the past three terms (including summer) and who has not withdrawn, transferred, or graduated; any individual who has registered for classes or has been approved for readmission to the University; any person participating as a student in University activities, even if prior to the start of classes; any person previously enrolled within the last three terms (including summer) and who has a continuing relationship with the University through active participation in student groups or University-sponsored activities; any person on an official leave of absence with an intent to return; any person who withdraws, transfers, or graduates after an alleged violation of the *Student Conduct Code* and before the allegation is resolved; and any already graduated person when the conduct at issue implicates the validity of the person's earned University degree.

For the purposes of prohibited behaviors defined by Board of Regents Policy: *Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*, student shall mean a person who has gained admission to the University.

**Subd. 8. Student Group.**

*Student group* shall mean any group of students that is or has been registered as a University student group under applicable University policies or procedures.

**Subd. 9. Unauthorized Collaboration.**

*Unauthorized collaboration* shall mean working with others, either in person or via electronic means, when the student is not given express permission by an instructor to do so.

**Subd. 10. University-Sponsored Activities.**

*University-sponsored activities* shall mean any program or event sponsored by the University, including but not limited to academic, athletic, extracurricular, study abroad, research, online, or internship programs or activities. Activities hosted by student groups that are not sponsored by a University department, unit, or program shall not be considered University-sponsored activities.

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<sup>1</sup> Portions used with permission from New York Institute of Technology and University of Texas, San Antonio.

**SECTION IV. PROHIBITED BEHAVIORS.**

Any student or student group who accepts an informal resolution or is found to have committed, attempted to commit, or assisted or abetted another person or group in committing the following misconduct is subject to appropriate student conduct action under this policy.

*General Behavior Prohibitions:*

**Subd. 1. Scholastic Dishonesty.**

Scholastic dishonesty means plagiarism; cheating on assignments or examinations, including the unauthorized use of online learning support and testing platforms; engaging in unauthorized collaboration on academic work, including the posting of student-generated coursework on online learning support and testing platforms not approved for the specific course in question; taking, acquiring, or using course materials without faculty permission, including the posting of faculty-provided course materials on online learning support and testing platforms; submitting false or incomplete records of academic achievement; acting alone or in cooperation with another to falsify records or to obtain dishonestly grades, honors, awards, or professional endorsement; altering, forging, misrepresenting, or misusing a University academic record; or fabricating or falsifying data, research procedures, or data analysis.

**Subd. 2. Violation of University Rules.**

Violation of University rules means engaging in conduct that violates University, collegiate, or departmental regulations that have been posted or publicized, including provisions contained in University contracts with students.

**Subd. 3. Violation of Local, State, or Federal Laws or Ordinances.**

Violation of local, state, or federal laws or ordinances means engaging in conduct that violates a local, state, or federal law, or ordinance, including, but not limited to, laws governing alcoholic beverages, drugs, gambling, sex offenses, indecent conduct, or arson.

**Subd. 4. Persistent Violations.**

Persistent violations means engaging in repeated conduct or action in violation of the *Student Conduct Code*.

**Subd. 5. Retaliation.**

Retaliation occurs when a student or student group takes adverse action against an individual for that individual's good-faith participation in reporting or otherwise expressing opposition to, suspected or alleged prohibited behavior; or participating in any process designed to review or investigate suspected or alleged prohibited behavior or non-compliance with applicable policies, rules, and laws.

[Retaliation related to sex discrimination is defined by Board of Regents Policy: \*Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination and the related administrative policy.\*](#)

*Prohibited Behaviors Implicating Health, Safety or Property:*

**Subd. 6. Harm to Others.**

Harm to others means engaging in conduct that endangers or threatens to endanger the health, safety, or welfare of another person, including, but not limited to, threatening, harassing, intimidating, and stalking or assaulting behavior that does not fall within the scope of Subd. 9 of this section.

**Subd. 7. Discriminatory Harassment.**

Discriminatory harassment means conduct that occurs under either of the following conditions:

- When it is stated or implied that a person needs to submit to, or participate in, unwelcome conduct based on a protected characteristic to maintain or advance in their employment, education, or participation in a University program or activity.
- When unwelcome conduct based on a protected characteristic is severe, persistent, or pervasive and (1) unreasonably interferes with an individual's employment, education, or participation in a University program or activity; (2) creates a work, employment, or other University environment that a reasonable person would find to be intimidating, hostile, or offensive; or (3) effectively denies an individual equal access to a University program or activity.

[Discriminatory harassment based on gender, gender identity, gender expression, sex, sexual orientation, and pregnancy and related conditions is defined by Board of Regents Policy: \*Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination\* and the related administrative policy.](#)

**Subd. 8. Bullying.**

Bullying means aggressive behavior directed at another person that causes stress or harm and that is repeated over time, including but not limited to assaulting, defaming, terrorizing, making obscene gestures, or invading privacy.

**Subd. 9. Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence.**

These prohibited behaviors are defined in Board of Regents Policy: *Sexual Harassment, Sexual Assault, Stalking and Relationship Violence and Other Forms of Sex Discrimination* and the related administrative policy.

**Subd. 10. Illegal or Unauthorized Possession or Use of Weapons.**

Illegal or unauthorized possession or use of weapons means possessing or using weapons or articles or substances usable as weapons, including, but not limited to, firearms, incendiary devices, explosives, and dangerous biological or chemical agents, except in those instances when authorized by law and, where applicable, by University policy.

**Subd. 11. Illegal or Unauthorized Possession or Use of Drugs or Alcohol.**

Illegal or unauthorized possession or use of drugs or alcohol means possessing or using drugs or alcohol illegally or, where applicable, without proper University authorization.

**Subd. 12. Providing Alcohol to Minors.**

Providing alcohol to minors means directly or indirectly providing alcohol to anyone under the legal drinking age.

**Subd. 13. Theft, Property Damage, or Vandalism.**

Theft, property damage, or vandalism means theft or embezzlement of, damage to, destruction of, unauthorized possession of, or wrongful sale or gift of property.

**Subd. 14. Hazing.**

Hazing means any behavior or activity that endangers the health or safety of an individual (including, without limitation, an act intended to cause personal degradation or humiliation), for the purpose of

initiation in, admission to, affiliation with, or as a condition for continued membership in a student group or University athletic team, regardless of the individual's willingness to participate.

*Prohibited Behaviors Interfering with University and Community Operations:*

**Subd. 15. Disruption of Academic Environment.**

Disruption of the academic environment means engaging in behavior that substantially or repeatedly interrupts either the instructor's ability to teach and/or a student's ability to learn.

**Subd. 16. Falsification.**

Falsification means willfully providing University offices or officials with false, misleading, or incomplete information; forging or altering without proper authorization official University records or documents or conspiring with or inducing others to forge or alter without proper authorization University records or documents; misusing, altering, forging, falsifying, or transferring to another person University-issued identification; or intentionally making a false report of a bomb, fire, natural disaster, or other emergency to a University official or an emergency service agency.

**Subd. 17. Refusal to Identify and Comply.**

Refusal to identify and comply means willfully refusing to or falsely identifying one's self or willfully failing to comply with a proper order or summons when requested by law enforcement personnel, by emergency medical staff responding to an emergency, or by a University officials acting within the purview of their job responsibilities.

**Subd. 18. Unauthorized Use of and/or Access to University Facilities or Services.**

Unauthorized use of and/or access to University facilities or services means wrongfully using University properties or facilities, services, or information systems, or obtaining or providing to another person the means of such unauthorized access, including but not limited to using or providing keys, access cards, passwords, or access codes without authorization; misusing, altering, or damaging fire-fighting equipment, safety devices, or other emergency equipment or interfering with the performance of those specifically charged to carry out emergency services; or acting to fraudulently obtain or represent goods, facilities, services, or funds from University departments or student groups or individuals acting on their behalf.

**Subd. 19. Disruptive Behavior.**

Disruptive behavior means obstructing or disrupting teaching, research, administrative, or public service functions; participating in a campus demonstration that disrupts the normal operations of the University and infringes on the rights of other individuals; leading or inciting others to disrupt scheduled or normal activities of the University; engaging in intentional obstruction that interferes with freedom of movement, either pedestrian or vehicular, on campus; using sound amplification equipment on campus without authorization; making or causing noise, regardless of the means, that disturbs authorized University activities or functions; or breaching the peace.

**SECTION V. AMNESTY.**

**Subd. 1. Medical Amnesty.**

Medical amnesty shall align with Minnesota Statutes § 340A.503, Subd. 8, and it shall mean that a student is not subject to *Student Conduct Code* student conduct outcomes for underage possession and consumption of alcohol if the student contacts a 911 operator to report that the student or another student is in need of medical assistance for an immediate health or safety concern. To be eligible for medical amnesty, the student who initiates contact must be the first person to make such a report, must provide a name and

contact information, must remain on the scene until assistance arrives, and must cooperate with the authorities at the scene. The student who receives medical assistance and up to two students acting in concert with the student initiating contact with a 911 operator shall also be immune from student conduct outcomes. This does not include a University response that may include required education. Medical amnesty is granted only for alcohol-related violations of Section IV, Subd. 11 of this policy, and it does not apply to other possible violations of the *Student Conduct Code* (e.g., property damage or assault) that may have occurred during the time of intoxication. In circumstances involving a student group, the willingness of the student group's members to seek medical assistance for a member or a guest will be viewed as a mitigating factor in the review process for any possible violations.

**Subd. 2. Sexual Misconduct-related Amnesty.**

To facilitate reporting and thorough investigations of sexual harassment, sexual assault, stalking, and relationship violence, individuals who provide information about possible violations to the University, and individuals who participate in an informal problem-solving or grievance process, will not be disciplined by the University for violations of the University's prohibition on the personal use of drugs or alcohol, when such a violation occurred in connection with a possible sexual harassment, sexual assault, stalking, or relationship violence violation and was discovered as a result of a sexual harassment, sexual assault, stalking, or relationship violence report.

Moreover, the University may offer leniency with respect to other violations by informal problem-solving or grievance process participants that emerge as a result of a sexual harassment, sexual assault, stalking, or relationship violence report, depending on the circumstances involved.

**SECTION VI. OUTCOMES.**

Students and student groups found responsible for prohibited behaviors under the *Student Conduct Code* are subject to appropriate outcomes. Factors to consider in determining appropriate outcomes include: the nature of the offense, the severity of the offense, the culpability of the student or student group, the impact on other students or members of the University community, and the opportunity for student development. Separation from the University through suspension or expulsion is a serious outcome that may be appropriate for: repeated violations of the *Student Conduct Code*, for serious scholastic dishonesty, and for misconduct that constitutes a threat to community safety or well-being (including, but not limited to harm to others and sexual harassment, sexual assault, stalking, or relationship violence), or significantly disrupts the rights of others or the operations of the University.

In certain cases, students can agree to accept outcomes informally, as well as propose alternative resolution options outside of the conduct process. It may also be appropriate for restorative justice and/or alternative resolutions to be utilized. Restorative actions may include, but are not limited to, educational interventions/experiences, academic/co-curricular success plans, etc. In cases involving medical amnesty, a student requiring emergency evaluation or treatment at a medical facility may be required to complete an alcohol assessment or education program, which is not considered a student conduct response.

The following outcomes may be imposed upon students or student groups found to have violated the *Student Conduct Code*:

**Subd. 1. Academic Outcome.**

An academic outcome means an outcome affecting the course or academic work of the student for violation of Section IV, Subd. 1.



**Subd. 2. Warning.**

A warning means the issuance of an oral or written warning or reprimand.

**Subd. 3. Probation.**

Probation means special status with conditions imposed for a defined period of time and includes the probability of more serious outcomes if the student or student group is found to violate any institutional regulation during the probationary period.

**Subd. 4. Required Compliance.**

Required compliance means satisfying University requirements, work assignments, community service, participating in a restorative justice process, or other discretionary assignments.

**Subd. 5. Confiscation.**

Confiscation means confiscation of goods used or possessed in violation of University regulations or confiscation of falsified identification or identification wrongly used.

**Subd. 6. Restitution.**

Restitution means making compensation for loss, injury, or damage.

**Subd. 7. Restriction of Privileges.**

Restriction of privileges means the denial or restriction of specified privileges, including, but not limited to, building access or service access.

**Subd. 8. University Housing Suspension.**

University housing suspension means separation of the student from University Housing on a single campus.

**Subd. 9. University Housing Expulsion.**

University housing expulsion means permanent separation of the student from University Housing on a single campus.

**Subd. 10. Suspension.**

Suspension means separation of the student or student group from the University for a defined period of time, after which the student is eligible to return to the University. Suspension may include conditions for readmission. Any violations of the *Student Conduct Code* while on suspension may be cause for additional charges and findings that may result in extended suspension or expulsion. A suspension may be deferred when an offense is serious enough to warrant separation from the University, but where the specific circumstances of the case justify special consideration.

**Subd. 11. Expulsion.**

Expulsion means the permanent separation of the student from the University.

**Subd. 12. Withholding of Diploma or Degree.**

Withholding of diploma or degree means the withholding of diploma or degree otherwise earned for a defined period of time or until the completion of assigned outcomes for a violation that implicates the academic validity of a diploma or degree.

**Subd. 13. Revocation of Admission or Degree.**

Revocation of admission or degree means revoking a student's admission to the University or revoking a degree already awarded by the University for a violation that implicates the academic validity of an admission or earned degree.

**SECTION VII. HEARING AND APPEALS OF STUDENT CONDUCT.**

Hearings and appeals regarding prohibited behaviors defined by Board of Regents Policy: *Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination* and the related administrative policy shall be adjudicated under those policies.

**Subd. 1. Hearing Process.**

Any student or student group charged with violation of the *Student Conduct Code* shall have the opportunity to receive a fair hearing. A finding of responsibility for violation of the *Student Conduct Code* must be based on a preponderance of the evidence. The president or delegate shall ensure that each campus has a hearing process that includes the following:

- (a) notification of the report and a request to meet;
- (b) meeting to learn more about the steps of the student conduct process and to share information related to the incident;
- (c) if the student or student group is found responsible, a proposal of an informal resolution that includes the findings and outcomes being offered to resolve the incident, except in exceptional circumstances where the University determines that an informal resolution is not appropriate;
- (d) if the informal resolution is not accepted, a request for a formal hearing in which a panel will determine responsibility and potential outcomes; and
- (e) if the formal resolution is not accepted, a request for an appeal.

In exceptional circumstances where the University determines that an informal resolution is not appropriate, a student's responsibility will be decided through a formal hearing in which a panel will determine responsibility and possible outcomes.

**Subd. 2. Appeals Process.**

To safeguard the rights of students and student groups, the president or delegate shall ensure that each campus has a campus-wide appeals procedure to govern alleged violations of this policy. The appeals procedure shall provide both substantive and procedural fairness for the student or student group alleged to have violated the *Student Conduct Code* and shall provide for resolution of cases within a reasonable period of time.

The appeals procedure must describe the following:

- (a) grounds for an appeal;
- (b) procedures for filing an appeal; and
- (c) the nature of an appellate review.

**SECTION VIII. INTERIM SUSPENSION.**

In rare circumstances, the president or delegate may impose an immediate suspension on a student or student group pending a hearing (1) to ensure the safety and well-being of members of the University community or to preserve University property, (2) to ensure the student's own physical or emotional safety

and well-being, or (3) if the student or student group poses an ongoing threat of disrupting or interfering with the operations of the University. During the interim suspension, the student or student group may be denied access to all University activities or privileges for which the student or student group might otherwise be eligible, including access to University housing, property, or services. The student or student group has a right to a prompt hearing before the president or delegate on the question of whether the interim suspension should remain in effect until the full hearing is completed. An interim suspension will not be considered when determining responsibility during the hearing or appeals processes.

**SECTION IX. JURISDICTION.**

**Subd. 1.**

The *Student Conduct Code* shall apply to student and student group conduct that occurs on campus or at University-sponsored activities.

**Subd. 2.**

The *Student Conduct Code* shall apply to student and student group conduct that directly relates to the University's education, services, programs, or rules, including but not limited to scholastic dishonesty, hazing, violation of University rules, and falsification, whether the conduct occurs on campus or off campus.

**Subd. 3.**

At the discretion of the president or delegate, the Student Conduct Code also shall apply to off-campus or online student and student group conduct when the conduct, as alleged, adversely affects a substantial University interest and either:

- (a) constitutes a criminal offense as defined by local, state, or federal law or ordinance, regardless of the existence or outcome of any criminal proceeding; or
- (b) indicates that the student or student group may present a danger or threat to the health or safety of the student or others.

**Subd. 4.**

In the case of an allegation of sexual harassment, sexual assault, stalking, or relationship violence, the *Student Conduct Code* shall apply when the conduct occurs off University property and outside the context of a University employment or education program or activity, but (1) has a continuing adverse effect on a University education program or activity; or (2) creates a hostile environment for one or more students, employees, or third parties while on University property or in any University employment or education program or activity.

**Subd. 5.**

Conduct of a student who is a member of a student group will not be considered to be conduct of the student group unless the facts and circumstances surrounding the conduct suggest that the student group sponsored, organized, or otherwise endorsed the conduct.

**SECTION X. THE RESPONSIBILITIES OF DUAL MEMBERSHIP.**

Students are members of both the University community and the state. Students are responsible to the community of which they are a part, and they are responsible to the academic community of the University. By enforcing the *Student Conduct Code*, the University neither substitutes for nor interferes with other civil or criminal legal processes. When a student is charged in both jurisdictions, the University will decide on the basis of its interests, the interests of affected students, and the interests of the community whether to

## DRAFT for Action

proceed with its student conduct process or to defer action. Determinations made or outcomes imposed under the *Student Conduct Code* will not be subject to change because criminal charges arising out of the same facts were dismissed, reduced, or resolved in favor of the criminal law defendant.

### SECTION XI. DELEGATION OF AUTHORITY.

The president or delegate shall implement this policy, including publishing and distributing the *Student Conduct Code* and the procedures governing the student conduct process at the University.

### REVISION HISTORY

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**Adopted:** July 10, 1970

**Amended:** December 13, 1974; March 11, 1994; June 13, 2003; December 8, 2006; October 12, 2012; June 10, 2016; October 13, 2017; June 10, 2022

**Technical Correction:** July 8, 2015; May 24, 2018; January 23, 2024

**Last Comprehensive Review:** 2022

**Supersedes:** Existing Disciplinary Appeals Policies in Contradiction and Specifically Repeals the Appeals Policies dated February 9, 1979.

Printed on: 05/29/2024. Please go to [policy.umn.edu](https://policy.umn.edu) for the most current version of the document.



# Conflict Resolution for Faculty, P&A, Civil Service, and Student Workers

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## Policy Statement

Faculty, P&A, Civil Service, and student workers may access the University's carefully coordinated network of options for the good faith review and resolution of workplace conflicts. These options include:

- informal services to encourage prompt resolution of disputes, to include consultation, problem solving, facilitated discussion, and mediation; and/or
- a formal petition process reserved for conflicts not resolved through informal efforts, including a peer hearing, a final University decision by the Executive Vice President and Provost, and the opportunity to elect binding outside arbitration, or where applicable, appeal to the Minnesota Court of Appeals.

## Exception

A formal petition may not be filed with [the Office for Conflict Resolution \(OCR\)](#) that (1) alleges a violation of the Administrative Policy: Sexual Harassment, Sexual Assault, ~~Stalking, and Relationship Violence~~ [and Other Forms of Sex Discrimination](#) or (2) challenges findings related to or disciplinary decisions resulting from violations of the Administrative Policy: Sexual Harassment, Sexual Assault, ~~Stalking, and Relationship Violence~~ [and Other Forms of Sex Discrimination](#).

## Scope

The conflict resolution process applies to employment-related conflicts of non-labor represented faculty, academic professional and administrative (P&A) staff, civil service staff, and student workers, including graduate student teaching and research assistants. In some circumstances, it applies to faculty emeriti and to recently terminated employees. This conflict resolution policy does not apply to labor-represented faculty and staff because their workplace concerns are governed by applicable collective bargaining agreements.

## Arbitrations

~~The Office of Conflict Resolution (OCR)~~ [OCR](#) maintains procedures that promote the fair, efficient, and cost-effective arbitration of employment conflicts at the election of the employee. The amount of, and responsibility to pay, arbitrator fees will depend on

the source of the arbitrator chosen by the employee.

- If the employee selects an arbitrator from the National Academy of Arbitrators, the employee and the University will share equally in paying the entire arbitrator fees.
- If the employee selects an arbitrator from a roster maintained by the Minnesota Bureau of Mediation Services, the arbitrator will be requested to cap their total fees at \$10,000, unless fees in excess of that amount are approved by the Vice President for Equity and Diversity upon a showing of good cause by the arbitrator. The employee and University will share equally the arbitrator fees up to \$7,000. The University will pay the arbitrator fees over \$7,000.

## Relief Available

When warranted, resolution of conflicts under this policy may include corrective action for the benefit of the employee, including reinstatement of back pay and restoration of benefits actually lost. Relief does not include attorneys' fees, damages for pain and suffering or emotional distress, or punitive damages. Resolution may not direct disciplinary action against an employee.

## Retaliation

No member of the University community may retaliate against an individual because of the individual's good faith participation in:

- reporting or otherwise expressing opposition to, suspected or alleged misconduct;
- participating in any process designed to review or investigate suspected or alleged misconduct or non-compliance with applicable policies, rules, and laws; or
- accessing OCR services.

A causal relationship between the good faith participation in one of these activities and an adverse action is needed to demonstrate that retaliation has occurred.

## Reporting Retaliation Concerns

Individuals who believe that retaliation is occurring or has occurred, as a result of their good faith participation in one of the above referenced activities, should follow the reporting options available to them in the Administrative Policy: *Reporting Suspected Misconduct*.

Reports of retaliation will be reviewed and investigated in the same manner in which other concerns of misconduct are handled. Any University member who engages in retaliation may be subject to disciplinary action up to and including termination of employment or expulsion.

## Intentionally False Reports/Information

Individuals who, knowingly or intentionally, file a false report or provide false or misleading information in connection with an investigation may be subject to disciplinary action up to and including termination of employment, or expulsion.

## Exclusions

Employees who are represented by a labor organization are excluded from services. Labor-represented employees may pursue their concerns through the process established in their collective bargaining agreements.

Persons who are not employed by the University, even if their work is physically located at the University, such as employees of University of Minnesota Physicians, are not eligible for these services. Volunteers, fellows, or other individuals who work with the University, but are not paid by the University, are generally not eligible for services.

## Reason for Policy

This administrative policy implements Board of Regents Policy: [Conflict Resolution Process for Employees \(PDF\)](#). This framework for resolution of workplace conflicts promotes early resolution of workplace conflicts and promotes the engagement of valued University faculty, P&A, Civil Service, and student employees.

## Procedures

- [Conflict Resolution Procedures for Faculty, P&A, Civil Service, and Student Employee Complaints](#)

## Forms/Instructions

- UM 1755: [Petition for Complaints Filed by Faculty, P&A, Civil Service and Student Employees \(doc\)](#)

## Appendices

- [Administrative Responsibilities](#)
- [Filing an Internal Discrimination Complaint\\*](#)
- [Jurisdictional Guidelines](#)
- [Relationship Between Internal Conflict Resolution Processes and Court Review](#)
- [Timeline for the Petition Process](#)

## Frequently Asked Questions

- FAQ: [Conflict Resolution for Faculty, P&A, Civil Service, and Student Workers](#)

## Contacts

Subject	Contact	Phone	Email
Primary Contact(s)	Adepeju Solarin		sola0020@umn.edu
Student Conflict Resolution Center (academic conflicts)	Jan Morse Michael Huyen	612-624-7272	sos@umn.edu
UReport (an anonymous reporting service for suspected violations of laws and University policies)	<a href="#">UReport</a>	1-866-294-8680	
Director, Human Resources, Crookston	Jonathon Fuller	218-281-8345	ljumc@umn.edu
Director, Human Resources, Duluth	Mark Yuran	218-726-6326	myuran@d.umn.edu
Director, Human Resources, Morris	Sarah Mattson	320-589-6024	mattsosi@morris.umn.edu

Subject	Contact	Phone	Email
Director, Human Resources, Rochester	Virginia Wright-Peterson	507-258-8009	umhr@r.umn.edu

## Responsible Individuals

Responsible Officer	Policy Owner	Primary Contact
<ul style="list-style-type: none"> <li>Vice President, Office for Equity and Diversity</li> </ul>	<ul style="list-style-type: none"> <li>Director, Office for Conflict Resolution</li> </ul>	<ul style="list-style-type: none"> <li>Adepeju Solarin Director, Office for Conflict Resolution</li> </ul>

## Definitions

### Adverse Action

Any action that might deter a reasonable person from engaging in reporting suspected or alleged misconduct, expressing opposition to alleged misconduct, participating in an investigation related to a misconduct allegation, or accessing the Office for Conflict Resolution services. Examples of adverse action include, but are not limited to: impeding the individual's academic advancement; departing from any customary academic or employment practice regarding the individual; firing, refusing to hire, or refusing to promote the individual; transferring or assigning the individual to a lesser position in terms of wages, hours, job classification, job security, employment or academic status; and threatening or marginalizing an individual. In some situations, retaliatory conduct may also include inappropriate disclosure of the identity of the individual who has made a complaint protected by this policy.

### Attorney

A person with a J.D. law degree.

### Conflict Resolution Advisory Committee

An advisory committee whose members are appointed by representative employee groups.

### Employee

A person receiving a University of Minnesota paycheck.

### Good Faith Participation

Reporting, or otherwise expressing opposition to, misconduct based on a reasonable belief that misconduct has occurred. Or, honestly participating in an investigation of misconduct or accessing conflict resolution services.

### Investigation

The steps taken to analyze all relevant information regarding suspected or alleged misconduct and then determine whether sufficient evidence exists to find that misconduct occurred.

### Party

A petitioner or respondent.

### Petition

A written complaint alleging a violation of a University rule, regulation, policy, or practice pertaining to employment.

### Petitioner



A University non-labor represented employee who files a petition.

#### Report in Good Faith

A report made by an individual who reasonably believes that misconduct has occurred and reports the incident.

#### Respondent

The person appointed by the senior administrator to respond to the petition.

#### Retaliation

Taking an adverse action against an individual because of the individual's good faith participation in reporting suspected or alleged misconduct, expressing opposition to alleged misconduct, participating in an investigation related to a misconduct allegation, or accessing the Office for Conflict Resolution services. (See also Adverse Action.) A causal relationship between good faith participation in reporting and an adverse action is needed to demonstrate that retaliation has occurred.

#### Rosters - Hearing Officer, Panelist, Advisor

- The Hearing Officer Roster consists of individuals who are available to serve as hearing officers on peer hearing panels. The Office for Conflict Resolution appoints a hearing officer from the roster when a matter goes to a peer hearing. The hearing officer must be from the same employment category as the petitioner. Hearing officers are nominated by representative employee committees and are appointed by the vice president for Equity and Diversity for terms of up to three years.
- The members of the Panel Roster are available to the petitioner to be panelists in a peer hearing or arbitration. They are appointed by representative employee committees and serve terms of up to three years.
- The Advisor Roster is a list of individuals who have agreed to serve as advisors to employees during conflict resolution processes. They receive training about conflict resolution processes from Office for Conflict Resolution staff.

#### Senior Administrator

The president, chancellor, senior executive, vice president, or appropriate vice president for the unit in which the petitioner is employed.

#### Vice President for Equity and Diversity

The senior administrator of the unit in which the Office for Conflict Resolution resides.

## Responsibilities

#### Conflict Resolution Advisory Committee

Advises the vice president for Equity and Diversity regarding the selection of the conflict resolution staff, its performance, and the operation of the conflict resolution program. It reviews the functioning of the program every five years and reports its findings and recommendations to the vice president for Equity and Diversity, president, and University Senate.

#### Director, Office for Conflict Resolution

Administers this policy and related procedures so that conflict resolution processes are accessible, competent, and fair. Provides informal and formal conflict resolution services. Offers educational programming about conflict resolution to University faculty and staff. Prepares an annual report on the work of the office.

#### Petitioner

A University non-labor-represented employee who files a written petition alleging a violation of University policy or practice and prepares and presents the issues to a peer panel.

#### President

Appoints a respondent and a panelist if a matter goes to arbitration. Appoints two administrative representatives to the Conflict Resolution Advisory Committee.

#### Respondent

Appointed by the Senior Administrator to respond to the petition.

#### Senior Administrator

Appoints a respondent to a petition and ensures that a written response to the petition is submitted. Appoints a panelist if the matter goes to a peer hearing.

#### Executive Vice President and Provost

Makes the final University decision on jurisdictional determinations and on petitions, following peer panel decisions.

#### Vice President for Equity and Diversity

Appoints the director of the Office for Conflict Resolution. Supervises the Office for Conflict Resolution in consultation with the Conflict Resolution Advisory Committee. Appoints hearing officers to the Hearing Office Roster after they are nominated by representative employee committees. Determines whether to approve payment of arbitrator fees exceeding the \$10,000 cap.

## Related Information

- Board of Regents Policy: [Conflict Resolution Process for Employees \(PDF\)](#)
- Administrative Policy: [Retaliation \(PDF\)](#)
- Administrative Policy: [Reporting Suspected Misconduct \(PDF\)](#)

## History

#### Amended:

August 2020 - Addresses the prohibition of filing a formal petition with OCR in certain situations

#### Amended:

May 2020 - Comprehensive Review.

1. Updates the policy owner, contact, and unit title and names of contacts.
2. Minor edits to clarify and simplify language.
3. Provides additional FAQs to improve guidance.
4. Updates and increases the stated arbitration fees.

#### Amended:

May 2017 - Comprehensive Review.

1. Updates the policy owner, contact, and unit title and names of contacts.
2. Minor edits to clarify and simplify language.
3. Provides additional FAQs to improve guidance.
4. Updates and increases the stated arbitration fees.

#### Amended:

August 2017 - Minor Revision. The section on Retaliation has been updated to be consistent with core language in Administrative Policy: *Retaliation*.

Amended:

February 2011 - Comprehensive Review. The following revisions were made to enhance efficiency and fair process:

1. A prohibition on retaliation was added to Board of Regents Policy: *Conflict Resolution Process for Employees*.
2. The Conflict Resolution Policy was converted to the new University-wide format for administrative policies.
3. Existing administrative procedures were revised to encourage the use of Minnesota arbitrators and streamline the arbitration process.
4. An estimated Minnesota arbitrator fee of \$3,500 (shared equally by the University and the employee) was established. A process for University payment of arbitration fees exceeding \$3,500 was added.

Effective:

February 11, 2005 – Board of Regents Policy: *Conflict Resolution Process for Employees* superseded Board of Regents Policy: *Grievance Process*. The Board of Regents policy and administrative procedures were revised to include informal ombuds services and to substitute "petition" and "conflict resolution" language for "grievance" language.

Amended:

July 12, 2002 – Board of Regents Policy: *Grievance Process* was adopted. It superseded the Grievance Procedure dated April 16, 1993. Revisions included expanding the scope to include faculty emeriti and revising the definition of "attorney" to include persons with J.D. degrees, who may not be licensed to practice law.

Adopted:

1993 – A University-wide Grievance Procedure for non-bargaining unit University employees was adopted.

## **Policy Documents:** *Discrimination*

<b>Policy Document</b>	<b>Page</b>
Administrative Policy: <i>Discrimination</i>	2
Administrative Procedure: <i>Response Procedures in Cases Involving Discrimination</i>	17
Appendix: <i>University Authorities and Appellate Officers</i>	35

These revised policy documents include reorganized content that does not lend well to a tracked-changes document. In short, the key proposed substantive changes to these policy documents are: 1) removing their coverage of differential treatment sex discrimination and related retaliation; and 2) making other wording and minor substantive changes to align the discrimination policy with the newly revised sex discrimination policy where it makes sense.

# Administrative Policy: *Discrimination*

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## I. POLICY STATEMENT

The University of Minnesota (the “University”) is committed to taking prompt and effective steps intended to stop discrimination, prevent its recurrence and, as appropriate, remedy its effects. This policy outlines the University’s definitions and procedures related to discrimination other than sex discrimination. Discrimination includes differential treatment discrimination, discriminatory harassment, and related retaliation (“prohibited conduct”) as defined below.

Sex discrimination (including marital and familial status discrimination on the basis of sex) is governed by the Administrative Policy: *Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*.

## II. APPLICATION OF POLICY

This policy applies to University members, who include:

- University students, whether enrolled full time or part time, in for-credit or non-credit courses;
- University employees as defined in this policy; and
- other individuals who are participating or attempting to participate in a University program or activity, including any person authorized by the University to provide an aid, benefit, or service under the University’s program or activity (“third parties”).

This policy applies to acts of prohibited conduct committed by or against students, employees, or third parties when:

- the conduct occurs on University property;
- the conduct occurs within the University’s programs or activities; or
- the conduct occurs outside of the University’s programs or activities, but 1) has a continuing adverse effect on a University program or activity; or 2) creates a hostile environment for one or more University members in a University program or activity; or 3) indicates that the respondent may present a danger or threat to the health or safety of University members.

To the extent any provision of this policy conflicts with Board of Regents Policy: *Diversity, Equity, Inclusion, and Equal Opportunity*, the Board policy controls. Nothing in this policy should be interpreted to abridge academic freedom or principles of free speech.

### **III. PROHIBITION**

The University does not discriminate on the basis of protected characteristics, as defined in this policy, in any education program or activity that it operates, as required by Title VI, Title VII, and other applicable laws, including in admissions and employment. All University members are prohibited from engaging in, or assisting or abetting another's engagement in, prohibited conduct.

### **IV. REPORTING REQUIREMENT**

All University supervisors and human resources representatives who are not confidential employees must promptly report directly to the campus Equal Opportunity office when they learn about conduct that reasonably may constitute prohibited conduct in the course of performing their respective supervisory or human resources employment duties. This obligation to report is not satisfied by making an anonymous report or by submitting information through UReport.

### **V. REQUIREMENT TO PROVIDE REASONABLE ACCOMMODATIONS**

The University provides reasonable accommodations for disability and religious beliefs and practices. For more information, please review the FAQ: *Reasonable Accommodations for Religious Beliefs and Practices* and FAQ: *Reasonable Accommodations for Disabilities*.

### **VI. RECORDKEEPING**

The campus Equal Opportunity office will maintain records related to reports received, and actions taken, under this policy for, at a minimum, the longer of seven years or the retention period required by Administrative Policy: *Managing University Records and Information*. The University will compile and maintain publicly available records, including Clery Act reporting and disclosures, without the inclusion of personally identifying information about the complainant. The University will provide complainants and respondents with access to their records related to any of the prohibited conduct processes set forth in this policy in accordance with the law.

### **VII. REASON FOR POLICY**

This policy implements Board of Regents policy: *Diversity, Equity, Inclusion, and Equal Opportunity*. The University adopts this policy to enact its commitment to: 1) taking prompt and equitable action to eliminate, prevent, and address prohibited conduct and its effects; 2) fostering a trusting environment where prohibited conduct is not tolerated; 3) cultivating a climate where individuals are well-informed and supported with respect to reporting prohibited conduct; 4) providing fair and impartial complaint response processes that treat all participants with dignity; and 5) identifying the standards by which violations of this policy will be evaluated and disciplinary action imposed.

## **PROCEDURES**

- *Response Procedures in Cases Involving Discrimination*

## **FORMS/INSTRUCTIONS**

Online forms for reporting prohibited conduct:

- <https://eot.umn.edu/report-misconduct>
- <https://compliance.umn.edu/report>

## **APPENDICES**

- *Roles and Responsibilities of Advisors and Support Persons*
- *University Authorities and Appellate Officers*

## **FREQUENTLY ASKED QUESTIONS**

- [FAQ: Accommodations for Religious Beliefs and Practices](#)
- [FAQ: Discrimination Based on Caste](#)
- [FAQ: Reasonable Accommodations for Disabilities](#)
- [FAQ: Retaliation in Discrimination Cases](#)
- [FAQ: Reporting](#)

## **CONTACTS**

### **Campus Equal Opportunity Offices**

Reports of prohibited conduct should be made to the University's campus Equal Opportunity offices listed below.

#### **Crookston Office**

<b>Subject</b>	<b>Contact</b>	<b>Phone</b>	<b>Email</b>
For reports involving employee or third party respondents	Michele Behm, Director of Human Resources	218-281-8345	behm0061@crk.umn.edu
For reports involving student respondents	Christopher Ehrhart Interim Dean of Student Services	218-281-8580	umcdean@crk.umn.edu

### **Duluth Campus**

<b>Subject</b>	<b>Contact</b>	<b>Phone</b>	<b>Email</b>
For reports involving employee or third party respondents	Corey Christensen Equal Opportunity Associate and Deputy Title IX Coordinator	218-726-8809	chri2595@d.umn.edu
For reports involving student respondents	Office of Student Conduct & Conflict Resolution	218-726-7255	conduct@d.umn.edu

### **Morris Campus**

<b>Subject</b>	<b>Contact</b>	<b>Phone</b>	<b>Email</b>
For reports involving employee or third party respondents	Sarah Mattson Director of Human Resources	320-589-6021	mattsosj@morris.umn.edu
For reports involving student respondents	Student Affairs	320-589-6013	ummvcsa@morris.umn.edu

### **Rochester Campus**

<b>Subject</b>	<b>Contact</b>	<b>Phone</b>	<b>Email</b>
For reports involving employee or third party respondents	Nicole Smith Director of Employee Engagement, Development, and Well-Being	507-258-8010	ndmsmith@r.umn.edu
For reports involving	Jenny Casper, Interim	507-258-8242	jjcasper@r.umn.edu



student respondents	Assistant Vice Chancellor for Student Success, Engagement, and Equity		
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### **Twin Cities Campus**

<b>Subject</b>	<b>Contact</b>	<b>Phone</b>	<b>Email</b>
For reports involving employee or third party respondents	Equal Opportunity & Title IX Office	612-624-9547	eot@umn.edu
For reports involving student respondents	Office for Community Standards	612-624-6073	ocs@umn.edu

### **UReport**

Reports of prohibited conduct, including anonymous reports, may be submitted 24 hours a day through the University’s UReport reporting system. Reports of prohibited conduct made through UReport will be forwarded to the campus Equal Opportunity office, which will address the concerns under this policy. The obligation of supervisors and human resources representatives to report conduct that reasonably may constitute prohibited conduct to the campus Equal Opportunity office is not satisfied by submitting information through UReport.

<b>Subject</b>	<b>Contact</b>	<b>Phone</b>
All Campuses	<a href="#"><u>UReport</u></a>	1-866-294-8680

### **Law Enforcement**

Employees, students, and third parties are encouraged to report crimes to the law enforcement agency for the jurisdiction in which the conduct at issue occurred. Complainants have the option to report a crime to the appropriate law enforcement agency, to decline to report to law enforcement, to report prohibited conduct to the appropriate campus Equal Opportunity office, or to report to multiple investigative bodies simultaneously. Upon request, the University will assist a student, employee, or third party in contacting law enforcement.

The University’s grievance process and law enforcement investigations may be pursued simultaneously but operate independently of one another. Even if a criminal investigation is ongoing, the University can conduct its own grievance process. However, at the request of law enforcement, the University may delay the fact-finding portion of a grievance process.

<b>Campus</b>	<b>Contact</b>	<b>Phone</b>	<b>Email</b>
<b>Crookston Campus</b>	The City of Crookston Police Department 321 West Robert Street Crookston, MN 56716	218-281-3111	
<b>Duluth Campus</b>	University of Minnesota-Duluth Police Department 287 Darland Admin Bldg 1049 University Drive Duluth, MN 55812	218-726-7000	umdspd@d.umn.edu
	Duluth Police Department 2030 North Arlington Avenue Duluth, MN 55811	218-730-5400	police@duluthmn.gov
<b>Morris Campus</b>	University of Minnesota Morris Public Safety Behmler Hall 6 600 East Fourth Street Morris, MN 56267	320-589-6000	ummpd@morris.umn.edu
	Morris Police Department 400 Colorado Avenue Morris, MN 56267	320-208-6500	mpd@co.stevens.mn.us
<b>Rochester Campus</b>	Rochester Law Enforcement Center 101 Fourth Street Southeast Rochester, MN 55902	507-328-6810	
<b>Twin Cities Campus</b>	University of Minnesota Police Department 511 Washington Ave. SE Minneapolis, MN 55455	612-624-2677	police@umn.edu

St. Paul Police Department 367 Grove Street St. Paul, MN 55101	651-291-1111	policeinfo@ci.stpaul.mn.us
Minneapolis Police Department 350 South 5th Street, Room 130 Minneapolis, MN 55415-1389	612-673-3000	police@minneapolis.mn.gov
Falcon Heights Police Department 3301 Silver Lake Road Saint Anthony, MN 55418	612-782-3350	

### Confidential Resources

The following resources offer free and confidential services, including advocacy, counseling and personal support.

Subject	Contact	Phone	Email
<b>Crookston Campus</b>	UMC Counseling Center	218-281-8571 218-281-8348	umccoun@crk.umn.edu
	Student Health	218-281-8512	umcnurse@crk.umn.edu
<b>Duluth Campus</b>	Counseling: Health Services	218-726-7913	umdcounseling@d.umn.edu
<b>Morris Campus</b>	Student Counseling	320-589-6060	umm counseling@morris.umn. edu
<b>Rochester Campus</b>	Crisis Hotline	507-269-4511	
	Student Counseling	507-258-8017	rkotovic@r.umn.edu
	Student Health Services	507-292-7250	
<b>Twin Cities Campus</b>	Boynton Mental Health	Office line: 612-625-8400	

		24 hour Crisis Connection counselors: 612-301-4673	
	Student Counseling Services	612-624-3323	counseling@umn.edu

The University’s Employee Assistance Program (EAP) is available to benefits-eligible employees on all system campuses. EAP provides confidential, professional consultation and referral services to address any personal or work concern that may be affecting one’s well-being. EAP can be reached at 877-295-8939 or umn.lyrahealth.com.

### State and Federal Agency Resources

Individuals with questions regarding the application of state and federal anti-discrimination laws may also contact the following federal and state agencies.

<b>Federal and state government contact</b>	<b>Address</b>	<b>Phone</b>	<b>Email/Reporting Portal</b>
U.S. Equal Employment Opportunity Commission	Minneapolis Area Office, Towle Building 330 South Second Avenue, Suite 720 Minneapolis, MN 55401-2224	612-552-7306	<a href="https://publicportal.eeoc.gov/portal/Login.aspx">https://publicportal.eeoc.gov/portal/Login.aspx</a>
Minnesota Department of Human Rights	Griggs Midway Building 540 Fairview Ave North, Suite 201 St. Paul, Minnesota 55104	651-539-1100 1-800-657-3704	info.mdhr@state.mn.us
U.S. Department of Education, Office for Civil Rights	Office for Civil Rights U.S. Department of Education John C. Kluczynski Federal Building 230 S. Dearborn Street, 37th	312-730-1560	OCR.Chicago@ed.gov

	Floor. Chicago, IL 60604		
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**Responsible Individuals**

<b>Responsible Officer</b>	<b>Policy Owner</b>	<b>Primary Contact</b>
<ul style="list-style-type: none"> <li>Mercedes Ramírez Fernández, Vice President, Office for Equity and Diversity</li> </ul>	<ul style="list-style-type: none"> <li>Tina Marisam, Director and Title IX Coordinator, Equal Opportunity &amp; Title IX</li> </ul>	<ul style="list-style-type: none"> <li>Tina Marisam, Director and Title IX Coordinator, Equal Opportunity &amp; Title IX</li> </ul>

**DEFINITIONS OF FORMS OF DISCRIMINATION (NON-SEX-BASED)**

**Differential Treatment Discrimination**

Differential treatment discrimination is:

- an action taken because of a protected characteristic that adversely affects a term or condition of an individual’s participation in a University program or activity; or
- a denial of reasonable accommodations that are required to accommodate an individual’s disability or religious beliefs and practices.

**Discriminatory Harassment**

Discriminatory harassment occurs when, based on the totality of the circumstances, unwelcome conduct based on a protected characteristic:

- is i) subjectively and objectively offensive, and ii) so severe or pervasive that it limits or denies an individual’s ability to participate in, or benefit from, the University’s programs or activities; or
- is so severe, persistent, or pervasive that it creates an employment environment that an individual finds, and a reasonable person would find to be, intimidating, hostile, or offensive.

Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- the degree to which the conduct affected a complainant's ability to access the University's programs or activities;
- the type, frequency, and duration of the conduct;
- the parties' ages, the parties' roles within the University's program or activity, the parties' previous interactions with one another, and other factors about each party that may be relevant to evaluating the effects of the reported unwelcome conduct;
- the location of the conduct and the context in which the conduct occurred; and
- other discriminatory harassment in the University's program or activity.

The determination of whether conduct is unwelcome is made according to a subjective standard. In other words, the determination is made based on whether a complainant viewed the conduct as unwelcome. This subjective standard reflects understanding that a subordinate individual may submit to or participate in unwelcome conduct from an individual with greater power (e.g., an academic advisor, supervisor, or instructor) because the subordinate individual fears potential negative repercussions if they refuse, and not because they welcome the conduct. A complainant's acquiescence to the conduct, or failure to complain about the conduct, is not by itself determinative of whether the conduct was welcome.

Discriminatory harassment may include conduct that is verbal, nonverbal, graphic, and/or physical. It can include a pattern of behavior or an isolated severe incident. The following conduct, depending on the totality of the circumstances, may support a decision that a respondent engaged in discriminatory harassment:

- epithets, slurs, comments, or jokes that target an individual or group based on a protected characteristic;
- conduct that threatens, intimidates, belittles, demeans, or undermines an individual or group because of a protected characteristic;
- conduct that communicates that people with a certain protected characteristic do not belong in the community or in a particular professional or academic field; and/or
- conduct that applies stereotypes to an individual or group based on a protected characteristic.

In some circumstances, discriminatory harassment can occur when:

- unwelcome conduct is: 1) based on a protected characteristic; and 2) causes an intimidating, hostile, or offensive employment environment for individuals who are not directly targeted by the unwelcome conduct;
- unwelcome conduct is directed at multiple individuals and, in the aggregate, rises to the level of discriminatory harassment; and/or
- unwelcome conduct is based on more than one protected characteristic.

## **Protected Characteristics**

For purposes of this policy, protected characteristics are: race, color, creed, religion, national origin, age, marital status, familial status, disability, public assistance status, membership or activity in a local commission created for the purpose of dealing with discrimination, and veteran status.

Discrimination based on gender, gender identity, gender expression, sex, sexual orientation, and pregnancy and related conditions is addressed in the Administrative Policy: *Sexual Assault, Sexual Harassment, and Other Forms of Sex-Based Discrimination*. However, reports of sex-based conduct can be considered under this Administrative Policy on *Discrimination*, and gender, gender identity, gender expression, sex, sexual orientation, and pregnancy and related conditions are considered protected characteristics under this Administrative Policy on *Discrimination*, when: 1) the alleged sex-based conduct would not constitute sex discrimination even if substantiated; and 2) the alleged sex-based conduct may, when considered in conjunction with allegations of conduct based on other protected characteristics, constitute prohibited conduct under the Administrative Policy: *Discrimination*.

Discrimination based on national origin includes discrimination based on English proficiency.

Discrimination based on national origin also includes discrimination based on actual or perceived shared ancestry or ethnic characteristics.

Discrimination based on familial status includes discrimination based on parental status.

## **Retaliation**

Retaliation means taking an adverse action against an individual: 1) for the purpose of interfering with any right or privilege secured by this policy; 2) for refusing to participate in any manner in an informal response or grievance process relating to a report of prohibited conduct (except this provision does not apply to the University's requirement that individuals participate as witnesses in response processes when required to do so); or 3) because of the individual's good faith participation in:

- reporting information or making a complaint about conduct that may reasonably constitute prohibited conduct;
- expressing opposition to conduct that may reasonably constitute prohibited conduct;
- testifying, assisting, or participating in an informal response or grievance process relating to a prohibited conduct report; or
- accessing the Office for Conflict Resolution (OCR) to resolve a conflict related to conduct that may reasonably constitute prohibited conduct.

Adverse actions are actions that might deter a reasonable person from exercising a right under this policy or participating in the reporting, adjudication, or resolution of prohibited conduct matters as set forth in the bullets above.

Examples of adverse action include, but are not limited to:

- impeding the individual's academic advancement;
- departing from any customary academic or employment practice regarding the individual;
- firing, refusing to hire, or refusing to promote the individual;
- transferring or assigning the individual to a lesser position in terms of wages, hours, job classification, job security, or employment or academic status;
- providing unfounded negative job references or otherwise interfering with a job search;
- actions that significantly disrupt the individual's ability to participate in University programs or activities; and
- threatening, intimidating, coercing, or discriminating against an individual.

Good faith participation means: 1) reporting or expressing opposition to conduct that may reasonably constitute prohibited conduct based on a reasonable belief that the conduct occurred or 2) honestly participating in a prohibited conduct response process or accessing conflict resolution services.

For more information on retaliation, see FAQ: *Retaliation in Discrimination Cases*.

## **OTHER DEFINITIONS**

### **Advisor**

An individual who is permitted to accompany a complainant or respondent to meetings in an informal response or grievance process. An advisor can be any individual of the party's choice, including an attorney. However, an advisor cannot be a fact witness or an individual whose participation as an advisor could create a conflict of interest. Under this policy, a party must submit an executed *Roles and Responsibilities of Advisors and Support Persons* form to the campus Equal Opportunity office before their advisor will be recognized as an advisor for purposes of this policy. Please see Appendix: *Roles and Responsibilities of Advisors and Support Persons*.

### **Appellate Officer**

Appellate Officers are identified in Appendix: *University Authorities and Appellate Officers*.

### **Campus Equal Opportunity Office**



Campus Equal Opportunity office staff members and others designated to respond to reports of prohibited conduct. Designees may include external investigators.

### **Complainant**

An individual is a “complainant” when the University learns that the individual may have been subjected to conduct that could constitute prohibited conduct.

### **Grievance Process Manager**

The University employee who coordinates the post-investigation appeal process.

### **Party**

A party is a complainant or respondent.

### **Relevant**

Relevant means related to the allegations of prohibited conduct. Questions are relevant when they seek evidence that may aid in showing whether the reported prohibited conduct occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the reported prohibited conduct occurred.

### **Respondent**

A respondent is a person who is alleged to have engaged in prohibited conduct.

### **Supervisors**

Supervisors include all individuals who have been assigned direct reports, including direct reports who are employees, student employees, volunteers, or temp/casual employees.

### **University Authority**

University Authorities are identified in Appendix: *University Authorities and Appellate Officers*.

### **University Employees**

University employees include the following individuals:

- individuals defined as employees by Board of Regents Policy: *Employee Group Definitions*, including:
  - faculty,
  - academic professionals,
  - academic administrators,
  - professionals in training (including postdoctoral associates),
  - civil service staff,
  - union-represented staff,

- graduate assistants, and
- student employees
- fellows;
- temporary employees; and
- third parties serving in instructional roles at the University.

### **University Member**

University members include:

- University students, whether enrolled full time or part time, in for-credit or non-credit courses;
- University employees as defined in this policy; and
- other individuals who are participating or attempting to participate in a University program or activity, including any person authorized by the University to provide an aid, benefit, or service under the University’s program or activity (“third parties”).

### **University Program or Activity**

University programs and activities include all operations of the University. This includes, for example, University employment, academics, and facilities.

### **University Property**

University property includes any building or property that is owned or controlled by the University.

## **RESPONSIBILITIES**

### **Appellate Officer**

Decides appeals as set forth in this policy.

### **Campus Equal Opportunity Offices**

Receive and respond to reports of prohibited conduct through an informal response or grievance process.

### **Counseling Services Offices**

Provide counseling services and referrals.

### **Equal Opportunity & Title IX**

Responds to concerns of prohibited conduct through informal response and grievance processes. Oversees the University’s compliance with federal and state laws prohibiting discrimination.

**Health Care Services**

Provide health care, counseling, and referrals.

**Human Resources and Supervisors**

Report possible prohibited conduct to the campus Equal Opportunity office. Assist in responding to alleged prohibited conduct committed by employees.

**Public Safety / Police Departments**

Investigate reports for possible criminal prosecution. Refer complainants to appropriate campus resources for personal support and investigation. Provide for campus safety and security. Provide timely warnings as appropriate.

**Student Conduct Offices**

Respond to and resolve reports of prohibited conduct involving student respondents consistent with this policy and the *Student Conduct Code*.

**University Authority**

Decides upon and implements responsive action.

**RELATED INFORMATION**

- Board of Regents Policy: *Student Conduct Code*
- Board of Regents Policy: *Code of Conduct*
- Board of Regents Policy: *Diversity, Equity, Inclusion, and Equal Opportunity*
- Board of Regents Policy: *Employee Group Definitions*
- Previous policy version and associated documents for prohibited conduct reported to have occurred prior to August 1, 2024

**HISTORY**

Amended August 2024 – This revised policy and its associated procedures apply to all reports of prohibited conduct, except that definitions from the policies in place at the time the reported prohibited conduct occurred will be used to make the decision on responsibility.

# **Administrative Procedure: *Response Procedures in Cases Involving Discrimination***

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## **I. APPLICATION**

This procedure applies to the following types of prohibited conduct:

1. ***Differential treatment discrimination*** - This includes: 1) actions taken because of a protected characteristic that adversely affect a term or condition of an individual's participation in a University program or activity; or 2) denials of reasonable accommodations that are required to accommodate an individual's disability or religious beliefs or practices.
2. ***Discriminatory harassment*** - This includes harassment based on one or more protected characteristics.
3. ***Retaliation*** - This includes retaliation related to differential treatment discrimination and discriminatory harassment.

This procedure does not apply to sex discrimination, which is addressed in the Administrative Policy: *Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*. However, reports of sex-based conduct can be considered under this procedure when: 1) the allegations would not constitute sex discrimination even if substantiated; and 2) the allegations may, when considered in conjunction with allegations of conduct based on other protected characteristics, constitute prohibited conduct under the Administrative Policy: *Discrimination*.

## **II. REQUIRED REPORTING**

In order to foster an environment free of prohibited conduct, all University members are encouraged to take reasonable prudent actions to prevent, stop, and report all acts of prohibited conduct. In addition, supervisors and human resources representatives have the following reporting and other obligations related to conduct that reasonably may constitute prohibited conduct.

### **A. REPORTING REQUIREMENTS**

Supervisors and human resources representatives, with the exception of confidential employees, must promptly contact the campus Equal Opportunity office when, in the course of performing their respective supervisory or human resources employment duties, they learn about conduct

that reasonably may constitute prohibited conduct directed at students, employees, or third parties that may have:

- occurred on University property;
- occurred during a University program or activity; or
- been committed by a current University member at the time they were a University member.

***Exception for confidential employees.*** The following three categories of University supervisors and human resources representatives are deemed “confidential employees” who are exempt from the requirement to report conduct that reasonably may constitute prohibited conduct.

1. An employee whose communications are privileged or confidential under federal or state law. The employee’s confidential status is only with respect to communications received while the employee is functioning within the scope of their duties to which the privilege or confidentiality applies. These employees include, for example, licensed medical and mental health professionals (including therapists and psychotherapists), attorneys, ordained clergy, and individuals acting in a professional capacity for which confidentiality is mandated by law.
2. An employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about prohibited conduct. The employee’s confidential status is only with respect to information received while conducting the study.
3. An employee whom the University has designated as confidential for the purpose of providing services to persons related to prohibited conduct, when that employee receives information about prohibited conduct in connection with providing those services. These employees include, but are not limited to:
  - employees whom the campus Equal Opportunity office has exempted from required reporting while they are providing specified discrimination prevention services to individuals;
  - employees of the Student Conflict Resolution Center, Office for Conflict Resolution, and other University ombuds offices when they are providing conflict resolution or ombuds services; and
  - advisors as defined under this policy, when they learn about prohibited conduct: 1) that is directly related to the case in which they are serving as an advisor; 2) from the party for whom they are serving as an advisor; and 3) in the course of their advising.

## **B. INFORMATION THAT MUST BE REPORTED**

University supervisors and human resources representatives who learn about conduct that reasonably may constitute prohibited conduct are not required to solicit additional information about the prohibited conduct or the individuals involved. However, to the extent known to them, supervisors and human resources representatives who learn of such conduct must report the following information:

- the names of the complainant(s), respondent(s), and possible witnesses;
- the date, time, and location of the conduct; and
- other relevant details about the conduct.

## **C. ADDITIONAL OBLIGATIONS**

In addition to their reporting responsibilities described above, supervisors and human resources representatives who learn about conduct that reasonably may constitute prohibited conduct must take prompt and effective responsive action. In some cases, this obligation will be satisfied by reporting to the campus Equal Opportunity office. In other cases, it will be appropriate for supervisors and human resources representatives to take additional responsive action in coordination and consultation with the campus Equal Opportunity office. The particular responsive actions that a supervisor or human resources representative should take will depend on the circumstances and may include:

- providing supportive measures to a complainant or respondent;
- making non-retaliatory employment changes that remove any continued impact on a complainant;
- conducting preliminary inquiries to determine whether others have experienced possible prohibited conduct by a particular respondent;
- discussing the prohibited conduct concerns with the respondent and setting expectations for future conduct;
- providing coaching and training on acceptable workplace conduct;
- communicating with the University's Sponsored Project Administration about prohibited conduct and related administrative action that may need to be reported to a grant-funding agency under the agency's rules; and
- monitoring to prevent the occurrence of future prohibited conduct.

In all cases, supervisors and human resources representatives must consult with the campus Equal Opportunity office, document the responsive actions taken, and provide this information to the campus Equal Opportunity office.

For additional information about supervisors' and human resources' representatives obligation to report prohibited conduct, please see FAQ: *Reporting*.

### **III. RESOURCES AND RIGHTS FOR COMPLAINANTS AND RESPONDENTS IN UNIVERSITY RESPONSE PROCESSES**

#### **A. OPTIONS FOR COMPLAINANTS**

There are a number of University resources and processes that may be available to complainants. Complainants can contact the campus Equal Opportunity office to learn more about:

- confidential personal support;
- supportive measures;
- the grievance process;
- the informal response process; and
- consultations with the campus Equal Opportunity office.

In addition, complainants can report anonymously through the University's UReport reporting system. Anonymous reports, however, may limit the University's ability to gather information and effectively respond to the report.

#### **B. SUPPORTIVE MEASURES**

Supportive measures are individualized measures that may be requested by a complainant or respondent. Supportive measures are designed to restore or preserve equal access to University programs and activities, protect the safety of all parties or the University's programs or activities, and/or provide support during the informal response or grievance process.

Parties who need supportive measures should request them directly from the departments or individuals with the ability to provide them, such as the appropriate instructor, supervisor, or human resources representative. The departments or individuals with the ability to provide the requested supportive measures will determine whether supportive measures are reasonably available and appropriate depending on the circumstances of each case. In making this determination, the department or individual may consult with the campus Equal Opportunity office. The campus Equal Opportunity office is also available to meet with University members to address questions or concerns about the provision of supportive measures.

The University will maintain the confidentiality of any supportive measures to the extent possible. In particular, the University will not disclose information about a supportive measure to individuals other than the individual to whom they apply, unless the disclosure is necessary to

provide the supportive measure or restore or preserve a party's access to the University's programs or activities.

## **C. PRIVACY AND CONFIDENTIALITY**

As described below, the University takes reasonable steps to protect the privacy of parties and witnesses involved in its informal response and grievance processes. These steps also help to protect the integrity of the University's response processes and prevent harassment, intimidation, or retaliation against parties and witnesses related to a response process.

### **1. Restrictions on disclosures by the University**

The University does not disclose the personally identifiable information of complainants, respondents, witnesses, and others that is obtained through its response processes under this policy, except when:

- a person with the legal right to consent to the disclosure of the personally identifiable information has provided prior written consent to the disclosure;
- the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- disclosure of the information is required to carry out requirements under this policy;
- disclosure of the information is required by federal law, federal regulations, or the terms and conditions of a federal award; or
- the disclosure is required by state or local law or permitted under the Family Educational Rights and Privacy Act (FERPA).

In carrying out this policy, it may be necessary for the campus Equal Opportunity office to share the identities of parties and witnesses, and information provided by parties and witnesses, with the participants in a response process. This information may also be included in an investigation report or other document relating to the case, which may be provided to the parties, University Authority, Appellate Officer, human resources representatives, and others as appropriate.

### **2. Restrictions on disclosures by parties, witnesses and advisors**

Parties, witnesses, and advisors are encouraged not to share information learned through their participation in a response process (including the allegations, the identities of the parties and witnesses, and the questions asked in interviews). Parties, witnesses, and advisors are cautioned not to discuss information learned through their participation in a response process in a manner that constitutes retaliation or unlawful conduct.



Parties and advisors must abide by the following restrictions related to the summary of the relevant evidence, investigation report, or other documents that they receive as part of a grievance process. Specifically, parties and their advisors are not permitted to:

- photograph or download these materials;
- provide other individuals with access to these materials, except as provided below; or
- share with other individuals information provided in these materials that is not otherwise known to the party or advisor through other means.

Additionally, parties, witnesses, and advisors are not generally permitted to provide other individuals with access to email communications from the campus Title IX office.

However, parties may share information, email communications, and documents or other materials obtained through the grievance process, as needed to:

- obtain and present evidence, including by speaking to witnesses;
- consult with their family members, confidential resources, advisors as defined in this policy, or any individual who is advising them for purposes of the grievance process;
- otherwise prepare for, or participate in, the grievance process; or
- participate in an administrative proceeding or litigation related to the complaint or prohibited conduct.

This policy does not limit an individual's use or redisclosure of their own information of which they are the data subject.

## **D. ADVISOR PARTICIPATION**

### **1. Employee, student employee, or third party respondent cases**

In prohibited conduct cases involving an employee, student employee, or third party respondent, the parties may be accompanied to meetings in a grievance or informal response process by one advisor. The advisor may be an attorney, union representative, or other individual. To protect the integrity of these processes, individuals who are witnesses with information about facts material to the underlying case, or whose participation as advisors could create a conflict of interest, may not serve as advisors. Other individuals may be permitted to attend these meetings for good reason, such as to accommodate a disability, at the discretion of the University official conducting the meeting.

For more information about the responsibilities of advisors in cases with employee, student employee, or third party respondents, please see Appendix: *Roles and Responsibilities of Advisors*.

## **2. Student respondent cases**

In prohibited conduct cases involving student respondents (who are not alleged to have engaged in prohibited conduct in their University employment), the parties may be accompanied to meetings in a grievance or informal response process by advisors in accordance with the Board of Regents: *Student Conduct Code* and its associated procedures on each campus.

## **E. PARTY AND WITNESS PARTICIPATION**

### **1. Notification of participation opportunities**

Parties will be provided with written notice of the date, time, location, participants, and purpose of all meetings during an informal response or grievance process at which the party is expected or invited, with sufficient time for the party to prepare to participate.

### **1. Employee, student employee, or third party respondent cases**

Complainants are not required to participate in a grievance or informal response process. However, the University may be limited in its ability to respond to possible prohibited conduct without a complainant's participation.

When requested, respondents are required to meet with the campus Equal Opportunity office without undue delay to, at a minimum, hear the detailed allegations asserted against them. Respondents are not required to respond to these allegations, and the fact of their failure to provide any response will not be used to support a finding of responsibility. However, when a complainant or respondent declines to provide relevant information in a grievance process, the grievance process may proceed if there is sufficient information to do so. A decision on responsibility and disciplinary sanctions, if any, will be based on the information available.

All other University members are required to participate in grievance or informal response processes to ensure that the most complete information is available to the University. In certain circumstances, the campus Equal Opportunity office may decide that a University member is not required to participate, such as where a University member is unlikely to provide significant relevant information or where participation would result in an unreasonable burden for that University member.

## **2. Student Respondent Cases**

In prohibited conduct cases involving student respondents (who are not alleged to have engaged in prohibited conduct in their University employment), the parties must participate where required by the Board of Regents: *Student Conduct Code* and its associated procedures on each campus.

## **3. Duty to Participate in Good Faith**

All University members are expected to provide truthful information in any informal response or grievance process. Individuals who knowingly make false statements or submit false information during an informal response or grievance process may be subject to disciplinary action up to and including termination of employment or expulsion. The University will not discipline an individual for making false statements in an informal response or grievance process based solely on the University's determination of whether prohibited conduct occurred.

Disciplinary action is not warranted where an individual makes a prohibited conduct report or participates in an informal response or grievance process in good faith, even if the report or information provided is ultimately not substantiated. An individual provides information in good faith when that individual reasonably believes that the information they have provided is accurate.

Concerns that an individual has knowingly made false statement or knowingly provided false information will be addressed by the following offices:

- if the individual is a student, the campus student conduct office;
- if the individual is an employee, the employee's supervisor or human resources representative; and
- if the individual is a third party, the University official responsible for retaining or overseeing the third party.

## **F. ACCOMMODATIONS IN UNIVERSITY RESPONSE PROCESSES**

Any individual who needs reasonable accommodations for a disability to participate in any of the response processes set forth in this policy should request accommodations through the campus disability services office and follow the process established by that office. The individual should also notify the campus Equal Opportunity office, which can assist in referring the individual to the campus disability services office. Any participant who needs reasonable accommodations for religion or for reasons related to pregnancy, childbirth, lactation, and related medical conditions should notify the campus Equal Opportunity office and, in student respondent cases,

the participant can also notify the campus student conduct office, about the need for accommodations. In addition, any participant who may need a language interpreter should notify the campus Equal Opportunity office or, in student respondent cases, the campus student conduct office, as soon as possible.

#### **IV. UNIVERSITY RESPONSES TO POSSIBLE PROHIBITED CONDUCT IN CASES WITH STUDENT RESPONDENTS**

University responses to possible prohibited conduct in cases with student respondents will be conducted in accordance with Board of Regents: *Student Conduct Code* by the campus student conduct office (or its designee).

#### **V. UNIVERSITY RESPONSES TO POSSIBLE PROHIBITED CONDUCT IN CASES WHERE A RESPONDENT IS A STUDENT AND AN EMPLOYEE**

In cases with a student employee respondent who is alleged to have engaged in prohibited conduct in an employment capacity, the campus Equal Opportunity office that responds to alleged prohibited conduct by employees will use an informal response or grievance process as appropriate. If there is an investigation by the campus Equal Opportunity office, the University will apply the post-investigatory process that applies to student respondents under the Board of Regents: *Student Conduct Code* and its related procedures. In cases where the student employee is found to have violated the *Discrimination* policy, the student employee may be subject to responsive action as a student under the *Student Conduct Code* process and as a student employee by their University employer.

In cases involving a student employee respondent who is alleged to have engaged in prohibited conduct in a non-employment capacity, the response process will be conducted in accordance with Board of Regents: *Student Conduct Code* by the campus student conduct office (or its designee). In cases where the student employee is found to have violated the *Discrimination* policy, the student employee may be subject to responsive action as a student under the *Student Conduct Code* and as a student employee by their employer.

In cases involving a respondent who is an employee and a student, where the respondent's employment is not contingent on their studentship, the campus Equal Opportunity office will make a fact-specific determination about whether to apply the University response process applicable to student, employee, or student employee respondents.

#### **VI. UNIVERSITY RESPONSES TO POSSIBLE PROHIBITED CONDUCT IN CASES WITH EMPLOYEE OR THIRD PARTY RESPONDENTS**

## **A. OVERVIEW OF UNIVERSITY PROCESSES**

The campus Equal Opportunity office will respond to reports of prohibited conduct through an informal response process, a grievance process, or by informing a party about the opportunity to request supportive measures.

When the campus Equal Opportunity office becomes aware of conduct that may constitute prohibited conduct, it will promptly contact a complainant where appropriate to provide information about available confidential personal support resources, the opportunity to request supportive measures, and the applicable response processes offered by the University. When a complainant does not respond to this communication from the campus Equal Opportunity office, the campus Equal Opportunity office will generally presume that the complainant does not want to initiate an informal response or grievance process.

When a complainant does not respond or does not request an informal response or grievance process, or when the campus Equal Opportunity office does not have sufficient information to effectively initiate an informal response or grievance process, the campus Equal Opportunity office will provide information about the opportunity to request reasonably available supportive measures and take other appropriate prompt and effective steps to ensure that prohibited conduct does not occur in the University's programs or activities.

In some cases, the campus Equal Opportunity office will initiate an informal response process to conduct an initial inquiry to determine whether reported conduct constitutes prohibited conduct in a University program or activity and whether an informal response or grievance process will most effectively address the alleged prohibited conduct.

In all cases, the campus Equal Opportunity office will assess whether the reported conduct has created a hostile environment within a University program or activity, and if so, what steps will be taken to end the hostile environment, remedy its effects, and prevent its recurrence.

## **B. INFORMAL RESPONSE PROCESS**

The campus Equal Opportunity office may initiate an informal response process to address reports and prevent prohibited conduct.

An informal response process may be used, for example, in cases: 1) with an anonymous complainant; 2) where the reported conduct does not rise to the level of prohibited conduct; 3) where the complainant does not want to initiate a grievance process and an informal response process may effectively deter future prohibited conduct; 4) where the reported conduct is likely

covered by academic freedom or free speech protections; or 5) where an informal response process is otherwise deemed to be the most appropriate and effective response.

In an informal response process, the campus Equal Opportunity office may provide resources to help address the concerns raised, make recommendations for non-disciplinary responsive action, and take appropriate prompt and effective steps designed to ensure that prohibited conduct does not occur within the University's programs or activities. For example, an informal response processes may include:

- gathering additional information about the reported prohibited conduct to determine how to most effectively respond to the alleged prohibited conduct or to provide pertinent information to the individuals involved;
- notifying a respondent about the concerns raised and about any reported impact on a complainant or community;
- providing education or coaching to a respondent or complainant;
- providing tailored training or education to impacted areas of the University;
- conducting a formal or informal climate survey of impacted areas of the University;
- providing recommendations that are aimed at preventing further concerns from arising to an appropriate individual who oversees a respondent or complainant; and/or
- establishing a plan to monitor for future prohibited conduct.

The informal response process is used to respond to reports of prohibited conduct through informal and non-disciplinary strategies, and does not result in a determination of whether a respondent has violated University policy.

Based on information gathered in an informal response process, the campus Equal Opportunity office may decide that it is appropriate to initiate a grievance process.

### **C. GRIEVANCE PROCESS**

The campus Equal Opportunity office may initiate a grievance process when the alleged conduct, if substantiated, would constitute prohibited conduct. In particular, the campus Equal Opportunity office will initiate a grievance process where it is necessary to comply with legal anti-discrimination requirements, or where a grievance process is otherwise deemed to be the most appropriate and effective response.

The University's procedures for investigating reported prohibited conduct are based upon principles of fairness and respect for complainants and respondents. To promote fairness in the grievance process, the University requires that its decisionmakers, including investigators and

others who implement this policy, do not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

When a complainant requests that their identity be kept private or that the University refrain from conducting a grievance process, the campus Equal Opportunity office will make an individualized determination of whether it is appropriate to maintain the privacy of an individual's identity or to instead conduct a grievance process in which an individual's identity will be disclosed. The campus Equal Opportunity office will consider the complainant's request as well as the University's ability to ensure that prohibited conduct does not occur in the University's programs or activities if it were to comply with the complainant's request.

### **1. Reports involving institutional actions**

In some cases, a complainant might not report that a specific University member engaged in prohibited conduct. For example:

- Discriminatory harassment cases in which the complainant reports that cumulative conduct by multiple individuals constitutes prohibited conduct, but does not report conduct by any one individual that would constitute prohibited conduct.
- Complaints alleging that a University policy or practice violates this policy.
- Differential treatment discrimination cases where an individual respondent is not identified – such as when a group of individuals, or unknown individuals, appear to have made the decision at issue.
- Differential treatment discrimination cases in which the respondent is no longer a University member, but the campus Equal Opportunity office has determined that a grievance process should proceed.

In these cases, an individual respondent may not be named. In these cases, where appropriate, the campus Equal Opportunity office may ask a unit head or other designee to receive and respond to grievance process-related communications and otherwise hold the process rights accorded to respondents in this policy. This individual is known as the “Designee for a Case without a Named Respondent.”

### **2. Reports without a participating complainant**

In some cases, the campus Equal Opportunity office may initiate a grievance process into a complaint when there is not a participating complainant. In these cases, an individual complainant may not be named. In these cases, where appropriate, the campus Equal Opportunity office may ask a unit head or other designee to receive and respond to grievance process-related communications and otherwise hold the process rights accorded to complainants

in this policy. This individual is known as the “Designee for a Case without a Named Complainant.”

### **3. Investigations**

#### **a. Who Can Conduct Prohibited Conduct Investigations**

The campus Equal Opportunity office will conduct investigations into reports of prohibited conduct by employees, by student employees who are alleged to have engaged in prohibited conduct in an employment capacity, or by third parties

In some circumstances, conduct that may constitute prohibited conduct in violation of the *Discrimination* policy may also be conduct that could violate other University policies or rules. In these situations, supervisors, human resources representatives, or other University offices may investigate the alleged conduct to determine whether it violated University policies and rules other than the *Discrimination* policy.

#### **b. Scope and Elements of an Investigation**

The nature and scope of an investigation will be determined based on the alleged prohibited conduct and any additional information gathered during the investigation, and will typically include the following elements:

- one or more interviews of a complainant, where a complainant will have the opportunity to describe the allegations giving rise to the prohibited conduct report, provide evidence, and identify witnesses;
- written notice to the parties of the alleged prohibited conduct investigation;
- one or more interviews of a respondent, where a respondent will have the opportunity to respond to the allegations, provide evidence, and identify witnesses;
- one or more interviews of witnesses, as appropriate;
- gathering and review of documents, photographs, communications between the parties, and other electronic records as appropriate;
- gathering and review of other evidence identified by the parties or investigator, if other evidence exists;
- an opportunity for the parties to review and respond to a written summary of the relevant evidence; and
- an investigation report that contains a decision on responsibility.



The campus Equal Opportunity office will interview a witness or witnesses identified by a party if the information the party has shared about the witness or witnesses suggests that they possess relevant information.

The University applies the preponderance of the evidence standard when determining whether this policy has been violated. “Preponderance of the evidence” means that it is more likely than not that a policy violation has occurred.

#### **4. Written Determination**

The campus Equal Opportunity office will provide the parties with an investigation report that contains a decision on responsibility (Written Determination).

In cases involving student employees, the campus Equal Opportunity office will send an investigation report (and not a Written Determination) that contains a recommended decision on responsibility to the campus student conduct office. The post-investigatory processes set forth under the *Student Conduct Code* and its associated procedures will then apply. At the conclusion of these post-investigatory processes, the student employee’s employer may take employment-based disciplinary action and/or other responsive action, as appropriate.

#### **5. Appeal**

##### **a. Appeal process for non-student employee respondents**

Any party may appeal the Written Determination. Appeals must be submitted to the Grievance Process Manager in writing within 7 calendar days of receipt of the Written Determination. Absent good cause, appeals received after 7 calendar days will be denied.

Submitted appeals must contain the ground(s) for the appeal, from the list below, and any information in support of the appeal. The Grievance Process Manager will forward the appeal to any other party and the campus Equal Opportunity office, which then have 7 calendar days to submit a written response to the appeal. The Grievance Process Manager will forward the written responses to the appeal, if any, to the appellant. The appellant may not submit additional information in response to the written responses.

The Grievance Process Manager will forward the appeal and the written responses to the appeal, if any, to the Appellate Officer. The Appellate Officer has discretion to ask for additional information from a party or to request information from the campus Equal Opportunity office.

1. ***Grounds for appeal.*** Appeals are not intended to allow for a new review of the same information provided during the investigation, and the Appellate Officer will not

substitute their judgment for that of the campus Equal Opportunity office. Appeals are limited to the grounds set forth below.

- Procedural irregularity that would change the outcome.
- New evidence that was not reasonably available when the decision on responsibility was made and that would change the outcome.
- A decision on responsibility that is not based on substantial information. Substantial information means relevant information that a reasonable person might accept as adequate to support a conclusion by the preponderance of the evidence. The Appellate Officer must respect the credibility determinations of the campus Equal Opportunity office. In making this determination, the Appellate Officer may not re-weigh the evidence and must not substitute the Appellate Officer's judgment for that of the campus Equal Opportunity office.
- The campus Equal Opportunity office had a conflict of interest or a bias against a complainant or respondent that affected the decision on responsibility.

2. ***Appellate Officer decision-making.*** The Appellate Officer will review the written submissions and the Written Determination and, as necessary, the entire record of the grievance process. The Appellate Officer will issue a written decision that (1) affirms, in whole or in part, the decision on responsibility, (2) overturns, in whole or in part, the decision on responsibility, or (3) remands the matter to remedy procedural errors or consider new evidence. The decision of the Appellate Officer is the final University decision on responsibility.

#### **b. Appeal process for student employee respondents**

In cases involving student employee respondents (where there is no Written Determination), the Board of Regents: *Student Conduct Code* and its related post-investigation procedures will apply.

### **6. Decisions on Disciplinary Sanctions and Other Responsive Actions**

#### ***Cases involving employee and third party respondents***

After an appellate decision (that does not remand the matter) has been issued, or after the time for appeal has run with no party providing timely appeal, the campus Equal Opportunity office will send the Written Determination, the appellate decision, if any, and the campus Equal Opportunity office's recommendations for disciplinary sanctions and responsive action, if any, to the University Authority and an appropriate Human Resources representative.

#### ***Cases involving student employee respondents***

After the Board of Regents: *Student Conduct Code* and its related post-investigation procedures have resulted in a finding of responsibility, the campus Equal Opportunity office will send the campus Equal Opportunity office's investigation report, the appellate decision, if any, and the campus Equal Opportunity office's recommendations for disciplinary sanctions and responsive action, if any, to the University Authority and an appropriate Human Resources representative.

### ***Cases involving employee, student employee, and third party respondents***

The University Authority will decide whether responsive actions will be implemented, including whether disciplinary sanctions will be implemented in cases where a decision of responsibility has been made.

In cases where the University Authority makes a decision on disciplinary sanctions that differs meaningfully from the discipline recommended by the campus Equal Opportunity office, the Provost or respective Chancellor (in cases with faculty respondents) or the Vice President for Human Resources or respective Chancellor (in cases with staff and third party respondents), or their designee, must approve the decision on disciplinary sanctions before it is implemented.

The University Authority will provide a respondent with a written description of the disciplinary sanctions and other responsive actions, if any, that the University Authority has decided to implement that directly impact the respondent. Similarly, the University Authority will notify a complainant of any responsive actions that directly impact the complainant. The University Authority will provide the campus Equal Opportunity office with a written description of all of the disciplinary sanctions and other responsive actions, if any, that the University Authority has decided to implement. The University Authority will monitor compliance with any disciplinary sanctions and responsive actions and address any compliance failures, while following applicable state and federal privacy laws.

In cases where the respondent is a labor-represented employee, the University Authority will additionally follow any requirements set forth in the collective bargaining agreement before imposing disciplinary sanctions.

## **7. Review of Discipline**

A respondent may seek review of any disciplinary sanctions imposed as a result of a decision of responsibility under this policy based on their specific job classification. To learn more about the available mechanisms for seeking review of disciplinary sanctions, consult the following:

- Labor-represented employees should contact their union representative and/or refer to the [applicable collective bargaining agreement](#).
- Faculty members should refer to Chapter 14 of Board of Regents Policy: [Faculty Tenure](#).
- Faculty members who are not represented by a union may also refer to the University's [conflict resolution process for employees](#).
- All other employees, including Civil Service and Professional and Administrative employees, should refer to the University's [conflict resolution process for employees](#).

## **VII. RESPONSIVE ACTION**

Responsive action is intended to eliminate prohibited conduct, prevent its recurrence, and promote accountability while supporting the University's educational mission and legal obligations. Responsive action may include disciplinary, rehabilitative (including educational), restorative, and monitoring components.

The University will not impose disciplinary sanctions on a respondent for prohibited conduct unless and until there is a determination at the conclusion of the grievance process that the respondent engaged in prohibited conduct.

### **A. FOR STUDENT RESPONDENTS**

Possible disciplinary sanctions in cases with student respondents are identified as "Outcomes" in Section VI of the Board of Regents Policy: *Student Conduct Code*.

### **B. FOR EMPLOYEE RESPONDENTS**

Possible disciplinary sanctions and other responsive actions in cases with employee respondents (including student employees) may include one or a combination of the following:

- coaching or education;
- mentoring;
- changes to work duties or locations;
- monitoring to ensure that prohibited conduct is not occurring;
- probation;
- transfer of position;
- removal of administrative appointment;
- salary reduction;
- demotion;
- oral or written reprimand;
- suspension; and

- termination of employment.

For labor-represented employees, the disciplinary sanctions that may be imposed are those set forth in their union contract.

### **C. FOR THIRD PARTY RESPONDENTS**

Possible disciplinary sanctions or other responsive actions in cases with third party respondents may include restrictions on a third party respondent's participation in University programs or activities, including their ability to enter University property, among other things.

### **D. CONSIDERATIONS IN DETERMINING DISCIPLINARY SANCTIONS OR OTHER RESPONSIVE ACTION**

The following factors, among others, may be considered in deciding the appropriate disciplinary sanctions or other responsive actions to address a decision of responsibility for prohibited conduct:

- the severity, persistence, or pervasiveness of the prohibited conduct;
- the nature of the prohibited conduct;
- whether the prohibited conduct threatened physical safety;
- any incidents of prior misconduct by a respondent, including the respondent's disciplinary history, at the University or elsewhere;
- the impact of the prohibited conduct on the complainant and other members of the University community;
- an assessment of a respondent's potential for development, including whether the respondent has accepted responsibility for the prohibited conduct;
- the maintenance of a safe, nondiscriminatory, and respectful work and learning environment; and
- any other mitigating, aggravating, or compelling factors.

## Appendix: *University Authorities and Appellate Officers*

This appendix applies to the Administrative Policy: *Discrimination* and Administrative Policy: *Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*.

<b>Respondent</b>	<b>University Authority</b>	<b>Appellate Officer</b>
<b>Student</b>	The campus student conduct office	For students on the Twin Cities campus: Vice President for Student Affairs or designee  For students on the Morris, Rochester, Duluth and Crookston campuses: Chancellor or designee
<b>Faculty or staff member</b>	Dean, Vice President, Vice Chancellor or equivalent senior administrator that oversees the respondent or the respondent's department or unit	For faculty on the Twin Cities campus: Executive Vice President and Provost or designee  For staff on the Twin Cities campus: Vice President for Human Resources or designee  For staff and faculty on the Morris, Rochester, Duluth and Crookston campuses: Chancellor or designee
<b>Third Party</b>	University official who retains or oversees the third party, as designated by the responsible Vice President, Vice Chancellor or equivalent senior administrator	Twin Cities campus: Vice President for Human Resources or designee  Morris, Rochester, Duluth and Crookston campuses: Chancellor or designee

<b>Twin Cities Deans</b>	Executive Vice President and Provost	President or designee
<b>Vice Chancellors and Deans on the Crookston, Duluth, Morris and Rochester campuses</b>	Chancellor	President or designee
<b>Executive Vice President, Senior Vice President, Vice President or Chancellor</b>	President	Board of Regents Chair or designee
<b>General Counsel</b>	President, with approval of the Board of Regents	Board of Regents Chair or designee
<b>President and other employees who report to the Board of Regents</b>	Board of Regents	Board of Regents Chair or designee

The University Authority: 1) offers post-investigation resolution proposals; and 2) decides upon and implements responsive action, including disciplinary sanctions. If an individual identified herein as the University Authority has a conflict of interest that prevents them from serving in the University Authority role in a particular matter, the Appellate Officer will appoint a different individual to serve as University Authority in that matter.

The Appellate Officer decides appeals as set forth in the policy. If the identified Appellate Officer also served as the University Authority in the case, or has another conflict of interest that prevents them from serving as Appellate Officer, the Appellate Officer will be the President or President’s designee.

**Policy Documents:**  
***Sexual Harassment, Sexual Assault,  
and Other Forms of Sex Discrimination***

Policy Document	Page
Administrative Policy: <i>Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination</i>	3
Administrative Procedure: <i>Response Procedures in Cases Involving Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination</i>	23
Administrative Procedure: <i>Post-Investigation Procedures in Cases Involving Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination</i>	45
Administrative Procedure: <i>Reasonable Accommodations for Pregnancy and Related Conditions</i>	63
Administrative Procedure: <i>Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence Reported to Have Occurred Between August 15, 2020 and July 31, 2024</i>	75
Appendix: <i>University Authorities and Appellate Officers</i>	89
Appendix: <i>Order of Hearing Proceedings</i>	91

These revised policy documents include reorganized content that does not lend well to a tracked-changes document. In short, substantive changes to these policy documents are required by new Title IX regulations that take effect on August 1, 2024. The key proposed changes are:

- Expanding the scope of the Administrative Policy on *Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence* to include all forms of sex discrimination. Renaming



the policy as *Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*.

- Expanding the current requirement that employees report concerns of sexual misconduct to require employees to report of all forms of sex discrimination.
- Newly requiring employees who are informed of a student's pregnancy or related condition by the student to promptly provide the student with certain information about available resources.
- Changing the sex discrimination definitions and grounds for appeal of decisions made in a Title IX grievance process as is required by the new regulations.

# ***Administrative Policy: Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination***

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## **I. POLICY STATEMENT**

The University of Minnesota (the “University”) is committed to taking prompt and effective steps intended to stop sex discrimination, prevent its recurrence, and, as appropriate, remedy its effects. Sex discrimination includes sexual harassment, sexual assault, relationship violence, and stalking; differential treatment sex discrimination; sex-based harassment; and retaliation related to all forms of sex discrimination (collectively, “prohibited conduct”).

## **II. APPLICATION OF POLICY**

This policy applies to University members, who include:

- University students as defined in this policy;
- University employees as defined in this policy; and
- other individuals who are participating or attempting to participate in a University program or activity, including any person authorized by the University to provide an aid, benefit, or service under the University’s programs or activities (“third parties”).

This policy applies to acts of prohibited conduct committed by or against students, employees, or third parties when:

- the conduct occurs on University property;
- the conduct occurs in a building owned or controlled by a registered student group;
- the conduct occurs within the University’s programs or activities;
- the conduct occurs outside of the University’s programs or activities, but 1) has a continuing adverse effect on a University program or activity; or 2) creates a hostile environment for one or more University members in a University program or activity; or 3) indicates that the respondent may present a danger or threat to the health or safety of University members; or
- the conduct occurs in circumstances that are otherwise subject to the University’s disciplinary authority.

To the extent any provision of this policy conflicts with Board of Regents Policy: [Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination](#), the Board policy controls.

To the extent any provision of this policy conflicts with any other University policy, this policy

controls. Nothing in this policy should be interpreted to abridge academic freedom or principles of free speech.

### **III. PROHIBITION**

The University does not discriminate on the basis of sex in any education program or activity that it operates, as required by Title IX, Title VII, and other applicable laws, including in admissions and employment, and prohibits all University members from engaging in, or assisting or abetting another's engagement in, prohibited conduct.

### **IV. REPORTING REQUIREMENT**

All University employees who are not confidential employees must promptly report directly to the campus Title IX office when they learn about conduct that reasonably may constitute prohibited conduct in the course of performing their employment duties. This obligation to report is not satisfied by making an anonymous report or by submitting information through UReport.

### **V. NOTIFICATION REQUIREMENT RELATED TO STUDENT PREGNANCY OR RELATED CONDITIONS**

University employees who are informed of a student's pregnancy or related condition by the student (or by a person who has a legal right to act on behalf of the student) must promptly: 1) provide the person with the Title IX Coordinator's contact information; and 2) inform the person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination, including based on pregnancy or related medical conditions, and ensure the student's equal access to the University's programs and activities. Contact information for campus Title IX Coordinators can be found [here](#). Employees may send this email to the student (or person who has a legal right to act on behalf of the student) to meet this notification obligation.

### **VI. REQUIREMENT TO PROVIDE REASONABLE ACCOMMODATIONS FOR PREGNANCY AND RELATED CONDITIONS**

The University provides reasonable accommodations to an individual who requests accommodations relating pregnancy and related conditions. Information about the accommodations process is available in the Administrative Procedure: *Reasonable Accommodations for Pregnancy and Related Conditions*.

### **VII. RECORDKEEPING**

The campus Title IX office or its designee will maintain records related to reports received, and actions taken, under this policy for, at a minimum, the longer of seven years or the retention period required by Administrative Policy: [Managing University Records and Information](#). The University will compile and maintain publicly available records, including Clery Act reporting and disclosures, without the inclusion of personally identifying information about a complainant. The University will provide complainants and respondents with access to their records related to any prohibited conduct processes set forth in this policy in accordance with the law.

## **VI. REASON FOR POLICY**

This policy implements Board of Regents: [Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination](#). The University adopts this policy to enact its commitment to: 1) taking prompt and equitable action to eliminate, prevent, and address prohibited conduct and its effects; 2) fostering a trusting environment where prohibited conduct is not tolerated; 3) cultivating a climate where individuals are well-informed and supported with respect to reporting prohibited conduct; 4) providing fair and impartial complaint response processes that treat all participants with dignity; and 5) identifying the standards by which violations of this policy will be evaluated and disciplinary action imposed.

## **PROCEDURES**

- *Response Procedures in Cases Involving Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*
- *Post-Investigation Procedures in Cases Involving Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*
- *Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence Reported to Have Occurred Between August 15, 2020 and July 31, 2024*
- *Reasonable Accommodations for Pregnancy and Related Conditions*

## **FORMS/INSTRUCTIONS**

Online forms for reporting prohibited conduct:

- <https://eot.umn.edu/report-misconduct>
- <https://compliance.umn.edu/report>

## **APPENDICES**

- *Order of Hearing Proceedings*
- *Roles and Responsibilities of Advisors and Support Persons*
- *University Authorities and Appellate Officers*

## FREQUENTLY ASKED QUESTIONS

- *Supportive Measures*
- *Employees' Obligation to Report Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination to the Campus Title IX Office*
- *Retaliation in Cases Involving Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*
- *The Grievance Process*

## CONTACTS

### 1. Campus Title IX Offices

Reports of prohibited conduct should be made to the University's campus Title IX offices listed here.

#### Crookston Campus

Subject	Contact	Phone	Email
Title IX Coordinator and campus Title IX office	Jason Tangquist Registrar	218-281-8424	jtangqui@crk.umn.edu

#### Duluth Campus

Subject	Contact	Phone	Email
Title IX Coordinator and campus Title IX office	Corey Christensen Equal Opportunity & Title IX Associate, and Title IX Coordinator	218-726-8809	chri2595@d.umn.edu

#### Morris Campus

Subject	Contact	Phone	Email
Title IX Coordinator and campus Title IX office for students	Adrienne Conley Associate Director, Residential and Community Life	320-589-6738	amconley@morris.umn.edu
Title IX Coordinator and campus Title IX office	Sarah Mattson Director of Human Resources	320-589-6021	mattsosj@morris.umn.edu

## Rochester Campus

Subject	Contact	Phone	Email
Title IX Coordinator and campus Title IX office for students	Jenny Casper Interim Assistant Vice Chancellor for Student Success, Engagement, and Equity	507-258-8242	jjcasper@r.umn.edu
Title IX Coordinator and campus Title IX office for employees	Nicole Smith Director of Employee Engagement, Development, and Wellbeing	507-258-8010	ndsmith@r.umn.edu

## Twin Cities Campus

Subject	Contact	Phone	Email
Title IX Coordinator and campus Title IX office	Tina Marisam Director of the Equal Opportunity & Title IX Office	612-626-9357	marisam@umn.edu

## 2. UReport

Reports of prohibited conduct, including anonymous reports, may be submitted 24 hours a day through the University's UReport reporting system. Reports of prohibited conduct made through UReport will be forwarded to the campus Title IX office, which will address the concerns under this policy. The obligation of University employees to report conduct that reasonably may constitute prohibited conduct to the campus Title IX office is not satisfied by submitting information through UReport.

Subject	Contact	Phone
All Campuses	<u><a href="#">UReport</a></u>	1-866-294-8680

## 3. Law Enforcement

Employees, students, and third parties are encouraged to report crimes to the law enforcement agency for the jurisdiction in which the conduct at issue occurred. Complainants have the option to report a crime to the appropriate law enforcement agency, to decline to report to law

enforcement, to report prohibited conduct to the appropriate campus Title IX office, or to report to multiple investigative bodies simultaneously. Upon request, the University will assist a student, employee, or third party in contacting law enforcement.

The University’s grievance process and law enforcement investigations may be pursued simultaneously, but operate independently of one another. Even if a criminal investigation is ongoing, the University can conduct its own grievance process. However, at the request of law enforcement, the University may delay the fact-finding portion of a grievance process.

Victims of sexual assault, relationship violence, and stalking are granted specific rights under Minnesota law. When a crime is reported to law enforcement, a victim has the right to:

- request that their identity be kept private in reports available to the public;
- be notified of crime victim rights and information on the nearest crime victim assistance resource;
- apply for financial assistance for non-property losses related to a crime;
- participate in the prosecution of their case, including the right to be informed of a prosecutor’s decision to decline prosecution or dismiss their case;
- protection from harm and from employer retaliation for taking time off to attend protection or harassment restraining order proceedings;
- receive information about seeking a protective or harassment order at no cost; and
- receive assistance from the Crime Victims Reparations Board and the Commissioner of Public Safety.

Victims of sexual assault have the right to undergo a confidential sexual assault examination at no cost and make a confidential request for HIV testing of a convicted felon. Victims of sexual assault are not required to undergo a polygraph examination in order for an investigation or prosecution to proceed. Victims of domestic abuse also have the right to terminate a lease without penalty. In cases of domestic abuse and violent crime where an arrest has been made, victims also have the right to be provided with notice of the release of the offender, including information on the release conditions and supervising agency.

<b>Campus</b>	<b>Contact</b>	<b>Phone</b>	<b>Email</b>
<b>Crookston Campus</b>	The City of Crookston Police Department 321 West Robert Street Crookston, MN 56716	218-281-3111	
<b>Duluth Campus</b>	University of Minnesota-Duluth Police Department	218-726-7000	umdspd@d.umn.edu

	287 Darland Admin Bldg 1049 University Drive Duluth, MN 55812		
	Duluth Police Department 2030 North Arlington Avenue Duluth, MN 55811	218-730-5400	police@duluthmn.gov
<b>Morris Campus</b>	University of Minnesota Morris Public Safety Behmler Hall 6 600 East Fourth Street Morris, MN 56267	320-589-6000	ummpd@morris.umn.edu
	Morris Police Department 400 Colorado Avenue Morris, MN 56267	320-208-6500	mpd@co.stevens.mn.us
<b>Rochester Campus</b>	Rochester Law Enforcement Center 101 Fourth Street Southeast Rochester, MN 55902	507-328-6810	
<b>Twin Cities Campus</b>	University of Minnesota Police Department 511 Washington Ave. SE Minneapolis, MN 55455	612-624-2677	police@umn.edu
	St. Paul Police Department 367 Grove Street St. Paul, MN 55101	651-291-1111	policeinfo@ci.stpaul.mn.us
	Minneapolis Police Department 350 South 5th Street, Room 130 Minneapolis, MN 55415- 1389	612-673-2941 (Sex crimes unit)	police@minneapolismn.gov
	Ramsey County Sheriff's Department 425 Grove Street Saint Paul, MN 55101	651-767-0640	

#### 4. Confidential Resources



The following resources offer free and confidential services, including advocacy, counseling and personal support.

<b>Campus</b>	<b>Contact</b>	<b>Phone</b>	<b>Email</b>
<b>Crookston Campus</b>	Polk County Coordinated Victim Services (complainant resource)	218-281-1554 800-524-1993	maryann.delgado@co.polk.mn.us dana.johnson@co.polk.mn.us
	UMC Counseling Center	218-281-8571 218-281-8348	umccoun@crk.umn.edu
	Student Health	218-281-8512	umcnurse@crk.umn.edu
<b>Duluth Campus</b>	Women’s Resource and Action Center	218-726-6292	wrac@d.umn.edu
	Program for Aid to Victims of Sexual Assault (complainant resource)	218-726-1931	pavsa@pavsa.org
	Counseling: Health Services	218-726-7913	umdcounseling@d.umn.edu
<b>Morris Campus</b>	Someplace Safe (complainant resource)	800-974-3359	info@someplacesafe.info
	Student Counseling	320-589-6060	ummcounseling@morris.umn.edu
<b>Rochester Campus</b>	Crisis Hotline	507-269-4511	
	Student Counseling	507-258-8017	bmcelroy@r.umn.edu batem108@r.umn.edu
	Student Health Services	507-292-7250	
<b>Twin Cities Campus</b>	The Aurora Center (complainant resource)	24 Hour Helpline: 612-626-9111 Office Line:	aurora@umn.edu

		612-626-2929	
	Boynton Mental Health	Office line: 612-625-8400 24 hour Crisis Connection counselors: 612-301-4673	
	Student Counseling Services	612-624-3323	counseling@umn.edu

The University’s Employee Assistance Program (EAP) is available to benefits-eligible employees on all system campuses. EAP provides confidential, professional consultation and referral services to address any personal or work concern that may be affecting one’s well-being. EAP can be reached at 877-295-8939 or umn.lyrahealth.com.

### 5. State and Federal Agency Resources

Individuals with questions or concerns regarding the application of state and federal anti-discrimination laws may also contact the following federal and state agencies.

<b>Federal and state government contact</b>	<b>Address</b>	<b>Phone</b>	<b>Email/Reporting Portal</b>
U.S. Equal Employment Opportunity Commission (EEOC)	Minneapolis Area Office, Towle Building 330 South Second Avenue, Suite 720 Minneapolis, MN 55401-2224	612-552-7306	<a href="#">U.S. EEOC Public Portal</a>
Minnesota Department of Human Rights	Griggs Midway Building 540 Fairview Ave North, Suite 201 St. Paul, Minnesota 55104	651-539-1100 1-800-657-3704	info.mdhr@state.mn.us
U.S. Department of Education, Office for Civil Rights	Office for Civil Rights U.S. Department of Education John C. Kluczynski Federal Building 230 S. Dearborn Street, 37th Floor. Chicago, IL 60604	312-730-1560	OCR.Chicago@ed.gov

### 6. Responsible Individuals

<b>Responsible Officer</b>	<b>Policy Owner</b>	<b>Primary Contact</b>
Mercedes Ramírez Fernández, Vice President, Office for Equity and Diversity	Tina Marisam, Director and Title IX Coordinator, Equal Opportunity & Title IX	Tina Marisam, Director and Title Coordinator, Equal Opportunity & Title IX

## **DEFINITIONS OF FORMS OF SEX DISCRIMINATION**

### **Differential treatment sex discrimination**

Conduct that subjects an individual to differential treatment based on sex (including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, gender identity, and gender expression) and causes harm to the individual. Such harm must be genuine and objectively non-trivial as assessed from the perspective of a reasonable person in the individual’s position. For example, differential treatment based on sex may include:

- denying a promotion to an employee or paying them less based on their sexual orientation or gender identity;
- providing a student with an unfairly low grade or denying an academic opportunity because of the student’s sex; or
- denying reasonable accommodations for an individual’s pregnancy or related conditions.

### **Relationship violence**

Relationship violence is: 1) actual, attempted, or threatened violence by one individual against another individual with whom they are, or have been, in a social relationship of a romantic or intimate nature; or 2) conduct that would constitute a felony or misdemeanor crime of violence by an individual against: (i) a current or former spouse or intimate partner; (ii) an individual with whom they share a child; (iii) an individual similarly situated to a spouse under the Minnesota state domestic or family violence laws; or (iv) any adult or youth who is protected from the individual’s acts under the Minnesota state domestic or family violence laws. Relationship violence includes both domestic violence and dating violence as defined by the Title IX regulations.

Here, violence consists of (1) physical conduct that caused physical harm or bodily injury and (2) attempted or threatened physical conduct that would be reasonably likely to cause physical harm or bodily injury. As used in this policy, the term “violence” generally does not include conduct that is reasonably taken in defense of self or others to avoid imminent substantial physical harm or bodily injury to one’s self or others.

The existence of a social relationship of a romantic or intimate nature is determined based on a consideration of the following factors: 1) the length of the relationship; 2) the type of relationship; and 3) the frequency of interaction between the individuals involved in the relationship.

### **Retaliation**

Retaliation means taking an adverse action against an individual: 1) for the purpose of interfering with any right or privilege secured by this policy or Title IX; 2) for refusing to participate in any manner in an informal response, grievance, or alternative resolution process relating to a report of prohibited conduct (except this provision does not apply to the University's requirement that individuals participate as witnesses in response processes when required to do so); or 3) because of the individual's good faith participation in:

- reporting information or making a complaint about conduct that may reasonably constitute prohibited conduct;
- expressing opposition to conduct that may reasonably constitute prohibited conduct;
- testifying, assisting, or participating in an informal response, grievance, or alternative resolution process relating to a prohibited conduct report; or
- accessing the Office for Conflict Resolution to resolve a conflict related to conduct that may reasonably constitute prohibited conduct.

Adverse actions are actions that might deter a reasonable person from exercising a right under this policy or participating in the reporting, adjudication, or resolution of prohibited conduct matters as set forth in the bullets above.

Examples of adverse actions include, but are not limited to:

- impeding the individual's academic advancement;
- departing from any customary academic or employment practice regarding the individual;
- firing, refusing to hire, or refusing to promote the individual;
- transferring or assigning the individual to a lesser position in terms of wages, hours, job classification, job security, or employment or academic status;
- providing unfounded negative job references or otherwise interfering with a job search;
- actions that significantly disrupt the individual's ability to participate in University programs or activities; and
- threatening, intimidating, coercing, or discriminating against an individual.

Good faith participation means: 1) reporting or expressing opposition to conduct that may reasonably constitute prohibited conduct based on a reasonable belief that the conduct occurred,

or 2) honestly participating in a prohibited conduct response process or accessing conflict resolution services.

For more information on retaliation, see FAQ: *Retaliation in Cases Involving Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*.

### **Sexual Assault**

Sexual assault is: 1) actual or attempted sexual contact without affirmative consent; or 2) a threat to engage in contact that would be, if the threat were carried out, sexual contact without affirmative consent.

Sexual contact is intentional sexual touching with an object or body part. Depending on the context, it may include, but is not limited to: (i) intentionally touching the breasts, buttocks, groin, or genitals of another individual; (ii) intentionally touching another individual with any of these body parts; and (iii) making an individual touch another individual or themselves with, or on, any of these body parts. Sexual contact can occur whether or not an individual's body parts are covered by clothing.

Affirmative consent is freely and affirmatively communicated words or actions given by an informed individual that a sober reasonable person under the circumstances would believe communicate a willingness to participate in the sexual contact. The following factors will be considered when determining whether affirmative consent was given:

- Each individual who wishes to engage in sexual contact is responsible for obtaining consent from the other individual or individuals who intend to be involved in the sexual contact.
- A lack of protest, the absence of resistance, and silence do not by themselves indicate consent.
- The existence of a present or past sexual, dating, or other romantic relationship between the individuals involved does not by itself imply consent to sexual contact.
- Consent must be present throughout the sexual contact and may be given and withdrawn at any time.
- When consent is withdrawn, all sexual contact must stop. Where there is confusion about the state of consent, sexual contact must stop until the individuals have verified the affirmative consent of all individuals involved.
- Consent to one form of sexual contact does not by itself constitute consent to another form of sexual contact.

Consent is not obtained where:

- An individual is compelled to engage in unwanted sexual contact through the use of coercion. Coercion may consist of physical force, intimidation, threats, or severe or persistent pressure that would reasonably cause an individual to fear significant consequences if they refuse to engage in sexual contact.
- An individual involved in sexual contact is incapacitated due to the influence of drugs or alcohol, and a reasonable person would know of this incapacitation. Incapacitation due to the influence of drugs or alcohol is a state beyond mere intoxication or impaired judgment. Some indicators of incapacitation due to the influence of drugs or alcohol may include:
  - A lack of control over one's physical movement (for example, an inability to walk or stand without stumbling or assistance).
  - An inability to effectively communicate (for example, where one's speech is heavily slurred, incomprehensible, or nonsensical).
  - A lack of awareness of one's circumstances or surroundings (for example, a lack of awareness of where one is, how one got there, who one is with, and how or why one became engaged in sexual contact).
- An individual involved in sexual contact is unable to communicate or understand the nature or extent of the sexual situation because of a physical or mental condition.
- An individual involved in sexual contact is asleep, unconscious, or involuntarily physically restrained.
- Sexual intercourse occurs with an individual who is not of legal age to give consent pursuant to Minnesota state law.
- Sexual intercourse occurs between parties who are related to each other within the degrees wherein marriage is prohibited by Minnesota state law.

**Sex-based harassment (including sexual harassment)**

Sex-based harassment means conduct based on sex under the following conditions:

- *Quid pro quo sexual harassment*: When a University member explicitly or impliedly conditions the provision of a University aid, benefit, or service on an individual's participation in conduct of a sexual nature.
- *Hostile environment sex-based harassment*: When, based on the totality of the circumstances, unwelcome conduct based on sex:
  - is (i) subjectively and objectively offensive, and (ii) so severe or pervasive that it limits or denies an individual's ability to participate in, or benefit from, the University's programs or activities; or
  - is so severe, persistent, or pervasive that it creates an employment environment that an individual finds, and a reasonable person would find to be, intimidating, hostile, or offensive.

Sex-based harassment under this policy encompasses all harassment based on sex, including:

- sexual harassment; and
- harassment based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, gender identity, and gender expression.

Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- the degree to which the conduct affected a complainant's ability to access the University's programs or activities;
- the type, frequency, and duration of the conduct;
- the parties' ages, the parties' roles within the University's program or activity, the parties' previous interactions with one another, and other factors about each party that may be relevant to evaluating the effects of the reported unwelcome conduct;
- the location of the conduct and the context in which the conduct occurred; and
- other sex-based harassment in the University's program or activity.

The determination of whether conduct is unwelcome is made according to a subjective standard. In other words, the determination is made based on whether a complainant viewed the conduct as unwelcome. This subjective standard reflects an understanding that a subordinate individual may submit to or participate in unwelcome conduct sought by an individual with greater power (e.g., an academic advisor, supervisor, or instructor) because the subordinate individual fears potential negative repercussions if they refuse, and not because they welcome the conduct. A complainant's acquiescence to the conduct, or failure to complain about the conduct, is not by itself determinative of whether the conduct was welcome.

Sex-based harassment may include conduct that is verbal, nonverbal, graphic, and/or physical. Individuals of all genders can be victims of sex-based harassment, and a complainant and a respondent can be of the same or different genders. The following conduct, depending on the totality of the circumstances, may support a decision that a respondent engaged in sex-based harassment:

- Unwelcome sexual advances.
- Implicit or explicit requests for sexual favors in exchange for employment or academic benefits.
- A pattern of sexually suggestive comments, jokes, or gestures.
- Unwelcome touching that is sexual in nature. For example, certain types of hugs, or touching on the butt, thighs, or waist.

- Recording, or distributing recordings, of another person's breasts, buttocks, groin, genitals, or engagement in sexual activity.
- Creating sexually explicit images of an individual or distributing such images.
- Epithets, slurs, comments, or jokes that target an individual or group based on sex stereotypes, sex characteristics, sexual orientation, gender identity or expression, or pregnancy or related conditions.
- Conduct that communicates that people do not belong in the community or in a particular professional or academic field based on sex.

### **Sexual harassment**

Sexual harassment is a subset of sex-based harassment where the conduct on the basis of sex is conduct of a sexual nature.

### **Stalking**

Stalking is a course of conduct directed at a specific individual that would cause a reasonable person to: 1) fear for their safety or the safety of others; or 2) suffer substantial emotional distress.

A course of conduct is multiple acts including, but not limited to, acts in which an individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another individual, or interferes with another individual's property. In determining whether an individual has engaged in a course of conduct, consideration is given to the number of acts, their level of severity, and the time period in which they occur.

## **OTHER DEFINITIONS**

### **Advisor**

An individual who is permitted to accompany a complainant or respondent to meetings and hearings in an informal response, grievance, or alternative resolution process, and who conducts questioning on behalf of a party at a live hearing in the grievance process. An advisor can be any individual of the party's choice, including an attorney. A party must submit an executed *Roles and Responsibilities of Advisors and Support Persons* form to the campus Title IX office or the Grievance Process Manager before their advisor will be recognized as an advisor for purposes of this policy. Please see Appendix: *Roles and Responsibilities of Advisors and Support Persons* form.

### **Appellate Officer**

Appellate Officers are identified in Appendix: *University Authorities and Appellate Officers*.



### **Campus Title IX Office**

Campus Title IX office staff members and others designated to respond to reports of prohibited conduct. Designees may include external investigators.

### **Complainant**

A complainant is:

- a student or employee who is alleged to have been subjected to conduct that could constitute prohibited conduct; or
- a person other than a student or employee who is alleged to have been subjected to conduct that could constitute prohibited conduct and who was participating or attempting to participate in a University program or activity at the time of the reported prohibited conduct.

### **Complaint**

A complaint is an oral or written request to the University that objectively can be understood as a request for the University to investigate and make a determination about a report of prohibited conduct.

### **Grievance Process Manager**

The University employee who coordinates the:

- process for appeals;
- process for challenging decisions related to supportive measures; and
- post-investigation grievance process.

### **Party**

A party is a complainant or respondent.

### **Pregnancy And Related Conditions**

Pregnancy and related conditions include: 1) pregnancy, childbirth, termination of pregnancy, or lactation; 2) medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; and 3) recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

### **Relevant**

Relevant means related to the allegations of prohibited conduct. Questions are relevant when they seek evidence that may aid in determining whether the reported prohibited conduct occurred, and evidence is relevant when it may aid in determining whether the reported prohibited conduct occurred.

**Respondent**

A respondent is a person who is alleged to have engaged in prohibited conduct.

**Supervisor**

Supervisors include all individuals who have been assigned direct reports, including direct reports who are employees, student workers, volunteers, or temp/casual employees.

**Support Person**

An individual who is permitted to accompany a complainant or respondent to meetings and hearings in an informal response, grievance, or alternative resolution process, and who is not a fact witness in the case. Under this policy, a party must submit an executed *Roles and Responsibilities of Advisors and Support Persons* form to the campus Title IX office or the Grievance Process Manager before their support person will be permitted to attend meetings or hearings in a response process. Please see Appendix: *Roles and Responsibilities of Advisors and Support Persons*.

**University Authority**

University Authorities are identified in Appendix: *University Authorities and Appellate Officers*.

**University Employee**

University employees include the following individuals:

- individuals defined as employees by Board of Regents Policy: *Employee Group Definitions*, including:
  - faculty,
  - academic professionals,
  - academic administrators,
  - professionals in training (including postdoctoral associates),
  - civil service staff,
  - union-represented staff,
  - graduate assistants, and
  - student employees
- fellows;
- temporary employees; and
- third parties serving in instructional roles at the University.

**University Member**

University members include:

- University students as defined in this policy;
- University employees as defined in this policy; and
- other individuals who are participating or attempting to participate in a University program or activity, including any person authorized by the University to provide an aid, benefit, or service under the University’s program or activity (“third parties”).

**University Program or Activity**

University programs and activities include all operations of the University. This includes, for example, University employment, academics, and facilities.

**University Property**

University property includes any building or property that is owned or controlled by the University and is used by the University.

**University Student**

University student means a person who has gained admission to the University.

**RESPONSIBILITIES**

**Appellate Officer**

Decides appeals as set forth in this policy.

**Campus Title IX Offices**

Respond to reports of prohibited conduct through informal response, grievance, and alternative resolution processes.

**Counseling Services Offices**

Provide counseling services and referrals.

**Equal Opportunity & Title IX**

Responds to concerns of prohibited conduct through informal response, grievance, and alternative resolution processes. Oversees the University’s compliance with federal and state laws prohibiting sex discrimination.

**Health Care Services**

Provide health care, counseling, and referrals.

**Human Resources**

Report possible prohibited conduct to the campus Title IX office. Assist in responding to reports of prohibited conduct committed by employees.

### **Public Safety / Police Departments**

- Investigate reports for possible criminal prosecution.
- Refer complainants to appropriate campus resources for personal support and investigation.
- Provide for campus safety and security.
- Provide timely warnings as appropriate.

### **Student Conduct Offices**

- Offer post-investigation resolution proposals, as appropriate, in grievance processes involving student respondents.
- Determine and implement disciplinary sanctions (referred to as “outcomes” in Board of Regents Policy: *Student Conduct Code*), if any, in grievance processes involving student respondents.

### **University Authority**

- Offers post-investigation resolution proposals, as appropriate.
- Decides upon and implements discipline and other responsive action, if any.

### **Victim/Survivor Services Related to Prohibited Conduct**

- Can maintain all contacts and reports as strictly confidential.
- Provide crisis intervention and advocacy.
- Assist complainants in contacting police and/or reporting to other University offices, if the complainant agrees (some can assist in obtaining restraining orders).
- Assist complainants in obtaining medical assistance and counseling, and changing academic programs or housing, among other things.
- Offer awareness, prevention, and risk-reduction training, and educational programming for students and employees.

## **RELATED INFORMATION**

- Board of Regents Policy: *Student Conduct Code*
- Board of Regents Policy: [\*Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination\*](#)
- Board of Regents Policy: *Employee Group Definitions*
- Previous policy version and associated documents for prohibited conduct reported to have occurred prior to August 1, 2024

## **HISTORY**

Amended August 2024 – Revised to comply with new federal Title IX regulations effective on August 1, 2024. This revised policy and its associated procedures apply to all reports of prohibited conduct, except that definitions from the policies in place at the time the reported prohibited conduct occurred will be used to make the decision on responsibility.

# ***Administrative Procedure: Response Procedures in Cases Involving Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination***

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## **I. REPORTING AND OTHER REQUIREMENTS FOR EMPLOYEES WHO LEARN ABOUT PROHIBITED CONDUCT**

In order to foster an environment free of prohibited conduct, all University members are encouraged to take reasonable prudent actions to prevent, stop, and report all acts of sex discrimination. Sex discrimination includes sexual harassment, sexual assault, relationship violence, and stalking; differential treatment sex discrimination; sex-based harassment; and retaliation related to all forms of sex discrimination (collectively, “prohibited conduct”).

In addition, University members have the following reporting and other obligations related to conduct that reasonably may constitute prohibited conduct.

### **A. REPORTING REQUIREMENTS**

All University employees, with the exception of confidential employees, must promptly contact the campus Title IX office when in the course of performing their employment duties they learn about conduct that reasonably may constitute prohibited conduct directed at students, employees, or third parties that may have:

- occurred on University property;
- occurred during a University program or activity;
- been directed at a current student, employee, or third party at the time they were a student, employee, or third party; or
- been committed by a current student, employee, or third party at the time they were a student, employee, or third party.

***Exception for confidential employees.*** The following three categories of University employees are deemed “confidential employees” who are exempt from the requirement to report conduct that reasonably may constitute prohibited conduct.

1. Employees whose communications are privileged or confidential under federal or state law. The employee’s confidential status is only with respect to communications received while the employee is functioning within the scope of their duties to which the privilege

or confidentiality applies. These employees include, for example, licensed medical and mental health professionals (including therapists and psychotherapists), sexual assault counselors, domestic violence counselors, attorneys, ordained clergy, and individuals acting in a professional capacity for which confidentiality is mandated by law.

2. Employees who are conducting Institutional Review Board-approved human-subjects research studies designed to gather information about sex discrimination. The employee's confidential status is only with respect to information received while conducting the study.
3. Employees whom the University has designated as confidential for the purpose of providing services to persons related to sex discrimination, when the employees receive information about prohibited conduct in connection with providing those services. These employees include, but are not limited to:
  - victim-survivor advocacy office employees and volunteers when they learn about prohibited conduct in the course of their advocacy office work;
  - LGBTQIA+ advocacy and support offices and personnel when they learn about sex discrimination in the course of their advocacy and support work;
  - employees whom the campus Title IX Coordinator has exempted from required reporting while they are providing specified sex discrimination prevention services to individuals;
  - employees of the Student Conflict Resolution Center, Office for Conflict Resolution, and other University ombuds offices when they are providing conflict resolution or ombuds services; and
  - advisors as defined under this policy, when they learn about prohibited conduct: 1) that is directly related to the case in which they are serving as an advisor; 2) from the party for whom they are serving as an advisor; and 3) in the course of their advising.

Confidential employees must: 1) explain their confidential status to any person who informs them of conduct that reasonably may constitute prohibited conduct; 2) provide that person with contact information for the campus Title IX office; 3) explain how to make a complaint of prohibited conduct; and 4) explain that the campus Title IX office may be able to offer and coordinate supportive measures, as well as initiate an informal response process or a grievance process.

## **B. INFORMATION THAT MUST BE REPORTED**

University employees who learn about conduct that reasonably may constitute prohibited conduct are not required to solicit additional information about the prohibited conduct or the individuals involved. However, to the extent known to them, University employees who learn of such conduct must report the following information:

- the names of the complainant(s), respondent(s), and possible witnesses;
- the date, time, and location of the conduct; and
- other relevant details about the conduct.

### **C. ADDITIONAL OBLIGATIONS FOR SUPERVISORS AND HUMAN RESOURCES REPRESENTATIVES WHO LEARN ABOUT PROHIBITED CONDUCT**

In addition to their reporting responsibilities described above, supervisors and human resources representatives who learn about conduct that reasonably may constitute prohibited conduct must take prompt and effective responsive action. In some cases, this obligation will be satisfied by reporting to the campus Title IX office. In other cases, it will be appropriate for supervisors and human resources representatives to take additional responsive action in coordination and consultation with the campus Title IX office. The particular responsive actions that a supervisor or human resources representative should take will depend on the circumstances and may include:

- providing supportive measures to a complainant or a respondent;
- making non-retaliatory employment changes that remove any continued impact on a complainant;
- conducting preliminary inquiries to determine whether others have experienced possible prohibited conduct by a particular respondent;
- discussing the prohibited conduct concerns with the respondent and setting expectations for future conduct;
- providing coaching and training on acceptable workplace conduct;
- communicating with the University's Sponsored Project Administration about prohibited conduct and related administrative action that may need to be reported to a grant-funding agency under the agency's rules; and
- monitoring to prevent the occurrence of future prohibited conduct.

In all cases, supervisors and human resources representatives must consult with the campus Title IX office, document the responsive actions taken, and provide this information to the campus Title IX office.



For additional information about University employees' obligation to report prohibited conduct, please see FAQs: *Employees' Obligation to Report Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination to the Campus Title IX Office*.

## **II. RESOURCES AND RIGHTS FOR COMPLAINANTS AND RESPONDENTS IN UNIVERSITY RESPONSE PROCESSES**

### **A. OPTIONS FOR COMPLAINANTS**

There are a number of University resources and processes that may be available to complainants. Complainants can contact the campus Title IX office to learn more about:

- confidential personal support and advocacy resources;
- supportive measures;
- the grievance process;
- the informal response process;
- alternative resolution processes; and
- consultations with the campus Title IX office.

In addition, complainants can report anonymously through the University's UReport reporting system. Anonymous reports, however, may limit the University's ability to gather information and effectively respond to the report.

### **B. OVERVIEW OF THE UNIVERSITY'S PROCESSES**

When the campus Title IX office becomes aware of conduct that reasonably may constitute prohibited conduct, it will promptly contact a complainant to provide information about supportive measures and applicable response processes offered by the University. When a complainant does not respond to this communication from the campus Title IX office, the campus Title IX office will generally presume that the complainant does not want to initiate a University process.

The campus Title IX office is committed to providing equitable treatment to complainants and respondents. The University will respond to reports of prohibited conduct in one of the following four ways:

#### **1. Grievance process**

The campus Title IX office will initiate a grievance process when it has received a complaint or when the Title IX Coordinator has initiated a complaint. The grievance process results in a

determination of whether a respondent engaged in prohibited conduct in violation of Administrative Policy: *Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*. The grievance process is the only process that can result in disciplinary sanctions being imposed on a respondent for a violation of this policy.

Where reported conduct is covered by academic freedom or free speech protections, the covered reported conduct will not be found to rise to the level of prohibited conduct, and a grievance process will not be initiated. However, the University will take prompt and effective steps as necessary to remedy any hostile environment that is created.

## **2. Informal response process**

The campus Title IX office may initiate an informal response process to address reports and prevent prohibited conduct. The informal response process may include appropriate prompt and effective steps to ensure that prohibited conduct does not occur in the University's programs or activities. An informal response process may be used, for example, in cases: 1) with an anonymous complainant; 2) where the reported conduct does not rise to the level of prohibited conduct; 3) where the complainant does not want to initiate a grievance process and an informal response process may effectively deter future prohibited conduct; or 4) where the reported conduct is likely covered by academic freedom or free speech protections.

## **3. Provision of supportive measures only**

When a complainant does not request an informal response or grievance process, or when the campus Title IX office does not have sufficient information to effectively initiate such a process, the campus Title IX office will offer reasonably available supportive measures and take other appropriate prompt and effective steps to ensure that prohibited conduct does not occur in the University's programs or activities.

## **4. Alternative resolution process**

The campus Title IX office may offer an alternative resolution process to the parties. An alternative resolution process will only proceed with the consent and agreement of both parties, and will result in a final resolution of the matter.

# **C. SUPPORTIVE MEASURES FOR COMPLAINANTS AND RESPONDENTS**

## **1. Supportive Measures**

Supportive measures are individualized measures offered to a complainant or respondent as appropriate, as reasonably available, and without charge. Supportive measures must not unreasonably burden either party or be imposed for punitive or disciplinary reasons.

The University will provide supportive measures to: 1) restore or preserve the complainant's or respondent's access to University programs and activities, 2) protect the safety of the parties or the University's programs or activities; or 3) provide support during the informal response, grievance, or alternative resolution process.

Supportive measures may include the following, among other things:

- counseling and support services;
- academic or course-related adjustments, such as extensions of deadlines;
- changes in class, work, housing, or extracurricular activities, regardless of whether there is a comparable alternative;
- campus escort services;
- restrictions on contact applied to one or more parties;
- leaves of absence;
- increased security and monitoring of certain areas of University property;
- training and education programs related to prohibited conduct; and
- assistance in making a report to law enforcement or obtaining a protective order.

## **2. Process for implementing supportive measures**

Complainants and respondents may seek supportive measures, or modification or termination of supportive measures, by:

- contacting the campus Title IX office, which is the University resource designated to coordinate the provision of supportive measures;
- directly contacting the departments or individuals with the ability to provide the requested supportive measures or to modify or terminate them, such as the campus housing and residential life office or the appropriate faculty member, supervisor, or human resources representative; or
- in cases involving sexual harassment, sexual assault, stalking, or relationship violence, contacting campus or local victim-survivor advocacy offices, which may be able to assist complainants in requesting, modifying, or terminating supportive measures.

The departments or individuals with the ability to provide the requested supportive measures will determine which supportive measures to implement depending on the circumstances. In making this determination, the department or individual may consult with the Title IX office, and in all

instances, before denying a request for supportive measures, the department or individual who received the request must consult with the campus Title IX office. Departments or individuals are encouraged to provide written documentation to the campus Title IX office of any supportive measure requests that they have received, any supportive measures that they have offered, and any supportive measures that they have implemented.

### **3. Opportunity to request review of decisions related to supportive measures from an impartial employee**

The University provides parties with a timely opportunity to request modification or reversal of a University decision to provide, deny, modify, or terminate supportive measures that are applicable to them from an appropriate and impartial employee with the authority to modify or reverse the decision.

Parties should submit a request for a review from an impartial employee to the Grievance Process Manager, who will route the request to an appropriate individual. Upon receipt of a request for review, the designated impartial employee may modify or reverse the decision at issue if the impartial employee determines that the decision was inconsistent with the definition of supportive measures in Section II.C.1.

### **4. Confidentiality of supportive measures**

The University will maintain the confidentiality of any supportive measures to the extent possible. In particular, the University will not disclose information about a supportive measure to individuals other than the individual to whom they apply, unless the disclosure is necessary to provide the supportive measure or restore or preserve a party's access to the University's programs or activities.

For more information about supportive measures, see FAQ: *Supportive Measures*. The campus Title IX office is also available to meet with University members to address questions or concerns about supportive measures.

## **D. PRIVACY AND CONFIDENTIALITY**

As described below, the University takes reasonable steps to protect the privacy of parties and witnesses involved in its informal response, grievance, and alternative resolution processes. These steps also help protect the integrity of the University's response processes and prevent harassment, intimidation, or retaliation against parties and witnesses related to a response process.

## **1. Restrictions on disclosures by the University**

The University does not disclose the personally identifiable information of complainants, respondents, witnesses, and others that is obtained through its response processes under this policy, except when:

- a person with the legal right to consent to the disclosure of the personally identifiable information has provided prior written consent to the disclosure;
- the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- disclosure of the information is required to carry out requirements under Title IX or this policy;
- disclosure of the information is required by federal law, federal regulations, or the terms and conditions of a federal award; or
- to the extent such disclosure is not otherwise in conflict with Title IX or its regulations, the disclosure is required by state or local law or permitted under the Family Educational Rights and Privacy Act (FERPA).

In carrying out this policy, it may be necessary for the campus Title IX office to share the identities of parties and witnesses, and information provided by parties and witnesses, with the participants in a response process. This information may also be included in an investigation report or other document relating to the case, which may be provided to the parties, Grievance Process Manager, hearing panel, University Authority, Appellate Officer, and others as appropriate.

## **2. Restrictions on disclosures by parties, witnesses, and advisors**

Parties, witnesses, and advisors are encouraged not to share information learned through their participation in a response process (including the allegations, the identities of the parties and witnesses, and the questions asked in interviews). Parties, witnesses, and advisors are cautioned not to discuss information learned through their participation in a response process in a manner that constitutes retaliation or unlawful conduct.

Parties and advisors must abide by the following restrictions related to the summary of the relevant evidence, access to the relevant and not otherwise impermissible evidence, investigation report, audio recordings, or other materials that they receive as part of a grievance process. Specifically, parties and advisors are not permitted to:

- photograph or download these materials;

- provide other individuals with access to these materials, except as provided below; or
- share with other individuals information provided in these materials that is not otherwise known to the party or advisor through other means.

Additionally, parties, witnesses, and advisors are generally not permitted to provide other individuals with access to email communications from the campus Title IX office.

However, parties may share information, email communications, and documents or other materials obtained through the grievance process, as needed to:

- obtain and present evidence, including by speaking to witnesses;
- consult with their family members, confidential resources, advisors as defined in this policy, or any individual who is advising them for purposes of the grievance process;
- otherwise prepare for, or participate in, the grievance process; or
- participate in an administrative or legal proceeding or in litigation related to the complaint of prohibited conduct, including by sharing documents with law enforcement.

This policy does not limit an individual's use or redisclosure of their own information of which they are the data subject.

#### **E. ADVISOR PARTICIPATION**

Complainants and respondents may be accompanied to meetings and hearings in an informal response, grievance, or alternative resolution process by: 1) an advisor of their choice who may be, but is not required to be, an attorney or union representative; and 2) a support person who cannot be a fact witness in the case. Other individuals may be permitted to attend these meetings or hearings to support a party for good reason, such as to accommodate a disability or a language need.

In most cases, a support person may not review any records that are private student education records under Board of Regents Policy: *Student Education Records* or private records under another applicable policy or law.

For more information about the responsibilities of advisors and support persons who attend meetings and hearings as allowed by this policy, please see Appendix: *Roles and Responsibilities of Advisors and Support Persons* and Administrative Procedure: *Post-Investigation Procedures in Sex Discrimination Cases*.

#### **F. PARTY AND WITNESS PARTICIPATION**

## **1. Notification of participation opportunities**

Parties will be provided with written notice of the date, time, location, participants, and purpose of all meetings during an informal response, grievance, or alternative resolution process at which the party is expected or invited, with sufficient time for the party to prepare to participate.

## **2. Participation requirements**

Parties and student witnesses are not required to participate in a grievance process under this policy. When a complainant, respondent, or witness declines to provide relevant information during a grievance process, the grievance process may proceed if there is sufficient information to do so. A decision on responsibility and disciplinary sanctions, if any, will be based only on the information available.

University employees and third parties authorized to provide aid, benefit, or service under a University program or activity who are asked by the campus Title IX office or Grievance Process Manager to participate in grievance processes as witnesses are required to participate to ensure that the most complete information is available to the University. In certain circumstances, the campus Title IX office or Grievance Process Manager may decide that such an individual is not required to participate, such as where the individual is unlikely to provide significant relevant information or where participation would result in an unreasonable burden for that individual.

## **3. Duty to Participate in Good Faith**

All University members are expected to provide truthful information in any informal response, grievance, or alternative response process. Individuals who knowingly make false statements or submit false information during an informal response, grievance, or alternative response process may be subject to disciplinary action up to and including termination of employment or expulsion. The University will not discipline an individual for making false statements in an informal response, grievance, or alternative response process based solely on the University's determination of whether prohibited conduct occurred.

Disciplinary action is not warranted where an individual makes a prohibited conduct report or participates in an informal response, grievance, or alternative response process in good faith, even if the report or information is ultimately not substantiated. An individual provides information in good faith when that individual reasonably believes that the information they have provided is accurate.

Concerns that an individual has knowingly made a false statement or knowingly provided false information will be addressed by the following offices:

- if the individual is a student, the campus student conduct office;
- if the individual is an employee, the employee’s supervisor or human resources representative; and
- if the individual is a third party, the University official responsible for retaining or overseeing the third party.

## **G. ACCOMMODATIONS IN UNIVERSITY RESPONSE PROCESSES**

Any individual who needs reasonable accommodations for a disability to participate in any of the response processes set forth in this policy should request accommodations through the campus disability services office and follow the process established by that office. The individual should also notify the campus Title IX office, which can assist in referring the individual to the campus disability services office. Any participant who needs reasonable accommodations for religion or for pregnancy and related conditions should notify the campus Title IX office about the need for accommodations. In addition, any participant who may need a language interpreter should notify the campus Title IX office as soon as possible.

## **H. AMNESTY**

The University encourages good faith reports of prohibited conduct. To facilitate reporting and thorough investigations of prohibited conduct, the University will not discipline individuals for violations of the University’s prohibition on the personal use of drugs or alcohol when the University learns about this information solely through a report of prohibited conduct, or through an informal response, grievance, or alternative resolution process.

Moreover, the University may offer leniency with respect to other violations that it learns about solely through information disclosed in a report of prohibited conduct or in an informal response, grievance, or alternative resolution process. Leniency is more likely to be provided in cases where the violation at issue did not cause and was unlikely to cause physical harm.

## **I. REMOVAL OF RESPONDENT FROM UNIVERSITY PROGRAMS OR ACTIVITIES**

The University may remove a respondent from its programs or activities on an emergency basis for reasons arising from a report of prohibited conduct when the University: 1) undertakes an individualized safety and risk analysis; 2) determines that there is an imminent and serious threat to the health or safety of a complainant, or any students, employees, or other persons arising from the report of prohibited conduct; 3) determines that this threat justifies removal; and 4) provides the respondent with notice and an opportunity to challenge the decision immediately



following the removal. An emergency removal may occur with or without a pending grievance process.

The University may also limit a respondent's participation in University activities or programs during a grievance process if it qualifies as a supportive measure under this policy.

In addition, the University may place an employee respondent on administrative leave from employment during a grievance process. Such action may be appropriate when there is a legitimate concern that, without the leave: 1) the respondent will engage in prohibited conduct while the grievance process is ongoing, 2) the respondent's continued employment during the grievance process would be unduly disruptive to University members or University programs or activities; or 3) other facts or circumstances support the imposition of administrative leave.

### **III. INFORMAL RESPONSE PROCESS**

The campus Title IX office may initiate an informal response process when a grievance process has not been initiated or when a complaint has been dismissed. In an informal response process, the campus Title IX office does not determine whether a respondent has violated University policy. However, the campus Title IX office may provide resources to help address the concerns raised, make recommendations for non-disciplinary responsive action, and take appropriate prompt and effective steps designed to ensure that prohibited conduct does not occur within the University's programs or activities. For example, an informal response processes may include:

- gathering additional information about the reported prohibited conduct to determine how to most effectively respond to the reported prohibited conduct or to provide pertinent information to the individuals involved;
- notifying a respondent about the concerns raised, and about any reported impact of the concerns on a complainant or community;
- providing education or coaching to a respondent or complainant;
- providing tailored training or education to impacted areas of the University;
- conducting a formal or informal climate survey of impacted areas of the University;
- providing recommendations that are aimed at preventing further concerns from arising to an appropriate individual who oversees a respondent or complainant; and/or
- establishing a plan to monitor for future prohibited conduct.

Based on information gathered in an informal response process, the Title IX Coordinator may subsequently decide that it is appropriate to initiate a grievance process.

### **IV. GRIEVANCE PROCESS**

## **A. GRIEVANCE PROCESS TIMELINES**

***Complaint evaluation process.*** The campus Title IX office strives to complete the complaint evaluation process and send out written notice of the grievance process, if any, within 10 calendar days of receipt of the complaint.

***Investigation process.*** The campus Title IX office strives to complete investigations within 120 calendar days of sending the written notice of the grievance process to the parties.

***Determination process.*** In matters that proceed to a live hearing or administrative resolution, the Grievance Process Manager strives to deliver the Written Determination to the parties and their advisors within 75 calendar days of the completion of the investigation.

***Appeal process.*** The Grievance Process Manager strives to deliver the decision of the Appellate Officer to the parties within 30 calendar days of receiving an appeal.

The timelines identified in this policy may be extended for good cause. When these processes are not completed within the above-described timelines, the campus Title IX office or Grievance Process Manager will provide written notification to the parties of the delay and the reason for the delay.

## **B. PROMOTION OF FAIRNESS**

To promote fairness in the grievance process, the University requires that its Title IX Coordinator, investigators, and decisionmakers do not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

## **C. COMPLAINT EVALUATION**

### **1. Complaint requirements**

A complaint is an oral or written request to the University that objectively can be understood as a request for the University to investigate and make a determination about a report of prohibited conduct.

The following individuals may make a complaint of prohibited conduct:

- a complainant;
- a parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; and

- the Title IX Coordinator.

The following additional individuals may make a complaint of differential treatment sex discrimination or retaliation:

- any student or employee; or
- any other individual who was participating or attempting to participate in the University's programs or activities at the time of the reported prohibited conduct.

## **2. Campus Title IX office response upon receiving a complaint**

Upon receipt of any report of prohibited conduct, the campus Title IX office will contact a complainant to provide information about supportive measures and applicable response processes offered by the University.

When a complaint is made, the campus Title IX office engages in a case evaluation process in which it will, among other things:

- conduct outreach, if not already done, to provide information about supportive measures and applicable response processes;
- take steps as needed to clarify the allegations of prohibited conduct in the complaint;
- determine whether to dismiss the complaint or initiate a grievance process;
- where more than one complaint has been submitted, determine whether to consolidate complaints;
- identify the parties; and
- prepare notice of grievance process documents.

## **3. Initiation of a complaint by the Title IX Coordinator**

When a complainant does not make a complaint, the Title IX Coordinator may initiate a complaint on behalf of the University. The Title IX Coordinator may initiate a complaint when they determine that the conduct as reported presents an imminent and serious threat to the health or safety of the complainant or another person, or that the conduct as reported prevents the University from ensuring that the complainant or another person has equal access on the basis of sex to its programs or activities.

In making this determination, the Title IX Coordinator will consider, at a minimum:

- the complainant's request not to proceed with initiation of a complaint;
- the complainant's reasonable safety concerns regarding initiation of a complaint;

- the risk that additional acts of prohibited conduct would occur if a complaint is not initiated;
- the severity of the reported prohibited conduct, including whether the allegations, if established, would require the removal of a respondent from University property or the imposition of another disciplinary sanction to end the reported prohibited conduct and prevent its recurrence;
- the age and relationship of the parties, including whether the respondent is an employee of the University;
- the scope of the reported prohibited conduct, including information suggesting a pattern of ongoing prohibited conduct, or prohibited conduct reported to have impacted multiple individuals;
- the availability of evidence to assist a decisionmaker in determining whether prohibited conduct occurred; and
- whether the University could end the reported prohibited conduct and prevent its recurrence without initiating a grievance process.

If the Title IX Coordinator decides to initiate a complaint, the campus Title IX office will notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others, including by providing additional or expanded supportive measures as appropriate.

Regardless of whether a complaint is initiated, the campus Title IX office will take other appropriate prompt and effective steps: 1) as necessary to effectuate the remedies provided to an individual complainant, if any; and 2) to ensure that sex discrimination, if any, does not continue or recur within the University's programs or activities.

#### **4. Consolidation of complaints**

The University may consolidate complaints when:

- the allegations arise out of the same facts or circumstances;
- there are: 1) complaints by one complainant against more than one respondent; 2) complaints by more than one complainant against one or more respondents; or 3) cross-complaints; and
- consolidation would comply with applicable privacy laws.

#### **5. Dismissal of a complaint**

The campus Title IX office may dismiss a complaint or any allegations therein after receiving a complaint when:

- the University is unable to identify a respondent after taking reasonable steps to do so;
- a respondent is not participating in any University program or activity and is not employed by the University;
- a complainant voluntarily and in writing withdraws any or all allegations in the complaint, and to the extent there are any remaining allegations of prohibited conduct, the campus Title IX office determines that they would not constitute prohibited conduct even if proven; or
- the campus Title IX office determines that the conduct alleged in the complaint, even if proven, would not constitute prohibited conduct.

Prior to dismissing a complaint because it would not constitute prohibited conduct even if proven, the Title IX office will make reasonable efforts to clarify the allegations with the complainant.

When dismissing a complaint, the campus Title IX office will provide the parties with prompt written notice of the complaint, the dismissal of the complaint, the basis for the dismissal, and an opportunity to appeal the dismissal on the bases set forth in the following section. If the dismissal occurs before the respondent has been notified of the allegations, the campus Title IX office will provide this written notice only to the complainant.

## **6. Appeal of a dismissal of a complaint**

Appeals must be submitted to the Grievance Process Manager in writing within 7 calendar days of the campus Title IX office's provision to the parties of the written decision to dismiss a complaint. Absent good cause, appeals received after 7 calendar days will be denied.

After receiving a timely appeal, the Grievance Process Manager will send a copy of the appeal to the non-appealing party and the campus Title IX office. If the respondent has not yet received written notice of the allegations, the Grievance Process Manager will also send the respondent written notice of the allegations. The non-appealing party and the campus Title IX office will be provided an opportunity to respond with a statement in support of, or challenging, the appeal. Any response must be submitted in writing within 7 calendar days from the date that the non-appealing party and campus Title IX office received the appeal.

The Appellate Officer's review is limited to the grounds set forth below:

- Procedural irregularity that would change the outcome.
- New evidence that was not reasonably available when the determination to dismiss was made and that would change the outcome.

- The campus Title IX office had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

In making this determination, the Appellate Officer will not substitute their judgment for that of the campus Title IX office. In most cases, the appellate review is limited to review of the complaint, the rationale and written decision by the campus Title IX office, the written appeal and response documents submitted by the parties, and any explanation submitted by the campus Title IX office. The Grievance Process Manager is responsible for providing these documents to the Appellate Officer. The Appellate Officer may, at their discretion, request and review additional information from the campus Title IX office.

The Appellate Officer will issue a written decision that: 1) affirms, in whole or in part, the decision, 2) overturns, in whole or in part, the decision, or 3) remands the matter to remedy procedural errors or consider new evidence. The Appellate Officer will strive to issue a decision within 14 calendar days of receipt of all appeal and response documents. The Grievance Process Manager will notify the parties of the result of the appeal and the rationale for the result.

## **7. Reports involving institutional actions**

In some cases, a complainant might not report that a specific University member engaged in prohibited conduct. For example:

- Sex-based harassment cases in which the complainant reports that cumulative conduct by multiple individuals constitutes prohibited conduct, but does not report conduct by any one individual that would constitute prohibited conduct.
- Complaints alleging that a University policy or practice violates this policy.
- Differential treatment sex discrimination cases where an individual respondent is not identified – such as when a group of individuals, or unknown individuals, appear to have made the decision at issue.
- Differential treatment sex discrimination cases in which the respondent is no longer a University member, but the campus Title IX office has determined that a grievance process should proceed.

In these cases, an individual respondent may not be named. In these cases, where appropriate, the campus Title IX office may ask a unit head or other designee to receive and respond to grievance process-related communications and otherwise hold the process rights accorded to respondents in this policy. This individual is known as the “Designee for a Case without a Named Respondent.”

## **8. Reports without a participating complainant**

In some cases, the campus Title IX office may initiate a grievance process into a complaint when there is not a participating complainant. In these cases, an individual complainant may not be named. In these cases, where appropriate, the campus Title IX office may ask a unit head or other designee to receive and respond to grievance process-related communications and otherwise hold the process rights accorded to complainants in this policy. This individual is known as the “Designee for a Case without a Named Complainant.”

## **D. GATHERING AND CONSIDERATION OF EVIDENCE**

### **1. Standard of evidence**

The University’s grievance process applies the preponderance of the evidence standard when determining whether this policy has been violated. “Preponderance of the evidence” means that it is more likely than not that a policy violation has occurred. The grievance process includes a presumption that a respondent is not responsible for the reported prohibited conduct unless and until a decision of responsibility is made at the conclusion of the grievance process.

### **2. Consideration of evidence**

The University has the burden to conduct a grievance process that gathers sufficient evidence to determine whether prohibited conduct occurred. The grievance process treats complainants and respondents equitably, and includes:

- an equal opportunity for the parties to present witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible;
- the University’s objective review of all evidence gathered; and
- credibility determinations, where applicable, that are not based on an individual’s status as a complainant, respondent, or witness.

### **3. Impermissible evidence**

The following types of evidence, and questions seeking that evidence, are excluded from the grievance process as impermissible. These types of evidence will not be accessed, considered, disclosed, or otherwise used, regardless of whether the evidence at issue is relevant.

- Evidence relating to the complainant’s sexual interests.
- Evidence relating to the complainant’s prior sexual conduct, unless that evidence is: 1) offered to prove that someone other than the respondent committed the reported conduct; or 2) about specific incidents of the complainant’s prior sexual conduct with the

respondent that is offered to prove consent to the reported prohibited conduct. However, prior sexual conduct between the parties will not be found to itself demonstrate or imply consent to alleged prohibited conduct or to preclude a finding that prohibited conduct occurred.

- Evidence that is protected under a legally recognized privilege, or evidence provided to a confidential employee, unless the individual to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the University obtains that party's or witness's voluntary, written consent for use in the grievance process.

## **E. INVESTIGATION**

The University provides for adequate, reliable, and impartial investigations of complaints.

### **1. Investigatory offices**

Investigations of complaints will be conducted by the campus Title IX office. If a prohibited conduct investigation reveals possible misconduct other than prohibited conduct under this policy, the campus Title IX office may forward this information to the appropriate University office responsible for responding to such misconduct.

### **2. Written notice to the parties**

After the complaint evaluation process is complete, and where the complaint was not previously dismissed, the campus Title IX office will provide written notice of the allegations to the parties whose identities are known with sufficient time for the parties to prepare a response before any initial interview. The written notice will include:

- Notice that a grievance process is being initiated.
- The grievance procedures and any available processes for alternative resolution.
- The identities of the parties involved in the reported prohibited conduct, the conduct reported to constitute prohibited conduct, and the date(s) and location(s) of the reported prohibited conduct, to the extent this information is available to the University.
- A statement that retaliation is prohibited.
- A statement that the respondent is presumed not responsible for the reported prohibited conduct unless and until a decision of responsibility is made at the conclusion of the grievance process.



- A statement that, prior to the determination of whether prohibited conduct occurred, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker.
- A statement that, during the grievance process, the parties are entitled to an equal opportunity to access and respond to the relevant and not otherwise impermissible evidence.
- Notice that the parties may be accompanied to meetings and hearings in the grievance process by: 1) an advisor of their choice who may be, but is not required to be, an attorney; and 2) a support person who cannot be a fact witness in the case.
- Notice that this policy prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, during the course of an investigation, the campus Title IX office decides to investigate additional allegations of prohibited conduct, the campus Title IX office will provide notice of those additional allegations to the appropriate parties whose identities are known.

### **3. Investigation process**

The nature and scope of an investigation will be determined based on the complaint and any additional information gathered during the investigation. The investigation process will include the following elements.

#### **a. Gathering of evidence**

The investigation process will include the gathering of relevant and not otherwise impermissible evidence, including by:

- conducting one or more interviews of a complainant, where the complainant will have the opportunity to describe the allegations giving rise to the complaint, provide evidence, and identify witnesses;
- conducting one or more interviews of a respondent, where the respondent will have the opportunity to respond to the allegations, provide evidence, and identify witnesses;
- conducting one or more interviews of witnesses, as appropriate;
- collecting documents, photographs, communications between the parties, and other electronic records as appropriate; and
- collecting other evidence identified by the parties or investigator, if other evidence exists.

The campus Title IX office will interview a witness or witnesses identified by a party if the information the party has shared about the witness or witnesses suggests that they possess relevant and not otherwise impermissible information.

## **b. Review of evidence and investigation report**

At the conclusion of the investigation, the parties will be provided with an opportunity to review a summary of the evidence that is relevant and not otherwise impermissible. The parties will have 7 calendar days to respond to the summary of the evidence.

Following receipt of any written response, the investigator will draft an investigation report, which will contain a recommended decision on responsibility.

## **F. POST-INVESTIGATION DETERMINATION AND APPEAL PROCESSES**

The post-investigation determination and appeal processes include the following steps:

- Provision of the investigation report to the parties.
- An opportunity in certain cases for the parties to resolve the case through a post-investigation resolution proposal.
- An opportunity in certain cases for the parties to resolve the case through an administrative resolution process.
- A live hearing, if the case is not resolved through a post-investigation resolution proposal or administrative resolution process.
- The provision of a Written Determination to the parties and their advisors if the case goes through an administrative resolution process or a live hearing.
- An opportunity for the parties to appeal the Written Determination.
- Implementation of disciplinary sanctions, if any.
- The provision of remedies, if any, to the complainant and other persons that the University identifies as having had equal access to the University's programs or activities limited or denied by prohibited conduct.

Additional detail about the post-investigation determination and appeal processes is set forth in *Administrative Procedure: Post-Investigation Procedures in Cases Involving Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*.

## **V. ALTERNATIVE RESOLUTION PROCESSES**

Alternative resolution processes are intended to resolve reports of prohibited conduct with the parties' voluntary consent and without the completion of a grievance process. Once agreed to, alternative resolution processes are binding on the parties and preclude the parties from initiating or resuming a grievance process arising from the same allegations. The University will not require parties to participate in an alternative resolution process.

The University may offer alternative resolution processes to parties at any time before a final decision on responsibility is made. The University has discretion to determine whether it is appropriate to offer an alternative resolution process. The University will not offer alternative resolution processes to resolve allegations that an employee engaged in prohibited conduct toward an elementary or secondary school student.

The University will only initiate an alternative resolution process when: 1) the University has provided the parties with a written notice of the offer and their rights and responsibilities in the alternative resolution process; and 2) the parties have provided voluntary consent to the process.

The written notice will explain:

- the allegations;
- the requirements of the alternative resolution process;
- that any party has the right to decline the offer of the alternative resolution process and that if any party declines or does not accept the offer of the alternative resolution process, the University's grievance process will proceed or, if not yet initiated, may be initiated;
- that the parties' agreement to a resolution through the alternative resolution process precludes the parties from initiating or resuming a grievance process arising from the same allegations;
- the potential terms that may be requested or offered in an alternative resolution agreement, including notice that an alternative resolution agreement is binding only on the parties; and
- what information the University will maintain and whether and how the University could disclose such information for use in a grievance process.

# ***Administrative Procedure: Post-Investigation Procedures in Cases Involving Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination***

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## **I. INTRODUCTION AND PURPOSE**

This procedure describes the post-investigation process for the resolution of complaints of Administrative Policy: *Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*. The goal of this procedure is to provide a fair process that facilitates the resolution of complaints of sex discrimination. Sex discrimination includes sexual harassment, sexual assault, relationship violence, stalking; differential treatment sex discrimination; sex-based harassment; and retaliation related to all forms of sex discrimination (collectively, “prohibited conduct”).

## **II. SCOPE OF THIS PROCEDURE**

This procedure applies to the adjudication of complaints of prohibited conduct. At the discretion of the hearing officer, this procedure may also be applied to other misconduct concerns where the conduct involves the potential violation of both this policy and another University policy arising from the same or similar set of facts and circumstances.

## **III. PARTIES**

The parties are the complainant and respondent. In certain cases, there may be more than one complainant and/or more than one respondent.

## **IV. ADVISORS AND SUPPORT PERSONS**

A party may be assisted throughout the post-investigation process by an advisor of their choice. If a party attends a hearing, the party may also have a support person, who is not a fact witness in the case, attend the hearing.

## **V. STANDARD OF PROOF, BURDEN OF PROOF, AND PRESUMPTION**

The standard of proof in all administrative resolutions and hearings governed by this procedure is “preponderance of the evidence,” which means that it is more likely than not that the respondent engaged in prohibited conduct.

The burden of proof and the burden of gathering evidence sufficient to reach a decision on responsibility rest on the University. The respondent is presumed to not be responsible for the reported prohibited conduct unless and until a decision of responsibility is made at the conclusion of the grievance process.

## **VI. SCOPE OF ADJUDICATION**

The campus Title IX office's written notice to the parties of its decision to initiate an investigation identifies the specific policy provisions the respondent is alleged to have violated. The hearing officer in an administrative resolution process or the hearing panel in a hearing must decide whether it is more likely than not that the respondent violated these identified policy provisions.

## **VII. POST-INVESTIGATION RESOLUTION PROPOSAL**

Following an investigation of a complaint, the University may offer a post-investigation resolution proposal to the parties.

The post-investigation resolution proposal is a form of alternative resolution process. Consistent with this policy's requirements related to alternative resolution processes, the University will only implement a post-investigation resolution proposal when: 1) the University has provided the parties with a written notice of the offer and their rights and responsibilities under the proposal; and 2) the parties have provided voluntary consent to the proposal.

### **1. Student respondent**

In cases involving a respondent who is a student, the Grievance Process Manager will share the campus Title IX office's investigation report with the campus student conduct office, which serves as the University Authority. The campus student conduct office will determine whether to propose a post-investigation resolution of the complaint. The campus student conduct office will strive to propose a post-investigation resolution, if any, within 7 days of receiving the investigation report from the Grievance Process Manager.

### **2. Employee or third party respondent**

In cases involving an employee or third party respondent, the Grievance Process Manager will share the campus Title IX office's investigation report and recommendations for a post-investigation resolution proposal with the appropriate University Authority. The University Authority will determine whether to propose a post-investigation resolution. The University Authority will strive to propose a post-investigation resolution, if any, within 14 days of receiving the investigation report and recommendations from the Grievance Process Manager.

### **3. Student employee respondent**

In cases involving a student employee respondent who is alleged to have engaged in prohibited conduct in their employment capacity, the Grievance Process Manager will determine whether to share the campus Title IX office's investigation report with both the campus student conduct office and the appropriate employment University Authority so that both University Authorities can determine whether to propose a post-investigation resolution of the complaint.

In cases involving a student employee respondent who is alleged to have engaged in prohibited conduct in their non-employment capacity, the Grievance Process Manager will share the investigation report with the campus student conduct office so that office can determine whether to propose a post-investigation resolution of the complaint. The Grievance Process Manager will also determine whether it is appropriate to share the investigation report and recommendations, if any, with the employment University Authority so that this University Authority can determine whether to propose a post-investigation resolution of the complaint related to the respondent's employment.

### **4. Respondent who is an employee and student, and whose employment is not contingent on studentship**

In cases involving a respondent who is an employee and student, where the respondent's employment is not contingent on their studentship, and where the respondent is alleged to have engaged in prohibited conduct in their employment capacity, the Grievance Process Manager will share the campus Title IX office's investigation report and recommendations for a post-investigation resolution proposal with the employment University Authority so that this University Authority can determine whether to propose a post-investigation resolution related to the respondent's employment. The Grievance Process Manager will also determine whether it is appropriate to share the campus Title IX office's investigation report with the campus student conduct office so that this office can determine whether to propose a post-investigation resolution of the complaint related to the respondent's studentship.

In cases involving a respondent who is an employee and a student, where the respondent's employment is not contingent on their studentship, and where the respondent is alleged to have engaged in prohibited conduct in their student capacity, the Grievance Process Manager will share the campus Title IX office's investigation report with the campus student conduct office so that this office can determine whether to propose a post-investigation resolution of the complaint with respect to the respondent's studentship. The Grievance Process Manager will also determine whether it is appropriate to share the campus Title IX office's investigation report and recommendations, if any, for a post-investigation resolution proposal with the employment

University Authority so that they can determine whether to propose a post-investigation resolution of the complaint related to the respondent's employment.

### **5. Approval process for post-investigation resolution proposal in cases with employee or third party respondents**

Where the University Authority's post-investigation resolution proposal differs meaningfully from the campus Title IX office's recommendation for a post-investigation resolution proposal, the University Authority's post-investigation resolution proposal must be approved by:

- the Provost (in cases with faculty respondents from the Twin Cities campus);
- the Vice President for Human Resources (in cases with staff or third party respondents from the Twin Cities campus); or
- the respective Chancellor (in cases with respondents from the Crookston, Duluth, Morris, and Rochester campuses).

The Grievance Process Manager will facilitate this approval process. In cases where the Provost, Vice President of Human Resources, or respective Chancellor reviews a post-investigation resolution proposal, they may not serve as the Appellate Officer. Instead, another individual will be appointed to serve as Appellate Officer if an appeal is filed.

### **6. Sharing of the investigation report and post-investigation resolution proposal, if any, with the parties**

If a post-investigation resolution is not proposed, the Grievance Process Manager will share the investigation report with the parties and the matter will proceed to a hearing or administrative resolution process, as set forth below.

If a post-investigation resolution is proposed, the Grievance Process Manager will simultaneously share the investigation report and proposal with the parties.

A post-investigation resolution proposal will be implemented, and the grievance process will conclude, if both parties agree to the proposal within 7 calendar days of the date the Grievance Process Manager shares the investigation report and proposal with the parties. If either party does not agree to the post-investigation resolution proposal within 7 calendar days, including by failing to respond to the proposal, the matter will proceed to a hearing or administrative resolution process.

## **VIII. THE GRIEVANCE PROCESS MANAGER, SEX DISCRIMINATION HEARING COMMITTEE, AND HEARING PANEL**

The Grievance Process Manager is the University employee who coordinates the:

- process for appeals;
- process for challenging decisions related to supportive measures; and
- post-investigation grievance process.

In addition, the Grievance Process Manager provides administrative and scheduling support to the Sex Discrimination Hearing Committee (SDHC). The Grievance Process Manager has discretion to make reasonable adjustments to any deadline set forth in this policy.

The SDHC consists of University members who serve as panelists for formal hearings. Current faculty, current staff (including civil service, bargaining unit, and professional and administrative employees), and enrolled students from all five University campuses serve on the SDHC.

The hearing panel is appointed by the Grievance Process Manager to decide whether it is more likely than not that a respondent engaged in prohibited conduct. A hearing panel generally includes a hearing officer and four panel members. All members of a hearing panel, including the hearing officer, are voting members. At least one panel member will be of the same University classification (i.e., faculty, staff, or student) as the complainant, and at least one panel member will be of the same University classification as the respondent. In the event that the complainant and the respondent are of the same University classification, at least one panel member will be of that classification.

## **IX. ADMINISTRATIVE RESOLUTION**

If the parties do not agree to a post-investigation resolution proposal, the Grievance Process Manager will offer the parties the opportunity to resolve the case through an administrative resolution process, whereby the investigation report, the parties' written responses to the investigation report (if any), and all relevant and not otherwise impermissible evidence gathered by the campus Title IX office as part of its investigation of the complaint is submitted to a hearing officer, who then makes a decision on responsibility.

The administrative resolution process is a form of alternative resolution process. Consistent with this policy's requirements related to alternative resolution processes, the University will only initiate an administrative resolution process when: 1) the University has provided the parties with a written notice of the offer and their rights and responsibilities in the process; and 2) the parties have provided voluntary consent to the process.



Privacy in an administrative resolution will be maintained in accordance with University policy, and all documents associated with this matter will be maintained in University records in accordance with University policy.

Each party has up to 3 calendar days from the date of the offer by the Grievance Process Manager to agree to resolve the case through the administrative resolution process. The administrative resolution process will only proceed if all parties agree. The decision on responsibility resulting from the administrative resolution process and any ensuing appeal is final and the parties cannot later withdraw from the administrative resolution process and resume the grievance process.

The administrative resolution process proceeds as follows:

- The Grievance Process Manager provides the parties with written notice of their agreement to pursue an administrative resolution.
- The parties have 14 calendar days from the written notice to provide a written response to the investigation report for consideration by the hearing officer.
- The Grievance Process Manager sends the hearing officer the investigation report, the parties' written responses to the investigation report (if any), and the relevant and not otherwise impermissible evidence gathered by the campus Title IX office as part of its investigation.
- The hearing officer strives to deliver the written decision on responsibility to the Grievance Process Manager within 14 calendar days.
- The Grievance Process Manager provides the hearing officer's written decision on responsibility to the University Authority.
- The University Authority decides disciplinary sanctions (if any). As appropriate, the University Authority strives to deliver the decision on disciplinary sanctions and other responsive actions, if applicable, to the Grievance Process Manager within 14 calendar days.
- Together, these written decisions on responsibility and disciplinary sanctions constitute the Written Determination. The Grievance Process Manager will provide the Written Determination simultaneously to the parties.
- Either party may appeal the Written Determination.

## **X. WRITTEN NOTICE OF HEARING**

If a post-investigation resolution is not implemented, and the parties do not agree to an administrative resolution process, the Grievance Process Manager will schedule a hearing for the earliest hearing date possible. The Grievance Process Manager will strive to schedule the hearing to occur within 45 days of learning that the matter will not be resolved through a post-investigation resolution.

At least 24 calendar days prior to the hearing, the Grievance Process Manager will send the parties a written notice of hearing that includes the following:

**Purpose of the Hearing.** The purpose of the hearing is to determine whether the respondent violated the specific policy provisions identified in the campus Title IX office's written notice to the parties.

**Advisors and support persons.** Each party has up to 3 calendar days from the date of the written notice of hearing to identify their advisor to the Grievance Process Manager, if their advisor was not previously identified to the campus Title IX office. If a party does not identify an advisor by this deadline, the Grievance Process Manager will offer the party a University-provided advisor to serve as outlined below in *Section XI. Advisor Participation in a Hearing*. Each party must identify any support person that will be present at the hearing in writing to the Grievance Process Manager no later than 3 calendar days prior to the hearing.

**Investigation Report.** The Grievance Process Manager will attach the investigation report to the written notice of hearing.

**Response to Investigation Report.** Each party may submit to the Grievance Process Manager a written response to the investigation report for consideration by the hearing panel. A written response may not exceed 3000 words, unless otherwise approved by the Grievance Process Manager in exceptional circumstances, in which case each party will be permitted the same number of additional words. The deadline for submission will be 17 calendar days from the date of the written notice of hearing (unless the Grievance Process Manager decides that there is good cause to extend this deadline). The Grievance Process Manager will strive to provide any response(s) to the investigation report to the hearing panel and any other party within 21 calendar days from the date of the written notice of hearing.

**Hearing.** The written notice of hearing will include the date, time, and location of the hearing after allowing both parties to communicate any scheduling conflicts to at least two proposed hearing dates. Hearings will take place virtually. The University can provide a private room for any party or witness who needs a private space from which to participate in the hearing. Any party or witness who needs a private space from which to participate should alert the Grievance Process Manager no later than 3 calendar days prior to the hearing.

**Hearing Officer and Panel Members.** The written notice of hearing will identify the hearing officer and panel members. Each party has up to 3 calendar days from the date of the written notice to submit an objection to the hearing officer or any panel member on the basis of actual bias or conflict of interest, along with a short statement of the basis for the objection. If an

objection is lodged against a panel member, the hearing officer will decide if the panel member should be excluded from the panel and replaced. If the objection is to the hearing officer, the Grievance Process Manager will decide if the hearing officer should be excluded from the panel and replaced and, if so, will arrange for the replacement. The Grievance Process Manager will send notice of the name of the replacement hearing officer or panel member to each party who will have 1 calendar day from the date of the Grievance Process Manager's notice to submit an objection.

If an appointed hearing officer or a panel member becomes unavailable for the hearing, a replacement hearing officer or panel member will be named. The Grievance Process Manager will send notice of the name of the replacement hearing officer or panel member to each party, who will have 1 calendar day from the date of the Grievance Process Manager's notice to submit an objection. However, if a panel member becomes unavailable for a hearing 5 or fewer days before the hearing or does not appear at the start of the hearing, the hearing will proceed as scheduled with only four voting members. A majority vote (three members) will be required to determine responsibility.

**Witnesses.** The written notice of hearing will state that each party must submit to the Grievance Process Manager a list of all witnesses the party intends to question at the hearing. The deadline for submission will be 17 calendar days from the date of the written notice of hearing (unless the Grievance Process Manager decides that there is good cause to extend this deadline). If a witness was interviewed by the campus Title IX office during the investigation process, the Grievance Process Manager will contact the witness and invite the witness to the hearing.

If a witness identified by a party was not interviewed during the investigation process, the party will provide a short description of the witness's relationship to the parties, expected testimony, and email address. Based on this information, the hearing officer will determine whether the witness's expected testimony is relevant and not otherwise impermissible. If the hearing officer determines that the witness's expected testimony is relevant and not otherwise impermissible, the Grievance Process Manager will contact the witness and invite the witness to the hearing.

During the hearing, parties may choose not to call any witness they have previously identified, at their discretion. However, parties may not call any witness who they have not previously identified.

At the request of the hearing officer or a panel member, the Grievance Process Manager may also invite witnesses to appear at the hearing who were not identified by either party, if such witnesses were interviewed or invited to be interviewed during the investigation process. Student witnesses are not obligated to attend the hearing. The Grievance Process Manager will strive to

make the witness list available to the hearing panel and any other party within 21 calendar days from the date of the written notice of hearing.

Written witness statements may also be submitted to the Grievance Process Manager. The deadline for submission of a written witness statement will be 17 calendar days from the date of the written notice of hearing (unless the Grievance Process Manager decides that there is good cause to extend this deadline). The hearing officer will determine if the witness statement is relevant and not otherwise impermissible, and, if so, the Grievance Process Manager will strive to make the witness statement available to the hearing panel and any other party within 21 calendar days from the date of the written notice of hearing.

**Evidence.** The Grievance Process Manager will obtain from the campus Title IX office all relevant and not otherwise impermissible evidence that the campus Title IX office gathered as part of its investigation. The Grievance Process Manager will strive to provide the parties with access to this evidence within 3 calendar days from the date of the written notice of hearing. Panel members will receive access to the same evidentiary information after the parties' deadline to submit their panel member objections, if any, has passed.

Each party must submit to the Grievance Process Manager any new evidence the party intends to submit to the hearing panel that was not considered during the investigation process. The deadline for submission will be 17 calendar days from the date of the written notice of hearing (unless the Grievance Process Manager decides that there is good cause to extend this deadline). The hearing officer will determine if the newly submitted evidence is relevant and not otherwise impermissible, and, if so, the Grievance Process Manager will strive to make the newly submitted evidence available to the hearing panel and any other party within 21 calendar days from the date of the written notice of hearing. If the hearing officer determines that the newly submitted evidence is not relevant or is otherwise impermissible, the Grievance Process Manager will notify the party who submitted the evidence.

Prior to the hearing, the hearing officer and panel members will review the complaint, the investigation report, all relevant and not otherwise impermissible evidence gathered by the campus Title IX office during the investigation process, the parties' written responses to the investigation report (if any), and any new evidence submitted by a party that the hearing officer has determined is relevant and not otherwise impermissible.

**Opportunity for Administrative Resolution.** The written notice of hearing will also offer the parties another opportunity to agree to resolve the case through an administrative resolution process.

## **XI. ADVISOR PARTICIPATION IN A HEARING**

If a party attends the hearing, the party's advisor is permitted to ask relevant and not otherwise impermissible questions and follow-up questions to parties and witnesses, and to additionally participate in other ways during the hearing, such as by making opening and closing statements.

If a party declines to attend a hearing, the party's advisor may still attend the hearing and ask relevant and not otherwise impermissible cross-examination and follow-up questions on behalf of the party, but may not otherwise participate in the hearing, other than in a non-speaking capacity. As noted above, if a party does not identify an advisor of their choice by 3 calendar days from the date of the written notice of hearing, the University will offer them the assistance of an advisor without charge. The party is responsible for accepting the University's offer in a timely manner to allow the appointed advisor sufficient time to access and review the documents.

If a party has not accepted the University's offer of an advisor in a timely manner or attends the hearing without an advisor, the University will provide them with an appointed advisor for the sole purpose of asking of any party or witness questions that the party provides to the appointed advisor (who will then pose the questions at the hearing).

## **XII. SUPPORT PERSONS IN A HEARING**

If a party attends the hearing, the party may also be accompanied at the hearing by a support person who participates in the hearing in a non-speaking capacity. A support person cannot be a fact witness in the case.

In most cases, a support person may not review any records that are private student education records under Board of Regents Policy: *Student Education Records* or private records under another applicable policy or law unless the records are displayed at the hearing.

## **XIII. HEARING DECORUM**

All hearings before the SDHC are governed by the following rules of decorum:

- All electronic devices, other than devices necessary for participation in a hearing conducted virtually, must be turned off or silenced during the hearing.
- All participants must ensure that they are in a private, secure space for the duration of the hearing. Participants must mute their microphones unless they have an active speaking role (e.g., making opening or closing comments, conducting direct or cross-examination, answering questions). Parties and witnesses must not turn off their cameras while they are speaking during the hearing, although they may turn off their cameras at other times.
- All participants must conduct themselves in a respectful manner at all times during a hearing. For example, participants may not yell, badger witnesses, use profanity, engage in personal attacks, ask the same question repeatedly, or otherwise ask questions in a

manner that is harassing, intimidating, or abusive. If the hearing officer determines that an advisor's question is harassing of the party or witness being questioned, the hearing officer will give the advisor one opportunity to clarify or revise the question.

- If a participant needs to leave the hearing for any reason, the participant must ask the hearing officer for a break in the proceedings.

The hearing officer has authority to ensure that the hearing is conducted in accordance with these rules of decorum. If a hearing participant, including a party, does not comply with the rules of decorum after being given a warning and opportunity to comply, the hearing officer will remove the participant and the hearing will continue. If a party's advisor is removed, the hearing officer will require the party to use a different advisor. If necessary, the University will provide the party with a new advisor to conduct questioning.

#### **XIV. ACCOMMODATIONS FOR THE HEARING**

Any participant in this process who needs reasonable accommodations for a disability should request accommodations through the campus disability services office and follow the process established by that office. The individual should also notify the Grievance Process Manager, who can assist in referring the individual to the campus disability services office. Any participant who needs reasonable accommodations for religion or pregnancy or related conditions should notify the Grievance Process Manager about the need for accommodations at least 3 days prior to the hearing. In addition, any participant who may need a language interpreter should notify the Grievance Process Manager as soon as possible.

#### **XV. RECORD OF HEARING**

Hearings are closed to the public. In certain limited circumstances, a third party may be permitted to attend a hearing, such as to provide reasonable accommodations for a participant with a disability or as otherwise deemed appropriate by the hearing officer. The Grievance Process Manager will record the hearing. No other participant is permitted to create an audio, visual, or other recording of the hearing.

The University will make available an audio recording of the live hearing to the parties for inspection and review.

The University will maintain the record of the hearing, the complaint, all evidence presented at the hearing, and all other related documentation for the longer of seven years or the retention period required by Administrative Policy: *Managing University Records and Information*.

#### **XVI. APPEARANCES**

Complainants, respondents, and student witnesses are not required to attend the hearing. The hearing panel may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The panel will not draw any inference about whether prohibited conduct occurred based solely on a party's or witness's refusal to respond to questions.

## **XVII. HEARING PROCESS**

The parties should prepare for a clear, complete, and concise presentation of their cases. The hearing panel will carefully review all written documentation in advance of the hearing; therefore, it is not necessary to repeat information found in the written record. Instead, case presentations should focus on points of contention or confusion and should seek to clarify inconsistencies. Except in exceptional cases as determined by the hearing officer, each party will be limited to two hours for the presentation of the party's case. The hearing officer may increase or decrease the time limit if appropriate.

Each party, either personally or through the party's advisor (if the party attends the hearing), may present brief opening comments. The parties will be given the opportunity to present relevant and not otherwise impermissible testimony and information by answering direct and cross-examination questions. The hearing panel will also have the opportunity to ask any questions it has of the parties.

The hearing panel will also have the opportunity to hear from any witnesses the parties or the hearing panel have identified in advance of the hearing.

After a party questions a witness, the other party's advisor and the hearing panel will have the opportunity to question that witness. Witnesses are only allowed to attend a hearing during their testimony.

Finally, the parties, either personally or through the party's advisor (if the party attends the hearing), can make brief closing comments.

## **XVIII. QUESTIONING OF PARTIES AND WITNESSES**

Questions intended to elicit relevant but not otherwise impermissible information may be asked during the hearing, including questions that seek to assess or challenge credibility. Questions that are duplicative might not be considered relevant.

Questioning at the hearing will be conducted by the parties' advisors and the hearing panel. The parties are not permitted to conduct questioning.

Before any question is posed at the hearing, the hearing officer will determine whether the question is relevant and not unclear, harassing, or otherwise impermissible, in which case the question must be posed, or whether the question is not relevant or unclear, harassing, or otherwise impermissible, in which case the question may not be posed. A question is deemed to be posed after: 1) the hearing officer has determined that it is intended to elicit relevant and not otherwise impermissible information, and 2) a party or witness is asked to respond.

If the hearing officer prevents a question from being posed, the hearing officer must state the reason for the determination. A party may register an objection for the record to a ruling on relevance. In addition, if the hearing officer determines that a question is unclear or harassing of a party or witness, the hearing officer will give the party one opportunity to revise or clarify the question. If the party sufficiently revises or clarifies the question, the question must be posed.

The following types of evidence, and questions seeking that evidence, are excluded from the grievance process as impermissible. These types of evidence will not be accessed, considered, disclosed, or otherwise used, regardless of whether the evidence at issue is relevant.

- Evidence relating to the complainant's sexual interests.
- Evidence relating to the complainant's prior sexual conduct, unless that evidence is: 1) offered to prove that someone other than the respondent committed the alleged conduct; or 2) evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to provide consent to the alleged prohibited conduct.
- Evidence that is protected under a legally recognized privilege, or evidence provided to a confidential employee, unless the individual to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the University obtains that party's or witness's voluntary, written consent for use in the grievance process.

## **XIX. DECISION ON RESPONSIBILITY**

At the close of the hearing, the hearing panel will deliberate in a closed session. Only the hearing panel and the Grievance Process Manager attend this session.

The hearing panel will not make credibility determinations based on a participant's status as a complainant, a respondent, or a witness.

In addition, the hearing panel will not draw any inferences based solely on a party's or witness's absence from the live hearing or refusal to answer questions.



The panel must make a decision on responsibility based on a preponderance of the evidence with respect to each policy provision the respondent is alleged to have violated. The hearing panel need not be unanimous in its decision, but a majority of the panel members must agree for the panel to make a decision that the respondent is responsible for a policy violation.

Where the hearing panel decides that a respondent engaged in prohibited conduct, the hearing panel may, at its discretion, make recommendations to the University Authority about disciplinary sanctions. The Grievance Process Manager will deliver these recommendations, if any, to the University Authority.

## **XX. DECISION ON DISCIPLINARY SANCTIONS AND OTHER RESPONSIVE ACTION**

When a hearing panel or officer decides that a respondent is responsible for a policy violation, the University Authority decides which disciplinary sanctions and other responsive actions will be implemented, if any. The University Authority is subsequently responsible for monitoring compliance with any disciplinary sanctions or other responsive actions and addressing any compliance failures by the respondent.

In cases involving a respondent who is a student and an employee (including student employees), the Grievance Process Manager will determine the appropriate University Authority(ies) to determine disciplinary sanctions and other responsive actions. In making this determination, the Grievance Process Manager will consider case-specific factors, including the context in which the alleged prohibited conduct occurred (e.g., whether it occurred in an employment or academic context) and the respondent's primary affiliation with the University.

In cases involving an employee or third party respondent, the Grievance Process Manager will promptly deliver the decision on responsibility to the campus Title IX office, which will make a recommendation on disciplinary sanctions and other responsive action based on the hearing panel's written decision on responsibility and rationale. The Grievance Process Manager will then provide the decision on responsibility and the campus Title IX office's recommendation to the University Authority.

The University Authority will strive to make the decision on disciplinary sanctions within 14 calendar days of receipt of the decision on responsibility. Where the University Authority's decision on discipline differs meaningfully from the recommendation on discipline made by the campus Title IX office, the discipline must be approved by:

- the Provost (in cases with faculty respondents from the Twin Cities campus);

- the Vice President for Human Resources (in cases with staff or third party respondents from the Twin Cities campus); or
- the respective Chancellor (in cases with respondents from the Crookston, Duluth, Morris, and Rochester campuses).

The Grievance Process Manager will facilitate this approval process. In cases where the Provost, Vice President of Human Resources, or respective Chancellor reviews a disciplinary decision, the Grievance Process Manager will need to appoint another individual to serve as appellate officer if an appeal is filed.

## **XXI. WRITTEN DETERMINATION**

Both parties and their advisors will be simultaneously provided with the hearing panel’s written decision on responsibility and the University Authority’s written decision on disciplinary sanctions, if any. Together, these written decisions on responsibility and disciplinary sanctions will constitute the “Written Determination” that may be appealed by either party.

The Written Determination will include:

- a description of the alleged prohibited conduct;
- information about the policies and procedures that the University used to evaluate the allegations;
- the evaluation of the relevant and not otherwise impermissible evidence, decision on responsibility, and rationale for the decision;
- a decision on disciplinary sanctions, if any, that will be imposed upon the respondent;
- a statement of whether the University will provide remedies to the complainant and/or to other individuals identified as experiencing the effects of prohibited conduct; and
- the University’s procedures for the parties to appeal the decisions on responsibility and disciplinary sanctions, as well as the permissible bases for appeal.

The Grievance Process Manager will strive to deliver the Written Determination simultaneously to the parties and their advisors within 28 calendar days of the hearing.

## **XXII. DISCIPLINARY SANCTIONS AND OTHER RESPONSIVE ACTION**

Responsive action is intended to eliminate prohibited conduct, prevent its recurrence, and promote accountability while supporting the University’s educational mission and legal obligations. Responsive action may include disciplinary, rehabilitative (including educational), restorative, and monitoring components.

Disciplinary sanctions will not be imposed on the respondent until: 1) the date on which an appeal would no longer be considered timely, if an appeal is not filed; or 2) the date that the parties are provided with the written decision of the result of the appeal, if an appeal is filed and disciplinary sanctions are imposed on the respondent as a result of the appeal.

The University will not impose discipline on a respondent for prohibited conduct unless and until there is a determination at the conclusion of the grievance process that the respondent engaged in prohibited conduct.

### **1. Range of disciplinary sanctions and other responsive action**

Possible disciplinary sanctions in cases with student respondents are identified as “Outcomes” in Section VI of Board of Regents Policy: *Student Conduct Code*.

Possible disciplinary sanctions and other responsive actions in cases with employee respondents (including student employees) may include one or a combination of the following:

- coaching or education;
- mentoring;
- changes to work duties or locations;
- monitoring to ensure that prohibited conduct is not occurring;
- probation;
- transfer of position;
- removal of administrative appointment;
- salary reduction;
- demotion;
- oral or written reprimand;
- suspension; and
- termination of employment.

For labor-represented employees, the disciplinary sanctions that may be imposed are those set forth in their union contract.

Possible disciplinary sanctions or other responsive actions in cases with third party respondents may include restrictions on a third party respondent’s participation in University programs or activities, including their ability to enter University property, among other things.

### **2. Considerations in determining disciplinary sanctions or other responsive action**

The following factors, among others, may be considered in deciding the appropriate disciplinary sanctions or other responsive actions to address a decision of responsibility for prohibited conduct:

- the severity, persistence, or pervasiveness of the prohibited conduct;
- the nature of the prohibited conduct;
- whether the prohibited conduct threatened physical safety;
- any incidents of prior misconduct by a respondent, including the respondent's disciplinary history, at the University or elsewhere;
- the impact of the prohibited conduct on the complainant and other members of the University community;
- an assessment of a respondent's potential for development, including whether the respondent has accepted responsibility for the prohibited conduct;
- the maintenance of a safe, nondiscriminatory, and respectful work and learning environment; and
- any other mitigating, aggravating, or compelling factors.

### **XXIII. APPEAL**

Any party may appeal the Written Determination. Appeals must be submitted to the Grievance Process Manager in writing within 7 calendar days of receipt of the Written Determination. Absent good cause, appeals received after 7 calendar days will be denied.

Submitted appeals must contain the ground(s) for the appeal, from the list below, and any information in support of the appeal. The Grievance Process Manager will forward the appeal to any other party, who then has 7 calendar days to submit a written response to the appeal. The Grievance Process Manager will forward the written response to the appeal, if any, to the appellant. The appellant may not submit additional information in response to the appellee's written response. Either party may review the recording of the hearing for purposes of the appeal.

Appeals are not intended to allow for a new review of the same information provided during the hearing, and the Appellate Officer will not substitute their judgment for that of the decisionmakers on responsibility and disciplinary sanctions, if any. Appeals are limited to the grounds set forth below.

- Procedural irregularity that would change the outcome.
- New evidence that was not reasonably available when the decision on responsibility was made and that would change the outcome.
- A sanction that is grossly disproportionate to the offense.

- A decision on responsibility that is not based on substantial information. Substantial information means relevant but not otherwise impermissible information that a reasonable person might accept as adequate to support a conclusion by a preponderance of the evidence. In making this determination, the Appellate Officer may not re-weigh the evidence and must not substitute the Appellate Officer's judgment for that of the hearing panel or officer.
- The Title IX Coordinator, investigator, hearing panel members, hearing officer, and/or University Authority had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

The Grievance Process Manager will forward the appeal and the written response to the appeal, if any, to the Appellate Officer. The Appellate Officer has discretion to ask for additional information from a party or to request information from the panel or the campus Title IX office.

The Appellate Officer will review the parties' written submissions and the Written Determination and, as necessary, the entire record of the grievance process.

The Appellate Officer will issue a written decision that (1) affirms, in whole or in part, the decision on responsibility, (2) overturns, in whole or in part, the decision on responsibility, (3) affirms, overturns, or adjusts the decision on disciplinary sanctions, or (4) remands the matter to remedy procedural errors or consider new evidence. The Appellate Officer will strive to issue a decision within 21 calendar days of receipt of the appeal and written response to appeal, if any. The decision of the Appellate Officer is the final University decision.

#### **XXIV. REMEDIES**

Where a decision on responsibility has been made that prohibited conduct occurred, remedies will be provided, as appropriate, to a complainant or any other person the University identifies as having had their equal access to the University's programs or activities limited or denied by prohibited conduct. Remedies are provided to restore or preserve that person's access to the University's programs or activities.

# ***Administrative Procedure: Reasonable Accommodations for Pregnancy and Related Conditions***

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The University does not discriminate against any person on the basis of current, potential, or past pregnancy or related conditions, including in its admissions policies, and will provide reasonable modifications to policies, practices, and procedures as necessary to prevent sex discrimination and ensure equal access to the University's programs and activities.

The University provides reasonable accommodations to individuals for pregnancy or related conditions. Pregnancy or related conditions includes any physical or mental condition related to, affected by, or arising out of:

- pregnancy, childbirth, termination of pregnancy, or lactation;
- medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

Reasonable accommodations are modifications to the University's policies, practices, or procedures that are necessary to prevent sex discrimination and ensure equal access to the University's programs and activities.

While pregnancy itself is not a disability, some impairments related to pregnancy or related conditions might be considered disabilities for which reasonable accommodations for disability are appropriate. The University provides reasonable accommodations to qualifying individuals with disabilities. See FAQ: *Reasonable Accommodations for Disabilities*.

## **I. INTERACTIVE PROCESS FOR REQUESTING AND RECEIVING REASONABLE ACCOMMODATIONS**

Reasonable accommodations are identified and implemented through an interactive process between the University and the individual seeking accommodation. The process is generally as follows:

First, the individual seeking accommodation must request an accommodation from either:

- the appropriate responsible administrator (the individual who has the authority to implement the accommodation, such as an instructor, supervisor, or department head); or
- the campus pregnancy accommodation coordinator, who is available to facilitate the interactive process between the responsible administrator and the individual seeking accommodation. Individuals seeking accommodation do not need to disclose information about their pregnancy or related condition to the responsible administrator, and can instead share that information with the campus pregnancy accommodation coordinator.

The individual seeking accommodation should:

- request the accommodation in advance, if possible, or as soon as reasonably practicable;
- identify the request as related to pregnancy or related conditions; and
- identify the modification that is needed due to pregnancy or related conditions and that gives rise to the request for accommodation.

Second, the responsible administrator must either:

- implement the requested accommodation(s); or
- engage in an interactive process with the individual seeking accommodation to identify alternate effective reasonable accommodation(s), if any. If the responsible administrator offers a reasonable accommodation that is accepted by the individual requesting accommodation, the responsible administrator must implement that accommodation.

The responsible administrator and individual seeking accommodation may consult with Human Resources or departmental leadership, the campus pregnancy accommodation coordinator, the campus Title IX office, and/or other appropriate resources (e.g., supervisor, department/unit leadership, Office of the General Counsel). The responsible administrator and individual seeking accommodation are each responsible for actively participating in the interactive process in good faith.

Denial of an accommodation request may be appropriate when an interactive process fails to result in identification of a reasonable accommodation. If the responsible administrator believes that they cannot grant an accommodation request and that no reasonable alternative accommodation is available, the responsible administrator should consult with Human Resources or departmental leadership, the campus pregnancy accommodation coordinator, the campus Title IX office, and/or another appropriate resource (e.g., supervisor, department/unit leadership, Office of the General Counsel) before denying the accommodation request.

Individuals who believe that they have been denied reasonable accommodation should report this concern to the campus Title IX office. Upon receiving such a report, the campus Title IX office

will apply its regular procedures for responding to sex discrimination reports, as described in the Administrative Policy: *Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*.

## **II. ASSESSMENT OF WHETHER A REQUESTED ACCOMMODATION IS REASONABLE**

The University is not required to provide an accommodation that is unreasonable. An accommodation for pregnancy or related medical conditions is unreasonable when it:

- is requested in an untimely manner;
- would fundamentally alter the nature of a University's program or activity;
- is requested by an employee who cannot fulfill essential job functions even with reasonable accommodation; or
- is requested by an employee or third party and would cause an undue hardship for the University.

A responsible administrator determines whether a request for accommodation or related conditions is unreasonable. A responsible administrator should generally consult with others (such as Human Resources, departmental leadership, the campus pregnancy accommodation coordinator, the campus Title IX office, or the Office of the General Counsel) before determining that a request for an accommodation for pregnancy or related conditions is unreasonable. In addition, a responsible administrator must be prepared to explain the basis for their determination and consider whether there are alternate reasonable accommodations that should be offered and, if so, to offer them.

### **1. Accommodations requested in an untimely manner**

Accommodations that are requested in an untimely manner are not reasonable and need not be provided by the University. Requests for retroactive accommodations are generally not reasonable, unless the accommodation need is related to a sudden medical condition and is requested as soon as reasonably practicable.

### **2. Accommodations requested by an individual that would fundamentally alter the nature of a University's program or activity.**

Requested accommodations that would fundamentally alter the nature of a University program or activity are not reasonable and need not be provided by the University.



When a student requests accommodation in an academic course or program, the responsible administrator must consult with a group of individuals who are trained, knowledgeable, and experienced in the area before making a determination that the requested accommodation would fundamentally alter the nature of a University program or activity, which in the academic context includes the learning outcomes (including skills, knowledge, and attitudes) that are required to uphold the academic and technical standards and the integrity of courses and academic programs. The groups could include faculty subject matter experts, department leaders, a program curriculum committee, and/or pedagogy consultants from the Center for Educational Innovation.

At a minimum, the group should discuss the following questions:

- What essential course or program requirement (learning outcome) does the requested accommodation fundamentally alter?
- What practical function does this essential requirement serve in the academic course or program?
- Is there documentation of the essential requirement in the course syllabus, professional standards, certification requirements, or elsewhere?
- How does the requested accommodation fundamentally alter this essential requirement?
- Has the requested accommodation been provided to any other student (e.g., to a student with an illness or injury or disability)?
- Is there another way that the student could meet the essential course or program objectives?

### **3. Accommodations requested by an employee who cannot fulfill essential job functions even with reasonable accommodation**

Accommodations that are requested by an employee who cannot fulfill essential job functions even with reasonable accommodation are not reasonable and need not be provided by the University, except as described below.

The University must provide reasonable accommodations related to an essential function the employee is not able to perform if:

- The employee can perform the essential function in the near future and a temporary suspension of the essential function would not create an undue hardship for the University. If the employee is pregnant, it is presumed that the employee can perform the essential function in the near future because they could perform the essential function within around 40 weeks of its suspension. For example, this criteria may be met by temporarily suspending the essential function that the employee cannot meet and instead having the employee:

- perform the remaining functions of their position;
- perform the remaining functions of their position and temporarily other functions assigned by the University;
- perform the functions of a different job to which the University temporarily transfers or assigns the employee; or
- temporarily perform light duty or modified duty work.

In determining whether a suspension of an essential function of an employee's position would result in an undue hardship for the University, the following factors will be considered, among others:

- the length of time that the employee will be unable to perform the essential function;
- whether, there is work (including reassigned work) for the employee to accomplish;
- the nature of the essential function, including its frequency;
- whether the University has provided other employees in similar positions who are unable to perform an essential function of their position with temporary suspensions of the essential function;
- if necessary, whether there are other employees, temporary employees, or third parties who can perform or be hired to perform the essential function; and
- whether the essential function can be postponed or remain unperformed for any length of time and, if so, for how long.

#### **4. Accommodations requested by employees that would cause an undue hardship**

Accommodations that would cause an undue hardship are not reasonable, and need not be provided to employees by the University. Undue hardship means a significant difficulty or expense that is incurred by the University. The following factors will be considered when determining whether an accommodation would cause an undue hardship:

- the nature and net cost of the accommodation requested;
- the overall financial resources and size of the facility or facilities involved in the provision of the reasonable accommodation;
- the overall financial resources, number of employees, and size of the University;
- the type of operation or operations of the University, including the composition, structure, and functions of its workforce, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the University; and

- the impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

For example, an accommodation may cause an undue hardship when it:

- jeopardizes the safety of the individual who requires the accommodation or others;
- infringes on the rights of employees, including the rights set forth in a collective bargaining agreement or other policy or law; or
- imposes an unreasonable burden on other employees or students.

The undue hardship standard is only met in rare circumstances. In determining whether an accommodation would create an undue hardship, a responsible administrator should rely on objective information, not on anticipated or hypothetical hardships to the University that could result from providing the accommodation. In addition, it is not appropriate to determine that an accommodation would create an undue hardship because others might request the same or similar accommodation in the future or because others think or might think it is unfair.

### **III. MEDICAL DOCUMENTATION**

#### **1. Medical documentation related to student accommodation requests**

The University may require supporting documentation for a student's request for accommodation when the documentation is necessary and reasonable for the University to determine reasonable accommodations. However, the University will not seek supporting documentation when:

- the need for accommodation is obvious;
- the student has previously provided the University with sufficient supporting documentation;
- the requested reasonable accommodation is allowing a student to carry or keep water nearby, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom;
- the student has lactation needs;
- other students requesting accommodations for temporary medical conditions are not required to provide supporting documentation; or
- the requested accommodation is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.

Students are not required to share medical information with their instructors and should share supporting documentation for an accommodation request, if required, with the campus pregnancy accommodation coordinator.

## **2. Medical documentation related to employee accommodation requests**

When it is reasonable under the circumstances, the University may seek supporting documentation to determine whether an employee requires accommodation due to pregnancy or related conditions. However, the University will not require an employee to provide supporting documentation when:

- the individual's pregnancy or related condition and the accommodation needed as a result are obvious;
- the University already has sufficient information to determine whether the employee is pregnant or has a related condition and needs an accommodation as a result;
- the employee seeks one of the following accommodations due to their own pregnancy: additional food, water, or restroom breaks, the ability to stand or sit as needed, the ability to keep water near them, or restrictions on lifting over 20 pounds;
- other employees requesting accommodations for temporary medical conditions are not required to provide supporting documentation; or
- the requested reasonable accommodation is related to a time and/or place to pump at work, other accommodations related to pumping at work, or a time to nurse during work hours.

When it is reasonable, under the circumstances, for the University to seek supporting documentation, the University will not require that the supporting documentation be submitted on a specific form.

When the University seeks documentation from a health care provider, the employee may provide documentation from, for example: doctors, midwives, nurses, nurse practitioners, physical therapists, lactation consultants, doulas, occupational therapists, vocational rehabilitation specialists, therapists, industrial hygienists, licensed mental health professionals, psychologists, or psychiatrists. The University will not require that the health care provider submitting documentation be the provider treating the condition at issue. Employees are not required to share medical information with their supervisor and should share such information with the campus pregnancy accommodation coordinator.

## **IV. CONFIDENTIALITY**

A responsible administrator should keep confidential all information related to an individual's accommodation for pregnancy or related conditions to the extent possible. In addition, a responsible administrator should not share information about an individual's pregnancy or

related condition with others who do not have a need to know, unless given permission by the individual.

## **V. EXAMPLES OF REASONABLE ACCOMMODATIONS**

Reasonable accommodations will be determined based on the needs of the individual seeking accommodation. For example, the following reasonable accommodations for pregnancy or related conditions may be available:

- measures to protect the health and safety of the individual and the pregnancy, such as limitations on heavy lifting, mobility support, intermittent absences to attend medical appointments, and additional or longer breaks;
- modifications to the physical environment, such as accessible seating and equipment, devices to assist with lifting or carrying, and reserved parking;
- course modifications, such as remote learning, withdrawal from courses, extensions of assignment, exam, or course completion deadlines, changes in course sequence, and course schedule changes;
- job modifications, such as part-time or modified work schedules, reassignment to a vacant position, remote work, changes to job assignments, temporary transfer to a less strenuous or hazardous position, schedule changes, and temporary suspension of one or more essential functions of the position;
- temporary leaves of absence; or
- other changes to policies, practices, or procedures.

***Reasonable accommodations for students participating in a performance, clinical rotation, or lab.*** A student who is absent from a performance, clinical rotation, or lab due to pregnancy or related conditions should work with their campus pregnancy accommodation coordinator and instructor and department to make an alternative plan to complete the required work. The responsible administrator must provide reasonable accommodations so that the student will not be disadvantaged in their course of study or research. For example, reasonable accommodations might include allowing the student to shift course order, substitute similar courses, and/or join a new cohort when returning from leave.

### **A. ACCOMMODATIONS FOR MEDICALLY NECESSARY ABSENCES**

#### **1. Medically necessary absences for students**

The University permits students to take medically necessary absences that are due to pregnancy or related conditions.

A student absent for medically necessary reasons related to pregnancy or related conditions will be allowed to return to the same academic status and, as practicable, to the same extracurricular status, that the student held when the absence began. The University will provide the student a meaningful opportunity and reasonable time to make up any coursework or exams missed during the absence, including any missed participation-related points or credit. The University may offer the student alternatives to making up missed work, such as retaking a semester, taking part in an online course credit recovery program, or allowing the student additional time in a program to continue at the same pace and finish at a later date, especially after longer periods of absence. Preferably, the student should be allowed to choose how to make up the work. Instructors' rules about attendance and make-up work generally cannot override these requirements.

## **2. Medically necessary absences for employees**

The University provides leave and other benefits and services to employees due to pregnancy or related conditions that are consistent with the leave, benefits, and services provided to employees with other temporary medical conditions.

Employees may be eligible for leave under the administrative policies on *Parental Leave and Medical Leave* and *Disability Benefits for Faculty and Academic Professional and Administrative Employees*. In addition, employees may have additional eligibility for leave under the Family and Medical Leave Act.

If the University's leave policies do not provide sufficient leave for an individual's pregnancy or related conditions, the University will provide the employee with a voluntary leave of absence without pay for a reasonable period of time.

At the conclusion of an employee's leave of absence related to pregnancy or a related condition, the employee will be reinstated to the status held when the leave began or to a comparable position, without a decrease in the rate of compensation or loss of promotional opportunities or any other right or privilege of employment.

## **B. PROCESS FOR OBTAINING CERTAIN ACCOMMODATIONS RELATED TO HEALTH AND SAFETY**

The University provides reasonable accommodations to protect the health and safety of individuals who are pregnant or have related conditions while in University programs and activities. For example, the University will provide personal protective equipment as needed to protect such individuals who may require personal protective equipment due to exposure to chemicals or other hazards in University programs or activities. Individuals who need personal protective equipment for pregnancy or related conditions should consult with the University's

Health, Safety and Risk Management by e-mailing [uohs@umn.edu](mailto:uohs@umn.edu). This office can assist by identifying the appropriate equipment, providing fit testing for respirators, and ensuring compliance with the OSHA Respiratory Protection Standard.

University units and departments are responsible for funding needed personal protective equipment for pregnant employees. University colleges (or departments) are responsible for funding needed personal protective equipment for pregnant students who require the equipment due to chemicals or other hazards present in academic programs or activities within the college (or department).

## **C. ACCOMMODATIONS FOR LACTATION**

The University provides reasonable accommodations related to lactation. For example:

### **1. Lactation spaces**

The University provides clean, private, and secure spaces for lactation that:

- are not a restroom;
- are shielded from view and free from intrusion;
- contain an electrical outlet, table, and a chair;
- are in reasonable proximity to the lactating individual's place of work or study;
- are in reasonable proximity to a sink and running water; and
- for lactation by employees, are in reasonable proximity to a refrigerator for storing milk.

For information about public lactation spaces on the University's campuses, visit [lacsaces.umn.edu](http://lacsaces.umn.edu).

### **2. Lactation breaks**

The University provides reasonable breaks for individuals to express breast milk as needed. To support lactating employees, reasonable breaks for employees to lactate are paid.

#### **a. Amount of time for lactation breaks**

The break time afforded for lactation will be sufficient to fully express milk. Generally, lactating individuals need 2-3 lactation breaks of 30 minutes or less during an 8-hour period, but individual needs vary. Lactation break time will include the time associated with travel to and from the lactation space, expressing milk, clean up, and storage. Some factors that may impact the time reasonably needed for a lactating individual to express milk include:

- the time it takes to walk to and from the lactation room and the wait, if any, to use the space;
- whether the lactating individual has to retrieve a pump and other supplies from another location;
- the time it takes to unpack and set up a pump;
- the efficiency of the pump used (employees using different pumps may require more or less time);
- whether there is a sink and running water nearby for the individual to use to wash hands before pumping and to clean the pump attachments when done expressing milk; and
- the time it takes for the individual to store milk in a refrigerator or personal cooler.

#### ***b. Scheduling of lactation breaks***

Lactation breaks will be scheduled based on the needs of the lactating individual and the operational considerations of the University.

Students will be excused from class, work, field experiences, exams, or other academic experiences as necessary to allow lactation. Students planning to express milk should do so around their scheduled classes and other academic obligations to the extent possible. Where this is not possible, instructors will work with students to allow for lactation breaks during the class or other academic obligation.

Employees planning to express milk during normal work hours should do so during scheduled breaks that are already provided (e.g., work breaks provided under policy or pursuant to the terms of a collective bargaining agreement) to the extent possible. Supervisors are expected to work with employees to arrange schedules to allow for reasonable lactation breaks. If lactation breaks cannot run concurrently with the employee's preexisting break time, the employee will be afforded separate lactation breaks.

### **3. Other possible accommodations for lactation**

Other accommodations for lactation may also be determined to be reasonable through the interactive process. For example, in some cases, a reasonable accommodation may include providing a lactating individual with:

- the ability to work from home for a specified period of time to be in proximity to their infant if the individual is unable to produce sufficient milk while pumping; or
- a temporary shift in job responsibilities where necessary to provide for lactation breaks.



## D. ACCOMMODATIONS FOR PARENTING INDIVIDUALS

The University does not discriminate against any person on the basis of current, potential, or past parental, family, or marital status, including in its admissions policies, and will not adopt or implement any policy, practice, or procedure concerning an individual's current, potential, or past parental, family, or marital status that treats the individually differently on the basis of sex. While University policy does not require the provision of accommodations related to parenting or caregiving, responsible administrators are encouraged to consider providing accommodations where possible. Accommodations should be provided equitably across parents of all gender identities and parents of all types (e.g., birth, adoptive, foster).

An individual seeking such accommodations should consult with an appropriate responsible administrator (e.g., an instructor, supervisor, or department head), who can determine whether to grant such accommodations on a case-by-case basis. For student parents seeking accommodations, the campus parenting support office may be able to provide support and assistance.

## E. CAMPUS CONTACTS

Students who would like to request accommodations for pregnancy or related conditions should contact the campus pregnancy accommodation coordinator listed below.

<b>Campus</b>	<b>Campus Pregnancy Accommodation Coordinators for Students</b>
Crookston	Taylor Bryant, Director, Disability Resources 218-281-8587   broek016@umn.edu
Duluth	Susana Pelayo-Woodward, Director, Office of Diversity & Inclusion 218-726-8444   swoodwar@d.umn.edu
Morris	Adrienne Conley, Assistant Director of Student Life 320-589-7638   amconley@morris.umn.edu
Rochester	Jeff Baier, Disability Resources Coordinator 507-589-8058   jbaier@r.umn.edu
Twin Cities	PregnancyAccom@umn.edu

Employees who would like to request accommodations for pregnancy or related conditions should contact their supervisor, Human Resources representative, or campus Title IX office.

To report concerns about the provision of reasonable accommodations for pregnancy or related conditions, contact the campus Title IX office.

# ***Administrative Procedure: Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence Reported to Have Occurred Between August 15, 2020 and July 31, 2024***

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This Procedure applies to sexual harassment, sexual assault, stalking, and relationship violence that is reported to have occurred between August 15, 2020 and July 31, 2024. Sexual harassment, sexual assault, stalking, and relationship violence covered by this Procedure are referred to as “prohibited conduct.”

## ***I. Grievance Process Exceptions to Administrative Procedure: Response Procedures In Cases Involving Sexual Harassment, Sexual Assault, And Other Forms Of Sex Discrimination***

Prohibited conduct is subject to the Administrative Procedure: *Response Procedures in Cases Involving Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination* with the following exceptions to these Sections as described below:

- Section II F.2 (Participation Requirements),
- Section II.1 (Removal of Respondent from University Programs or Activities),
- Section IV (Grievance Process), and
- Section V (Alternative Resolution Processes).

### **A. PARTICIPATION REQUIREMENTS**

Parties and witnesses are not required to participate in a grievance process under this policy. When a complainant, respondent, or witness declines to provide relevant information during a grievance process, the grievance process may proceed if there is sufficient information to do so. A decision on responsibility and disciplinary sanctions, if any, will be based only on the information available.

### **B. REMOVAL OF RESPONDENT FROM UNIVERSITY PROGRAMS OR ACTIVITIES**

*Student respondents.* A student respondent may be removed from their University role as an interim measure during a grievance process in two circumstances. First, the University may undertake emergency removal of a student respondent for reasons arising from the alleged prohibited conduct when the University: 1) undertakes an individualized safety and risk analysis;

2) concludes that there is an immediate threat to the physical health or safety of any student or other individual arising from the alleged prohibited conduct; and 3) provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. Second, the University may impose an interim disciplinary suspension on a student respondent in accordance with [Board of Regents Policy: Student Conduct Code](#), Section VI. Interim Suspension for reasons not arising from the alleged prohibited conduct.

The University may also limit a student's participation in University activities or programs during a grievance process if it qualifies as a supportive measure under this policy.

***Employee and third party respondents.*** The University may remove an employee or third party respondent from its programs or activities on an emergency basis for reasons arising from a report of prohibited conduct when the University: 1) undertakes an individualized safety and risk analysis; 2) determines that there is an imminent and serious threat to the health or safety of a complainant, or any students, employees, or other persons arising from the report of prohibited conduct; 3) determines that this threat justifies removal; and 4) provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. An emergency removal may occur with or without a pending grievance process.

The University may also limit an employee or third party respondent's participation in University activities or programs during a grievance process if it qualifies as a supportive measure under this policy.

In addition, the University may place an employee respondent on administrative leave from employment during a grievance process. Such action may be appropriate when there is a legitimate concern that, without the leave: 1) the respondent will engage in prohibited conduct while the grievance process is ongoing, 2) the respondent's continued employment during the grievance process would be unduly disruptive to University members or University programs or activities; or 3) other facts or circumstances support the imposition of administrative leave.

### **C. GRIEVANCE PROCESS TIMELINES**

***Complaint evaluation process.*** The campus Title IX office strives to complete the complaint evaluation process and send out written notice of the grievance process, if any, within 10 calendar days of receipt of the complaint.

***Investigation process.*** The campus Title IX office strives to complete investigations within 120 calendar days of sending the written notice of the grievance process to the parties.

***Determination process.*** In matters that proceed to a live hearing or administrative resolution, the Grievance Process Manager strives to deliver the Written Determination to the parties and their advisors within 75 calendar days of the completion of the investigation.

***Appeal process.*** The Grievance Process Manager strives to deliver the decision of the Appellate Officer to the parties within 30 calendar days of receiving an appeal.

The timelines identified in this policy may be extended for good cause. When these processes are not completed within the above-described timelines, the campus Title IX office or Grievance Process Manager will provide written notification to the parties of the delay and the reason for the delay.

#### **D. PROMOTION OF FAIRNESS**

To promote fairness in the grievance process, the University requires that its Title IX Coordinator, investigators, and decisionmakers do not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

#### **E. COMPLAINT EVALUATION**

##### **1. Complaint requirements**

The campus Title IX office will initiate the grievance process when a formal complaint alleging prohibited conduct in violation of this policy is filed by a complainant or signed by the Title IX Coordinator.

A formal complaint is a document filed by a complainant or signed by the Title IX Coordinator that: 1) alleges that an individual engaged in prohibited conduct toward a complainant; and 2) requests that the University investigate the allegation of prohibited conduct. A complainant files a formal complaint by submitting such a document to the campus Title IX office that contains the complainant's physical or digital signature or otherwise indicates that the complainant is the individual filing the formal complaint. A formal complaint may be filed with the Title IX Coordinator in person, by mail, by e-mail, or through an online portal provided for this purpose, where available.

##### **2. Campus Title IX office response upon receiving a complaint**

Upon receipt of any report of prohibited conduct, the campus Title IX office will contact a complainant to provide information about supportive measures and applicable response processes offered by the University.

When a complaint is made, the campus Title IX office engages in a case evaluation process in which it will, among other things:

- conducts outreach, if not already done, to provide information about supportive measures and applicable response processes;
- takes steps as needed to clarify the allegations of prohibited conduct in the complaint;
- determines whether to dismiss the complaint or initiate a grievance process;
- where more than one complaint has been submitted, determines whether to consolidate complaints;
- identifies the parties; and
- prepares notice of grievance process documents.

### **3. Initiation of a complaint by the Title IX Coordinator**

When a complainant does not make a complaint, the Title IX Coordinator may initiate a complaint on behalf of the University. The Title IX Coordinator may initiate a complaint when they determine that the conduct as reported presents an imminent and serious threat to the health or safety of the complainant or another person, or that the conduct as reported prevents the University from ensuring that the complainant or another person has equal access on the basis of sex to its programs or activities.

In making this determination, the Title IX Coordinator will consider, at a minimum:

- the complainant's request not to proceed with initiation of a complaint;
- the complainant's reasonable safety concerns regarding initiation of a complaint;
- the risk that additional acts of prohibited conduct would occur if a complaint is not initiated;
- the severity of the reported prohibited conduct, including whether the allegations, if established, would require the removal of a respondent from University property or the imposition of another disciplinary sanction to end the reported prohibited conduct and prevent its recurrence;
- the age and relationship of the parties, including whether the respondent is an employee of the University;
- the scope of the reported prohibited conduct, including information suggesting a pattern of ongoing prohibited conduct, or prohibited conduct reported to have impacted multiple individuals;
- the availability of evidence to assist a decisionmaker in determining whether prohibited conduct occurred; and
- whether the University could end the reported prohibited conduct and prevent its recurrence without initiating a grievance process.

If the Title IX Coordinator decides to initiate a complaint, the campus Title IX office will notify the complainant prior to doing so and appropriately address reasonable concerns about the

complainant's safety or the safety of others, including by providing additional or expanded supportive measures as appropriate.

Regardless of whether a complaint is initiated, the campus Title IX office will take other appropriate prompt and effective steps: 1) as necessary to effectuate the remedies provided to an individual complainant, if any; and 2) to ensure that sex discrimination, if any, does not continue or recur within the University's programs or activities.

#### **4. Consolidation of complaints**

The University may consolidate complaints when:

- the allegations arise out of the same facts or circumstances;
- there are: 1) complaints by one complainant against more than one respondent; 2) complaints by more than one complainant against one or more respondents; or 3) cross-complaints; and
- consolidation would comply with applicable privacy laws.

#### **5. Decision about the designation of prohibited conduct**

Upon receipt of a formal complaint, the campus Title IX office will initiate a grievance process. Once the campus Title IX office initiates a grievance process, it will provide notice to the parties in writing of, among other things:

- its decision about whether to designate the alleged prohibited conduct as Title IX-based prohibited conduct;
- the reasons for this decision; and
- the parties' right to appeal this decision, as described below.

#### **6. Dismissal of a complaint**

The campus Title IX office may dismiss a complaint or any allegations therein after receiving a complaint when:

- the University is unable to identify a respondent after taking reasonable steps to do so;
- a respondent is not participating in any University program or activity and is not employed by the University;
- a complainant voluntarily and in writing withdraws any or all allegations in the complaint, and to the extent there are any remaining allegations of prohibited conduct, the campus Title IX office determines that they would not constitute prohibited conduct even if proven; or

- the campus Title IX office determines that the conduct alleged in the complaint, even if proven, would not constitute prohibited conduct.

Prior to dismissing a complaint because it would not constitute prohibited conduct even if proven, the Title IX office will make reasonable efforts to clarify the allegations with the complainant.

When dismissing a complaint, the campus Title IX office will simultaneously notify the known parties in writing of: 1) the complaint, if this notice has not yet been provided; 2) the decision to dismiss; 3) the reasons for the dismissal; and 4) the parties' right to appeal the dismissal to an impartial appellate officer.

### **7. Appeal of a dismissal of a complaint or of a decision about the designation of prohibited conduct**

Any party may appeal the campus Title IX office's written decision to: 1) designate the alleged conduct as Title IX-based prohibited conduct or its decision to not make that designation; or 2) dismiss a formal complaint for one of the permissible reasons set forth in the preceding section.

Appeals must be submitted to the Grievance Process Manager in writing within 7 calendar days of the campus Title IX office's provision to the parties of the written decision to dismiss a complaint. Absent good cause, appeals received after 7 calendar days will be denied.

After receiving a timely appeal, the Grievance Process Manager will send a copy of the appeal to the non-appealing party, if known, and the campus Title IX office. The non-appealing party and the campus Title IX office will be provided an opportunity to respond with a statement in support of, or challenging, the appeal. Any response must be submitted in writing within 7 calendar days from the date that the non-appealing party and campus Title IX office received the appeal.

The Appellate Officer's review is limited to the grounds set forth below:

- Procedural irregularity that affected the outcome.
- New evidence that was not reasonably available when the determination to dismiss was made and that could have affected the outcome.
- The campus Title IX office had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome.

In making this determination, the Appellate Officer will not substitute their judgment for that of the campus Title IX office. In most cases, the appellate review is limited to review of the



complaint, the rationale and written decision by the campus Title IX office, the written appeal and response documents submitted by the parties, and any explanation submitted by the campus Title IX office. The Grievance Process Manager is responsible for providing these documents to the Appellate Officer. The Appellate Officer may, at their discretion, request and review additional information from the campus Title IX office.

The Appellate Officer will issue a written decision that: 1) affirms, in whole or in part, the decision, 2) overturns, in whole or in part, the decision, or 3) remands the matter to remedy procedural errors or consider new evidence. The Appellate Officer will strive to issue a decision within 14 calendar days of receipt of all appeal and response documents. The Grievance Process Manager will notify the parties of the result of the appeal and the rationale for the result.

### **8. Applicable administrative procedure after Title IX or non-Title IX designation**

The decision to designate prohibited conduct as Title IX or non-Title IX prohibited conduct is final: (1) after the time for appeal has lapsed without an appeal; or (2) after the Appellate Officer's written decision on appeal if the appeal does not remand the matter.

After a final designation decision is made, alleged prohibited conduct that is designated as Title IX prohibited conduct is addressed under the Section IV: Grievance Process that is set forth in this Administrative Procedure.

Alleged prohibited conduct that is designated as non-Title IX prohibited conduct is addressed under the Administrative Procedure: *Response Procedures in Cases Involving Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*. However, at its discretion, the campus Title IX office may instead decide to apply this Administrative Procedure in matters where a complaint involves reports of both non-Title IX and Title-IX prohibited conduct.

## **F. GATHERING AND CONSIDERATION OF EVIDENCE**

### **1. Standard of evidence**

The University's grievance process applies the preponderance of the evidence standard when determining whether this policy has been violated. "Preponderance of the evidence" means that it is more likely than not that a policy violation has occurred. The grievance process includes a presumption that a respondent is not responsible for the reported prohibited conduct unless and until a decision of responsibility is made at the conclusion of the grievance process.

### **2. Consideration of evidence**

The University has the burden to conduct a grievance process that gathers sufficient evidence to determine whether prohibited conduct occurred. The grievance process will treat complainants and respondents equitably, and will include:

- an equal opportunity for the parties to present witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible;
- the University's objective review of all evidence gathered; and
- credibility determinations, where applicable, that are not based on an individual's status as a complainant, respondent, or witness.

### **3. Impermissible evidence**

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not considered relevant and are therefore impermissible, unless such questions and evidence: 1) are offered to prove that someone other than the respondent committed the conduct alleged by the complainant; or 2) concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

The consideration of information protected under a legally recognized privilege, or questions seeking disclosure of this information, is impermissible, unless the person holding the privilege waives it.

Access to or consideration of a party's records that were made or maintained by a physician, psychiatrist, psychologist, or other professional in connection with the provision of treatment to the party is impermissible, unless that party provides voluntary, written consent.

## **G. INVESTIGATION**

The University provides for adequate, reliable, and impartial investigations of complaints.

### **1. Investigatory offices**

Investigations of complaints will be conducted by the campus Title IX office. If a prohibited conduct investigation reveals possible misconduct other than prohibited conduct under this policy, the campus Title IX office may forward this information to the appropriate University office responsible for responding to such misconduct.

### **2. Written notice to the parties**

After the complaint evaluation process is complete, the campus Title IX office will provide written notice of the allegations to the parties whose identities are known with sufficient time for the parties to prepare a response before any initial interview. The written notice will include:

- Notice that a grievance process is being initiated.
- Information about the grievance procedures and any available processes for alternative resolution.
- Information about applicable supportive measures and advisor resources, and an opportunity to discuss them with the campus Title IX office.
- The identities of the parties involved in the reported prohibited conduct, the conduct reported to constitute prohibited conduct, and the date(s) and location(s) of the reported prohibited conduct, to the extent this information is available to the University.
- Notice of the decision on whether the reported conduct will be designated as Title IX prohibited conduct, the reasons for this decision, and the parties' right to appeal this decision;
- A statement that retaliation is prohibited.
- A statement that the respondent is presumed not responsible for the reported prohibited conduct unless and until a decision of responsibility is made at the conclusion of the grievance process.
- A statement that, prior to the determination of whether prohibited conduct occurred, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker.
- A statement that, during the grievance process, the parties are entitled to an equal opportunity to access and respond to the relevant and not otherwise impermissible evidence.
- Notice that the parties may be accompanied to meetings and hearings in the grievance process by: 1) an advisor of their choice who may be, but is not required to be, an attorney; and 2) a support person who cannot be a fact witness in the case.
- Notice that this policy prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, during the course of an investigation, the campus Title IX office decides to investigate additional allegations of prohibited conduct, the campus Title IX office will provide notice of those additional allegations to the appropriate parties whose identities are known.

### **3. Investigation process**

The nature and scope of an investigation will be determined based on the complaint and any additional information gathered during the investigation. The investigation process will include the following elements.

### **a. Gathering of evidence**

The investigation process will include the gathering of relevant and not otherwise impermissible evidence, including by:

- conducting one or more interviews of a complainant, where the complainant will have the opportunity to describe the allegations giving rise to the formal complaint, provide evidence, and identify witnesses;
- conducting one or more interviews of a respondent, where the respondent will have the opportunity to respond to the allegations, provide evidence, and identify witnesses;
- conducting one or more interviews of witnesses, as appropriate;
- collecting documents, photographs, communications between the parties, and other electronic records as appropriate; and
- collecting other evidence identified by the parties or investigator, if other evidence exists.

The campus Title IX office will interview a witness or witnesses identified by a party if the information the party has shared about the witness or witnesses suggests that they possess relevant and not otherwise impermissible information.

### **b. Review of evidence and investigation report**

The campus Title IX office will provide an equal opportunity for the parties and their advisors to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint as follows:

Prior to completion of the investigation, the campus Title IX office will send to each party and the party's advisor, if any, the evidence and a summary of the relevant evidence for inspection and review. The parties will be provided 10 calendar days in which to submit a written response, which the campus Title IX office will consider prior to completion of the investigation.

Following receipt of any written response, the investigator will draft an investigation report that fairly summarizes the relevant evidence, provides an analysis of the evidence, and provides a recommended decision on responsibility.

## **H. POST-INVESTIGATION DETERMINATION AND APPEAL PROCESSES**

The post-investigation determination and appeal processes include the following steps:

- Provision of the investigation report to the parties.

- An opportunity in certain cases for the parties to resolve the case through a post-investigation resolution proposal.
- An opportunity in certain cases for the parties to resolve the case through an administrative resolution process.
- A live hearing, if the case is not resolved through a post-investigation resolution proposal or administrative resolution process.
- The provision of a Written Determination to the parties and their advisors if the case goes through an administrative resolution process or a live hearing.
- An opportunity for the parties to appeal the Written Determination.
- Implementation of disciplinary sanctions, if any.
- The provision of remedies, if any, to the complainant and other persons that the University identifies as having had equal access to the University's programs or activities limited or denied by prohibited conduct.

Additional detail about the post-investigation determination and appeal processes is set forth in Administrative Procedure: *Post-Investigation Procedures in Cases Involving Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*.

## **I. ALTERNATIVE RESOLUTION PROCESSES**

Alternative resolution processes are intended to resolve reports of prohibited conduct with the parties' voluntary consent and without the completion of a grievance process. Once agreed to, alternative resolution processes are binding on the parties and preclude the parties from initiating or resuming a grievance process arising from the same allegations. The University will not require parties to participate in an alternative resolution process.

The University may offer alternative resolution processes to parties at any time before a final decision on responsibility is made. The University has discretion to determine whether it is appropriate to offer an alternative resolution process. The University will not offer alternative resolution processes in cases where the complainant is a student and the respondent is an employee.

## **II. Exceptions to Administrative Procedure: *Post-Investigation Procedures In Cases Involving Sexual Harassment, Sexual Assault, And Other Forms Of Sex Discrimination***

Prohibited conduct is subject to the Administrative Procedure: *Post-Investigation Procedures in Cases Involving Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*, with the following exceptions to these Sections as described below:

- VII. Post-Investigation Resolution Proposal

- IX. Administrative Resolution
- X. Written Notice of Hearing (Witnesses)
- X. Written Notice of Hearing (Evidence)
- XII. Advisor Participation in a Hearing
- XIII. Hearing Decorum
- XVI. Appearances
- XVIII. Questioning of parties and witnesses
- XXI. Written Determination

This Section sets forth the procedures that apply to prohibited conduct as defined in this Procedure instead. For ease of reference, the sections below use the same numbering as in Administrative Procedure: *Post-Investigation Procedures in Cases Involving Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*.

**VII. Post-Investigation Resolution Proposal** – A post-investigation proposal will not be offered in cases where the complainant is a student and the respondent is an employee.

**IX. Administrative Resolution** – An administrative resolution will not be offered in cases where the complainant is a student and the respondent is an employee.

**X. Written Notice of Hearing (Witnesses)** – Employee witnesses are not obligated to attend the hearing.

**X. Written Notice of Hearing (Evidence)** – The Grievance Process Manager will obtain from the campus Title IX office all evidence directly related to the allegations in the formal complaint that the campus Title IX office gathered as part of its investigation. This information will not include 1) information subject to a legally protected privilege and 2) medical treatment records offered without an individual’s voluntary, written consent.

**XI. Advisor Participation in a Hearing** - If neither the party nor the party’s advisor attend the hearing, the University will provide an advisor for the sole purpose of conducting cross-examination on behalf of the absent party.

**XIII. Hearing Decorum** – Hearing participants must not turn off their cameras and must appear on camera throughout the hearing.

**XVI. Appearances** – Employee witnesses are not obligated to attend the hearing.

**XVI. Appearances** – If neither the party nor the party’s advisor attend the hearing, the University will provide an advisor for the sole purpose of conducting cross-examination on behalf of the absent party.

**XVIII. Questioning of parties and witnesses** – Replace Section XVIII from the *Post-Investigation Procedures in Cases Involving Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination* with the following:

Questions intended to elicit relevant but not otherwise impermissible information may be asked during the hearing, including questions that seek to assess or challenge credibility. Questions that are duplicative might not be considered relevant.

Questioning at the hearing will be conducted by the parties’ advisors and the hearing panel. The parties are not permitted to conduct questioning.

Before any question is posed at the hearing, the hearing officer will determine whether the question is permissible (because it is relevant and not unclear, harassing, or otherwise impermissible), in which case the question must be posed, or whether the question is impermissible (because it is not relevant or because it is unclear, harassing, or otherwise impermissible) in which case the question may not be posed. A question is deemed to be posed after: 1) the hearing officer has determined that it is permissible, and 2) a party or witness is asked to respond.

If the hearing officer determines that a question is impermissible, the hearing officer must state the reason for the determination. A party may register an objection for the record to a ruling on relevance. In addition, if the hearing officer determines that a question is unclear or harassing of a party or witness, the hearing officer will give the party one opportunity to revise or clarify the question. If the party sufficiently revises or clarifies the question, the question must be posed.

Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not considered relevant, unless such questions and evidence: 1) are offered to prove that someone other than the respondent committed the conduct alleged by the complainant; or 2) concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.

There will be no consideration of information protected under a legally recognized privilege, or questions seeking disclosure of this information, unless the person holding the privilege waives it.

There will be no access to or consideration of a party's records that were made or maintained by a physician, psychiatrist, psychologist, or other professional in connection with the provision of treatment to the party, unless that party provides voluntary, written consent.

**XXI. Written Determination** – The Written Determination will also include a description of the procedural steps taken by the University from its receipt of the formal complaint through the Written Determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held.



## Appendix: *University Authorities and Appellate Officers*

This appendix applies to the Administrative Policy: *Discrimination* and Administrative Policy: *Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination*.

<b>Respondent</b>	<b>University Authority</b>	<b>Appellate Officer</b>
<b>Student</b>	The campus student conduct office	For students on the Twin Cities campus: Vice President for Student Affairs or designee  For students on the Morris, Rochester, Duluth and Crookston campuses: Chancellor or designee
<b>Faculty or staff member</b>	Dean, Vice President, Vice Chancellor or equivalent senior administrator that oversees the respondent or the respondent's department or unit	For faculty on the Twin Cities campus: Executive Vice President and Provost or designee  For staff on the Twin Cities campus: Vice President for Human Resources or designee  For staff and faculty on the Morris, Rochester, Duluth and Crookston campuses: Chancellor or designee
<b>Third Party</b>	University official who retains or oversees the third party, as designated by the responsible Vice President, Vice Chancellor or equivalent senior administrator	Twin Cities campus: Vice President for Human Resources or designee  Morris, Rochester, Duluth and Crookston campuses: Chancellor or designee

<b>Twin Cities Deans</b>	Executive Vice President and Provost	President or designee
<b>Vice Chancellors and Deans on the Crookston, Duluth, Morris and Rochester campuses</b>	Chancellor	President or designee
<b>Executive Vice President, Senior Vice President, Vice President or Chancellor</b>	President	Board of Regents Chair or designee
<b>General Counsel</b>	President, with approval of the Board of Regents	Board of Regents Chair or designee
<b>President and other employees who report to the Board of Regents</b>	Board of Regents	Board of Regents Chair or designee

The University Authority: 1) offers post-investigation resolution proposals; and 2) decides upon and implements responsive action, including disciplinary sanctions. If an individual identified herein as the University Authority has a conflict of interest that prevents them from serving in the University Authority role in a particular matter, the Appellate Officer will appoint a different individual to serve as University Authority in that matter.

The Appellate Officer decides appeals as set forth in the policy. If the identified Appellate Officer also served as the University Authority in the case, or has another conflict of interest that prevents them from serving as Appellate Officer, the Appellate Officer will be the President or President’s designee.

## Appendix: Order of Hearing Proceedings

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*Note: The complainant and the respondent may be accompanied by an advisor and may have an advisor act on their behalf throughout the hearing proceedings listed below except for No. 3. If a party declines to attend the hearing, that party's advisor may still attend the hearing and conduct cross-examination on behalf of the party, but may not otherwise participate in the hearing except in a non-speaking capacity.*

- 1) Call to order, announcements, and opening remarks by the hearing officer.
- 2) Presentation of the complaint by the hearing officer including the specific policy provisions alleged to have been violated.
- 3) The respondent responds to the complaint by stating "Responsible" or "Not responsible."
- 4) The complainant and/or their advisor may provide opening comments (up to 5 minutes).
- 5) The respondent and/or their advisor may provide opening comments (up to 5 minutes).

***Party case presentations (up to 2 hours each).*** Each party's case presentation includes direct examination of the party and the party's witness(es), if any, as well as cross-examination of the opposing party and the opposing party's witness(es) if any. If a witness is not available at the time called, the hearing will not stop. If the party has not exhausted their allotted time, they may reserve up to 10 minutes total for recall/follow-up questions (see "Final Recall" items 8 and 9 below).

- 6) The complainant presents information:
  - a. The complainant's advisor may ask questions of the complainant. This uses the time allotted for the complainant's case presentation.
  - b. The respondent's advisor may cross-examine the complainant. This uses the time allotted for the respondent's case presentation.
  - c. The hearing panel may ask any questions it has for the complainant.
  - d. The complainant's witness(es), if any (repeat for each witness):
    - i. The complainant's advisor may ask questions of the witness. This uses the time allotted for the complainant's case presentation.
    - ii. The respondent's advisor may cross-examine the witness. This uses the time allotted for the respondent's case presentation.
    - iii. The hearing panel may ask any questions it has for the witness.
- 7) The respondent presents information:

- a. The respondent's advisor may ask questions of the respondent. This uses the time allotted for the respondent's case presentation.
- b. The complainant's advisor may cross-examine the respondent. This uses the time allotted for the complainant's case presentation.
- c. The hearing panel may ask any questions it has for the respondent.
- d. The respondent's witness(es), if any (repeat for each witness):
  - i. The respondent's advisor may ask questions of the witness. This uses the time allotted for the respondent's case presentation.
  - ii. The complainant's advisor may cross-examine the witness. This uses the time allotted for the complainant's case presentation
  - iii. The hearing panel may ask any questions it has for the witness.

***Final recall.*** Opportunity for a few brief, clarifying questions of the complainant and/or the respondent. Witnesses may not be recalled.

- 8) Final recall of the complainant, if any.
  - a. The complainant's advisor may ask final questions of the complainant (up to 5 minutes). This uses the time allotted for the complainant's case presentation.
  - b. The respondent's advisor may ask final questions of the complainant (up to 5 minutes). This uses the time allotted for the respondent's case presentation.
  - c. The hearing panel may ask final questions for the complainant (up to 5 minutes).
- 9) Final recall of the respondent, if any.
  - a. The respondent's advisor may ask final questions of the respondent (up to 5 minutes). This uses the time allotted for the respondent's case presentation.
  - b. The complainant's advisor may ask final questions of the respondent (up to 5 minutes). This uses the time allotted for the complainant's case presentation
  - c. The hearing panel may ask final questions for the respondent (up to 5 minutes).
- 10) Closing comments from the complainant and/or their advisor (up to 10 minutes).
- 11) Closing comments from the respondent and/or their advisor (up to 10 minutes).
- 12) The hearing officer adjourns the hearing.
- 13) The hearing panel retires to deliberate in a closed meeting that is not recorded. The hearing panel evaluates the relevant and not otherwise impermissible evidence, makes a decision on responsibility, and deliberates on the rationale for the decision.

# CIVIL SERVICE EMPLOYMENT RULES

Approved by the University of Minnesota  
Board of Regents

**Effective: February 17, 2023**

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# RULE 1 History, Purpose, Amendment of Rules

## 1.1 History and Purpose of the Rules

1.1.1 These rules, through June 30, 2011 prepared and recommended by the Vice President for the Office of Human Resources and the duly appointed Civil Service Committee in accordance with the authority vested in them by the Basic Law for Civil Service of the University of Minnesota, as approved by the Board of Regents on November 24, 1945, were until the adoption of the Civil Service Senate Constitution known as the Civil Service Rules, or Rules.

1.1.2 Henceforth prepared and recommended by the Vice President for the Office of Human Resources and the Civil Service Consultative Committee under the authority vested in them by the Board of Regents and the Civil Service Senate Constitution, they shall be known as the Civil Service Employment Rules, or Rules, and shall govern the operation of the University of Minnesota Civil Service personnel system from July 1, 2011 onward.

1.1.3 The words "Vice President" as used in these Rules shall refer to the administrative head or designee of the Office of Human Resources. The words "the President" shall refer to the President of the University of Minnesota. The words "Consultative Committee" or "the Committee" as used in these Rules shall refer to the Civil Service Consultative Committee, with powers and duties designated by the governing documents of the Civil Service Senate and by these Rules.

1.1.4 For the purpose of this document all the terms defined in the appendix "Definitions" have the meanings given them unless otherwise stated.

## 1.2 Application of the Rules

The Civil Service Employment Rules cover all University employees in job classifications included in the Civil Service Employee group except that temporary no-post and non-public employees are specifically excluded from coverage. In addition, decisions and appeals regarding disciplinary action in response to complaints against employees for alleged violation of Board of Regents Policy: ~~Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence~~ Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination and Administrative Policy: ~~Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence~~ Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination are excluded from these Civil Service Employment Rules and shall be addressed under Administrative Policy: ~~Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence~~ Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination and related administrative procedures.

## 1.3 Amendment of the Rules

1.3.1 Any University civil service employee may propose an amendment to the Consultative Committee at any time. The Committee will solicit and review additional proposals, conduct public hearings, and recommend amendments to the President as deemed appropriate. A complete Rules review will be conducted at an interval no greater than every three years.

1.3.2 Public hearings are required before Rules amendments are proposed to the President. Notice of intention to amend the Rules specifying the date, hour, and place of the hearings shall be published on the University Senate website and the Office of Human Resources website not less than 14 days before said hearing.

1.3.3 Proposed revisions will be made available at least seven days before the public hearings on the University Senate website and the Office of Human Resources website not less than 14 days before said hearing.

1.3.4 The Vice President and Consultative Committee shall recommend to the President all proposed amendments. After consultation with the Vice President and the Consultative Committee, the President shall make recommendations to the Board of Regents for their consideration. The members of the Board of Regents shall be provided with copies of the proposed amendments.

1.3.5 Amendments shall become effective upon adoption by the Board of Regents except as otherwise specifically provided. The Vice President shall promptly transmit notification to administrators and shall make the Rules and amendments available to employees.



1.3.6 New or amended Rules shall not retroactively affect personnel actions that were completed before the new Rules went into effect.

1.3.7 Before issuing the Civil Service Employment Rules, the Vice President or designee may correct spelling and/or grammatical errors.

1.3.8 Electronic links to external documents are subject to administrative change; such changes are not considered amendments.

## **1.4 Distribution of the Rules**

All employees shall have access to the Rules at: [https://z.umn.edu/civil\\_service\\_Contract](https://z.umn.edu/civil_service_Contract) or from the Office of Human Resources, <https://hr.umn.edu/>

# **RULE 2 Code of Conduct, Discrimination, Harassment, Nepotism and Political Activity**

## **2.1 Discrimination**

2.1.1 Discrimination and harassment on the basis of race, color, creed, religion, sex, marital status, sexual orientation, public assistance status, disability, age, national origin, or veteran status are forbidden by the University of Minnesota. Additionally, discrimination on the basis of political opinions or affiliation with any union or other organization representing the interest of public employees is forbidden by the University of Minnesota.

2.1.2 It is unlawful for any person in the University of Minnesota service, on the basis of prohibited discrimination, to (1) refuse to hire an individual; (2) maintain a system of employment that unreasonably excludes an individual from employment; (3) discharge an individual; or (4) discriminate against an individual with respect to hire, employment terms, promotion, or privileges of employment. A person in the University of Minnesota service may not encourage or compel, or attempt to encourage or compel, any action covered by this section.

## **2.2 Political Activity**

No employee of the University Civil Service shall be required to pay or be allowed to solicit or receive any assessment, contribution, or subscription for political purposes whatsoever during work hours. No officer or employee of the University shall directly or indirectly use the officer's or employee's authority or official influence to compel any officer or employee in University Civil Service to apply for membership in or become a member of any political organization; or to pay or promise to pay any assessment, subscription, or contribution; or to take part in any political activity.

## **2.3 Employee Rights and Responsibilities**

Employees shall be granted all rights, benefits, and considerations under the policies and procedures referenced in these Civil Service Rules and exercise all rights not denied them or otherwise prohibited by these Rules or other applicable policies and procedures.

## **2.4 Regents' Code of Conduct**

Employees must not engage in, nor permit harassment and are entitled to a respectful and safe work environment consistent with the Regents' Code of Conduct. Current policy can be accessed at <https://regents.umn.edu/policy/all#board-of-regents> or from the Office of Human Resources <https://hr.umn.edu/>.

## **2.5 Nepotism**

The Regents' policy on nepotism covers all University employees. Current policy can be accessed at <https://regents.umn.edu/policy/all#board-of-regents> from the Office of Human Resources, <https://hr.umn.edu/>.

## **RULE 3 Civil Service Consultative Committee, Human Resources, University Administration**

### **3.1 Civil Service Governance**

In accordance with the governing documents of the Civil Service Senate, there shall be a Civil Service Consultative Committee having specific powers and duties with respect to these Rules.

### **3.2 Powers and Duties of the Civil Service Consultative Committee with respect to these Rules**

The Civil Service Consultative Committee shall:

3.2.1 review, conduct public hearings, and present recommendations to the President regarding Civil Service Rules, in accordance with Rule 1.3;

3.2.2 act as an appeals board in all cases involving supervisors or employees appealing decisions made by the Vice President in accordance with Rules 4, Position Classification Plan; and 5, Compensation System; Appeals shall be handled by panels consisting of at least three Consultative Committee members and/or alternates.

3.2.3 make investigations at the request of the Board of Regents, the President, the Vice President, Civil Service staff, or on its own initiative concerning personnel administration in University Civil Service;

3.2.4 interpret the intent or meaning of the Rules in cases of questions or dispute;

3.2.5 as consultants to the Vice President in developing performance appraisal plans (Rule 9.1);

3.2.6 review the creation of new and elimination of obsolete job classifications (Rule 4);

3.2.7 review and approve proposed changes to the compensation plan (Rule 5.1);

3.2.8 review proposed changes in any salary range that are requested by the Vice President (Rule 5.2);

3.2.9 appoint civil service representatives to the Conflict Resolution Advisory Committee, and nominate civil service employees for selection to serve on the Hearing Officer Roster and the Panelist Roster (Rule 14);

3.2.10 appoint civil service representatives to other University committees and task forces as requested by the President; and

3.2.11 perform such other duties as may be assigned to it by the President or these Rules.

### **3.3 Role of the Vice President for Human Resources with respect to these Rules**

The Vice President or designee shall:

3.3.1 consult with the President on proposed rule amendments (Rule 1.3.6);

3.3.2 maintain the civil service job classification system (Rules 4.4.1 and 4.4.2);

3.3.3 prepare, consult with the Consultative Committee, and obtain approval of the President for a compensation plan (Rule 5.1);

3.3.4 determine salary range changes (Rule 5.2.1);

3.3.5 establish compensation policies (Rule 5.3);

3.3.6 determine the forms and manner for applications for civil service positions (Rule 6.4);

3.3.7 prescribe and maintain the application system for civil service positions (Rule 6.5);

3.3.8 approve certain probationary period requirements (Rule 7.2.2) and determine and publish probationary periods for job classifications (Rule 7.2.3); and

3.3.9 develop and administer a performance appraisal plan (Rule 9.1).

### **3.4 Powers and Duties of Responsible University Administrators and Supervisors with respect to these Rules**

Responsible administrators and supervisors shall administer the policies and procedures referenced in these Civil Service Rules and exercise all rights (unless denied them or otherwise prohibited by these Rules) inherent in the management process with respect to the supervision of employees.

## **RULE 4 Position Classification**

### **4.1 Position Classification**

The Vice President shall classify all Civil Service positions according to the nature and scope of duties and responsibilities assigned to and performed by the employees appointed to such positions and shall assign to each position a classification title, number, and salary range.

### **4.2 Position Classification Process**

4.2.1 Employees may submit, through supervisory and administrative channels, updated Position Descriptions when changes in the tasks, duties, and responsibilities of their position have occurred due to reorganization of work, staffing requirements, technology, or when they believe their positions are inappropriately classified.

4.2.2 A review of any position can result in no change, a promotion, demotion, or change to a different classification which does not constitute a promotion or demotion. No probation is required after a reclassification unless requested by the supervisor and approved by the Vice President.

4.2.3 The reclassification of any position shall be made effective on the first day of the payroll period after the employee submits a signed and dated Classification Review Request form, which includes an updated Position Description, to their immediate supervisor.

4.2.4 Reclassifications resulting in a demotion and reduction in salary will be made effective the first payroll period following notification of the decision by the Office of Human Resources.

4.2.5 The Position Description shall be forwarded for review and classification within seven calendar days to each designated administrative level starting with the immediate supervisor and ending with the appropriate human resources office.

4.2.6 A supervisor cannot change, or require the employee to change, the employee's content within the Position Description. However, managers are able to provide, either verbally or in writing, any differing opinions about the employee's job duties.

4.2.7 The Office of Human Resources shall make a determination on the classification within 35 calendar days after receiving the Position Description and shall convey the decision in writing to the employee and the responsible administrator, who is expected to implement the decision.

4.2.8 The decision of the Office of Human Resources may be appealed by the employee within 21 calendar days after receiving the decision. Appeals must be made in writing to the Office of Human Resources and a facilitated discussion will be scheduled to review the classification and come to a final decision.

### 4.3 Manager-Initiated Reclassification Reviews

4.3.1 An administrator or supervisor initiates a review of a Civil Service position within a unit by completing a Classification Review Request form, which includes an updated Position Description. Reclassifications resulting from the Manager-Initiated Reclassification Review shall be made effective on the first day of the pay period mutually agreed to by the appropriate human resources office and the administrative unit and will be specified in writing.

4.3.2 The decision of the Office of Human Resources may be appealed by the manager and/or employee within 21 calendar days after receiving the decision. Appeals must be made in writing to the Office of Human Resources and a facilitated discussion will be scheduled to review the classification and come to a final decision.

### 4.4 Maintenance of Classifications

4.4.1 The creation of new job classifications, the elimination of obsolete ones, and changes in titles or pay ranges of existing classifications shall be recommended by the Vice President for review by the Consultative Committee and approved by the University administration.

## RULE 5 Compensation System

### 5.1 Preparation of Compensation Plan

The Vice President shall prepare a compensation plan that includes provisions for any salary increases. The policy of equal pay for equal work, the University's ability to pay, labor market competitiveness, and internal pay equity will be the major considerations in formulating the compensation plan. The Vice President shall obtain approval of the Consultative Committee and the Board of Regents. The current compensation plan can be viewed on the worldwide web at <https://hr.umn.edu/HR-Community/Compensation-and-Classification/Job-Classification-System/Job-Families-and-Salary> or be obtained from the responsible administrator.

### 5.2 Compensation Policies

5.2.1 The Vice President shall establish compensation policies for the regulation of salary increases, hiring rates, on-call rates, augmentation rates, in-range adjustments, outstanding achievement awards, and salary changes in cases of promotion, demotion, transfer, reinstatement, shift differential, and return from leaves of absence. Administrative units have full managerial discretion within the framework of the policies except for the following:

5.2.2 No one can be hired above or below a salary range, except that trainees must be hired below the salary range (Rule 6.5.2).

5.2.3 Promoted employees (see Rule 4) must receive a minimum salary increase of four percent unless that increase would:

- a) place the salary below the minimum salary or
- b) place the salary over the maximum of the range of the higher level classification.

5.2.3.1 If the minimum increase of four percent does not bring the salary to the minimum salary of the higher classification, then the employee must receive whatever percent increase is necessary to reach the new base.

5.2.3.2 If the four percent increase places the salary over the maximum, then the employee's salary shall be set at the maximum of the range of the higher level classification.

5.2.4 Employees who have been demoted and who have:

- 1) not experienced reductions in salary as a result of the demotions, and
- 2) who are subsequently promoted to classifications at or below their former salary ranges (but not below the minimum salary of the classifications in which they have been promoted), shall not receive a promotional salary increase without the approval of the Vice President.

5.2.4.1 If, however, the employees' salaries are below the minimum salary of the classifications to which the employees have been promoted, the employees must receive the minimum salary of the higher classification (see Rule 4).

5.2.5 An employee who is demoted (see Rule 4) shall be paid at or below the maximum of the salary ranges for the job classification into which the employee is being demoted. Depending upon administrative unit discretion, the salaries within the range after demotion should reflect the employee's experience and performance. The salary may not, however, exceed the employee's salary before the demotion.

5.2.6 Employees who transfer may receive an increase in salary over their former salary. If the beginning rate for the new position is higher than the rate the employee was at in the former position, the employee's salary shall move to the beginning rate for the new classification. Conversely, if the employee's salary in the former position exceeds the maximum of the range for the new position, the employee's salary must be decreased to the maximum of the range for the new position.

5.2.7 Employees returning from unpaid leaves of absence shall be compensated at the same rate of pay they received when the leaves commenced plus any non-discretionary increases which became effective during the time of the leaves. For increases requiring a specific length of service in order to be eligible for consideration, the period of the leave of absence is not counted toward eligibility. However, if employees gain additional experience or education that is relevant to their work during the leaves of absence, the time of the leaves may, at the administrative unit's discretion, be counted toward eligibility for discretionary increases.

5.2.8 Employees shall receive on-call and augmentation pay, as provided for by University policy (see OHR web site and refer to Civil Service pay plan). Employees shall also be provided with off-cycle checks under the circumstances specified by University policy.

5.2.9 An employee who performs work in a higher classification for longer than five consecutive workdays shall receive a temporary salary augmentation during the remainder of the time the employee works out-of-class. The augmentation must be a minimum of four percent of the employee's current hourly rate, or the percent of the employee's current hourly rate necessary to reach the minimum rate of the higher classification, whichever is greater. Any overtime shall include the augmentation. If the responsibilities of the higher classification become permanent duties of the employee, that employee has the right to submit an updated Position Description for possible reclassification.

### **5.3 Total Remuneration**

5.3.1 Employees shall not receive perquisites, which may include but not be limited to residence, board, room, laundry, commutation, or any combination thereof, as a part of the employee's regular compensation unless these perquisites are required for the satisfactory performance of assigned duties.

5.3.2 Whenever employees are required to wear uniforms as a condition of employment, the employer shall, according to administrative policies, either provide employees with uniforms or provide funding to the employees for purchasing uniforms. Laundering of lab coats when employee works in hazardous environments shall be the responsibility of the lab per the guidelines when working in hazardous environments: <https://www.dehs.umn.edu>

5.3.3 Likewise, whenever badges, ID Cards, keys, electronic access or communication devices (e.g. internet connections, pagers, cell phone) are required as a condition of employment, the employer shall provide them or provide funding for their purchase. Employees may be assessed reasonable refundable deposits including interest, or charged reasonable replacement fees for items that are lost or negligently damaged

## **RULE 6 Recruitment and Employment**

### **6.1 Request to Establish Position to Fill Vacancy**

When a newly created position or a vacancy in an existing position is to be filled, the responsible administrator shall submit a personnel requisition to the appropriate human resources office. Upon receipt of the requisition, human resources personnel will review the position to approve the requested classification or reclassify it after consulting with the hiring authority before posting.

## 6.2 Announcement of Employment Opportunities

6.2.1 Announcements of all vacancies shall be publicly posted and available through the Office of Human Resources on the worldwide web. Information on the benefits and rights attached to temporary positions, as well as those not attached to temporary positions, shall be available through the Office of Human Resources home page at <https://hr.umn.edu/>

6.2.2 A minimum of seven calendar days (excluding holidays) shall elapse between the initial posting of an announcement concerning a vacancy in a continuing or temporary posted position and the date of hire by a responsible administrator (Rule 6.3), except when a laid-off or injured worker is re-employed.

## 6.3 Hiring and Certification

6.3.1 Applicants who have been certified by the Office of Human Resources as meeting the qualifications of a vacancy shall be considered and interviewed for employment in the following order:

1. Former employees whose names appear on the layoff list, with layoff rights to the posted vacancy according to the provisions of Rule 12.3.
2. Former employees on the job transfer list because of eligibility under state or federal disability laws, in accordance with Rule 12.3. <https://hr.umn.edu/Supervisors/Supervising>
3. Former employees on the job transfer list because of an on-the-job injury, in accordance with Rule 12.3.

6.3.2 Should no individual be eligible and/or hired from the above listed groups, additional applicants may be considered in the following order:

1. Individuals whose names appear on the layoff lists and who do not have layoff rights to the posted vacancy and current University Civil Service employees, whether their current positions are posted temporary or permanent.
2. Other applicants may then be considered.

The order of preference may be changed under special circumstances by the University Equal Opportunity Officer in accordance with affirmative action policies of the Board of Regents.

## 6.4 Employment Procedure and Files

6.4.1 Applications for all Civil Service employment shall be made on the appropriate forms and in such manner as prescribed by the Vice President and, upon submission to the Office of Human Resources, become the property of the Board of Regents of the University of Minnesota.

6.4.2 Official individual employee personnel files are maintained by the Office of Human Resources at the respective campuses (Crookston, Duluth, Morris, Rochester and Twin Cities). Employees shall have a right to see their own personnel files upon request, in the Office of Human Resources, in the presence of an appropriate Human Resources staff member.

6.4.3 The University policy concerning file access conforms to applicable State and Federal laws. Contact the Office of Human Resources for more information.

6.4.4 Employees have the right to include or update information in their files that may be pertinent to their performance of job duties.

## 6.5 Types of Appointments

6.5.1 No appointment shall be authorized by a responsible administrator or immediate supervisor without prior certification by the appropriate human resources office that the candidate is qualified. All appointments shall be subject to the ratification of the Vice President and the Equal Opportunity and Affirmative Action Office, under provisions of Rule 6, Section 3.

6.5.2 Trainee appointments may be made when the Vice President approves trainee programs to qualify persons for a particular work classification. An employee hired as a trainee shall be hired at a rate, as established by the Vice President in consultation with the responsible administrator, below the salary range for the class, and may be granted incentive increases as the employee progresses through an organized training program.

6.5.3 After successfully completing the program, the employee will reach the minimum salary of the range for the class. The employee shall then be required to successfully complete the probationary period assigned to the class before receiving a continuing appointment.

6.5.4 Continuing appointments shall be made to any position in which the assigned work time is at least 50 percent of full-time and of a continuing nature and when the employee has successfully completed the probationary period for the class of work.

6.5.5 Temporary appointments may be made to any position and must have a beginning and ending date. Temporary appointments may be part-time or full-time and employees shall not serve a probationary period during the period of the temporary appointment.

6.5.6 The following rights accrue to employees on temporary appointments of 50 percent time or more, within the same classification within the same administrative unit in conformance with Rule 6:

6.5.6.1. Classification seniority and rights to the layoff list shall be granted after more than one calendar year of service. Classification seniority will be retroactive to the date of entry into the classification in the administrative unit.

6.5.6.2. Grievance rights for termination for just cause shall be granted after more than one calendar year of service, within the same administrative unit within the same classification.

6.5.7 The following rights accrue to employees on temporary appointments of 50 percent time or more, within the same position including reclassifications of that position, within the same administrative unit in conformance with Rule 6:

6.5.7.1. A temporary appointment will become a continuing appointment with all rights and benefits after more than two consecutive calendar years of service and a probationary period will be considered to be completed.

6.5.7.2. An employee with continuing status who promotes or transfers to a temporary position forfeits all rights and benefits given to a continuing position and shall be governed by the rules for temporary employees.

6.5.7.3. A former employee with continuing status, whether on the layoff list or not, who is re-employed in a temporary position, assumes the status of a temporary employee, and classification and unit seniority credits cannot be reinstated.

6.5.7.4. An employee with continuing status who is laid off and bumps an employee in a temporary position retains the status of a continuing employee.

6.5.8 At the time of the initial interview, individuals being considered for temporary positions shall be informed of the temporary nature of these positions and the consequences of accepting temporary positions.

6.5.9 Individuals who accept temporary positions must be notified in writing of the temporary nature of their appointments. This written notification shall also include the beginning and ending dates of the position and the benefits and rights inherent to and denied a temporary appointment. This temporary letter shall be given to the employee within five workdays after the initial hire or, if this is not possible, within five workdays after the employee completes administrative unit orientation meetings, and must be signed by the employee. The original of the temporary letter shall be forwarded to the Office of Human Resources at: <https://hr.umn.edu/Supervisors/Supervising>

6.5.10 Part-time appointments may be made to any position in which the assigned work time is less than 100 percent time. Such an appointment may be temporary or continuing.

## **RULE 7 Probationary Period and Orientation**

### **7.1 Intent of Probation**

The probationary period shall be an integral part of the selection process for appointment to any position in which the assigned work time is at least 50 percent of full-time and of a continuing nature. The supervisor shall use the probationary period to inform employees of their job responsibilities and duties and of the administrative unit's expectations; to evaluate the employee's work performance; and to inform employees of their work performance.

### **7.2 Application of Probationary Period**



7.2.1 A probationary period of employment shall be designated for each class of work, shall be served by every employee hired in any continuing position to work 50 percent time or more regardless of whether such employment occurs as an original appointment, promotion, transfer, or demotion and shall be successfully completed before the employee can be given a continuing appointment to the position.

7.2.2 Unless probation is requested in writing by the responsible administrator and approved by the Vice President, no probationary period shall be required of an employee who bumps back into any position in a classification in which the employee has previously passed probation (Rule 12.3). An employee will be credited with probation already served when their position is reclassified or when the employee is assigned to a different position in the same job class in the same administrative unit or the employee is recalled in the same class and administrative unit following layoff or reinstatement after resignation. Employees affected by this request to serve probation shall be notified in writing that a probationary period must be served.

7.2.3 The Vice President shall determine and publish the length of the probationary period for each class of positions in the University Civil Service. This period may not be less than three months nor more than one year. Related and comparable classes shall have probationary periods of the same length. All employees working less than full time (but at least 50 percent time) shall work the same number of calendar months as full-time employees to complete their probationary periods.

7.2.4 Any absences without pay shall automatically extend the probationary period.

### **7.3 Orientation**

Employees shall be provided with University orientation information and shall be allowed to attend orientation sessions when offered by the Office of Human Resources. See: <https://hr.umn.edu/Welcome-New-Employees>

### **7.4 Probationary Rating**

All probationary employees will have a minimum of one verbal performance appraisal and one written performance appraisal during their probationary period, except where immediate removal from the position is warranted, such as serious job misconduct -- for example, falsification of records or misappropriation of University resources -- or workplace actions that endanger the health or safety of the employee or others or when termination is a result of discipline imposed under the Administrative Policy: *Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence* *Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination* and related administrative procedures. Supervisors must inform the probationary employee of any performance issues and develop a plan to remedy any performance issues which may be cause for not passing probation within 30 days of the expiration date of the probation period. Supervisors must use either the standardized University evaluation form or other Human Resources approved evaluation form, pursuant to Rule 9.1. The Vice President may, at any other time during the probationary period, ask the responsible administrator for additional oral and/or written statements regarding the employee's work performance. If a written performance appraisal is not given before the actual expiration date of an employee's probationary period, the employee will pass probation

### **7.5 Rights of Probationary Employees**

Probationary employees are entitled to all rights under these Rules, including the right to grieve any alleged Rules violations unless specifically denied by these Rules.

### **7.6 Termination of Employment during Probationary Period**

7.6.1 If the responsible administrator or immediate supervisor determines, after complying with Rule 7.4, during the probationary period, that the employee's appointment will not continue, the employee's appointment shall not be continued. Just cause is not required for termination of a probationary appointment and it is not grievable except under the discrimination clause of Rule 2.

7.6.2 The responsible administrator or immediate supervisor shall give an employee who fails to pass the probationary period at least 10 workdays written notice before termination. These 10 workdays may be given as a leave of absence with pay.

7.6.3 An employee who is being terminated during the probationary period (Rule 12.3) but held a prior position shall have the right to return to the prior position within 10 workdays after notifying the responsible administrator in charge of the prior position, provided the employee:

7.6.3.1 has successfully completed the probationary period for the prior position; and

7.6.3.2 was promoted or transferred from the prior position; and

7.6.3.3 notifies the prior responsible administrator by the termination date of the currently held probationary position of the intent to return to the prior position.

7.6.4 The prior position referred to in this Rule is the position an employee last held before being promoted or transferred to the position requiring the probationary period.

7.6.5 If an employee's prior position no longer exists (has been abolished or reclassified) or if the employee does not choose to return to a prior position (Rule 12.3), the employee may notify the prior responsible administrator by the termination date of the probationary position, of intent to be placed on the layoff list.

7.6.6 If the prior position was a temporary position the employee held for one year or less, there will be no right of return or right of placement on the layoff list.

7.6.7 If the prior position was a temporary position the employee held for more than one year, but not more than two years, there will be right of placement on the layoff list provided the employee notifies the prior responsible administrator by the termination date of the probationary position of intent to be placed on the layoff list, but there will be no right of return.

7.6.8 If the prior position was a temporary position the employee held for more than two years, there will be right of return; but if the prior position is now on temporary status, the employee will lose continuing status upon return to that position. The employee shall notify the responsible administrator in charge of the prior position of intent to return to the prior position by the termination date of the currently held probationary position, and return to the prior position shall be within 10 workdays after notification. If the employee does not choose to return to the prior position under these circumstances, there will be right of placement on the layoff list provided the employee notifies the prior appropriate human resources office by the termination date of the probationary position of intent to be placed on the layoff list.

7.6.9 A probationary employee who is discharged from the University for disciplinary reasons, including as a result of discipline imposed through the Administrative Policy: ~~*Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence*~~ *Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination* and related administrative procedures, shall forfeit all rights to return to any prior position or to the layoff list.

## **7.7 Academic Conversions to Civil Service Positions**

If an academic employee accepts a Civil Service appointment, the employee will be required to serve the designated period of probation in the Civil Service classification. If an academic employee's position is converted to a Civil Service classification with no change in job duties, no probationary period will be required.

## **7.7 Civil Service Conversions to Academic Positions**

Per the Board of Regents resolution passed December 12, 1980, no individual currently in another personnel category (faculty or civil service) shall be moved to the Academic Staff category unless the individual requests to do so and the request is approved by all concerned.

# **RULE 8 Continuing Education and Required Courses**

## **8.1 Continuing Education**

Employees shall be allowed the opportunity, within the limits of these Rules, to improve their performance, continue their education, and expand their promotional possibilities by taking courses (see Rule 11.9). The University encourages employees to participate in professional development activities (refer to Rule 3.4, Regents' Code of Conduct).

## **8.2 Required Courses**

If an employee is required to take coursework as a condition of continuing employment, the course shall be treated as paid work time with travel time computed in accordance with the Fair Labor Standards Act. Supervisors shall allow employees to attend at least 8 hours per year of continuing education in the form of seminars, workshops, and professional development activities during scheduled work hours as paid work time.

## **RULE 9 Performance Appraisal**

### **9.1 Plan**

The Vice President shall be responsible for developing and administering a performance appraisal plan. The plan shall be implemented after consultation with and input from the Consultative Committee and other appropriate University personnel. Use of alternate plans must be approved by the Vice President after consultation with and input from the Consultative Committee (refer also to Rule 7.4 Probationary Appraisal).

### **9.2 Frequency of Appraisals**

9.2.1 Performance appraisals for all Civil Service employees shall be submitted at least once each year. Within this framework, the Vice President shall establish the frequency with which appraisals shall be submitted.

9.2.2 Employees shall be evaluated by their supervisors. Reviews by employee's peers and/or subordinates may be combined with the supervisory review if it is done in accordance with an approved performance appraisal plan in use by the employee's administrative unit.

9.2.3 The original performance appraisal shall be placed in the employee's official personnel file. Employees have the right to review their official personnel files upon request (Rule 6.4).

### **9.3 Employee Review of Appraisals**

9.3.1 Supervisors are to provide to each employee an annual written assessment of performance. The review is to include performance strengths and key areas for improvement. Supervisors are expected to support employees in efforts to improve.

9.3.2 Each employee has the right to add written comments regarding their review on the performance appraisal form, at the time of the initial review and when any changes are made to the form. The employee's signature on the performance appraisal form signifies that the performance appraisal has been reviewed with the employee, but does not signify that the employee agrees with the appraisal.

9.3.3 Each employee shall have the right to see any changes, deletions, or additions to the performance appraisal made by their supervisor, or other appropriate responsible administrator. Such changes shall be discussed with the employee.

## **RULE 10 Hours of Work, Overtime, Holidays, Reporting, and Callback**

### **10.1 Standard Hours of Work**

10.1.1 The full-time workweek for all work classifications in the University Civil Service shall be 40 hours per seven-day workweek.

10.1.2 Whenever possible the 40 hours shall be consecutive workdays with two or more consecutive days off; however, administrators and supervisors may reschedule work time as necessary.

10.1.3 Scheduled unpaid meal periods interrupting a work shift shall be not less than 30 minutes nor more than one hour in length. If a shift is extended to more than eight hours of work, additional or longer meal periods should be implemented, if warranted.

10.1.4 Employees are entitled to and shall be granted two 15 minutes paid break periods during eight hours of work. The scheduling of paid break periods is at the sole discretion of the supervisor. Paid break periods are not cumulative from one day to the next. Break periods for employees working other than eight-hour workdays shall be proportionally calculated.

10.1.5 Split shifts shall be avoided whenever possible. No split shift shall extend the working hours of an employee to more than 12 hours in any 24-hour period, except that in agricultural operations, working hours may extend to 14 hours in a 24-hour period.

10.1.6 In emergency situations two eight-hour shifts may occasionally be scheduled in a 24-hour period.

10.1.7 Shift differential shall be paid to employees whose scheduled work shift begins before 6:00 a.m. or begins/ends after 7:00 p.m. Scheduled shifts must be at least six hours in duration. For shift differential rate, please see the Civil Service pay plan at: <https://hr.umn.edu/HR-Community/Compensation-and-Classification/Pay-Practices-Policy-and-Guidelines/Civil-Service-Pay>.

## 10.2 Overtime

10.2.1 As a condition of employment, employees may be required to work overtime. Overtime is the work time in excess of 40 hours per workweek on one or more University jobs. All overtime must be approved by the appropriate responsible administrator prior to being worked. Failure to obtain approval may result in disciplinary action.

10.2.2 All employees, except those whose jobs are designated as V-class (Rule 11.2), shall be paid overtime or given compensatory time off, at the discretion of the employee, at the rate of time and one-half for work in excess of 40 hours per workweek on one or more University jobs.

10.2.3 An employee may use compensatory time within a reasonable period after a request to do so unless the use would unduly disrupt the operation of the administrative unit.

10.2.4 Administrative units have full discretion to reasonably restrict the amount of compensatory time off that can be accumulated and the length of time a compensatory time-off balance can be carried forward, except that maximum limits imposed by the Fair Labor Standards Act (currently 240 hours) will be strictly followed.

## 10.3 Holidays

10.3.1 There shall be a total of twelve paid holidays, including observed holidays, each fiscal year for employees appointed at a designated percentage of time.

10.3.2 The observed holidays are New Year's Day, Martin Luther King's Birthday, Memorial Day, Juneteenth, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

10.3.3 Four of the twelve holidays shall be floating Holidays, scheduled annually upon recommendation to the President. One of the floating holidays shall be a personal holiday to be taken at the employee's discretion with the supervisor's approval and in accordance with the Vice President's guidelines on the use of personal holidays. This paragraph does not apply to the Crookston, Duluth and Morris campuses, which establish their own holiday policies.

10.3.4 Observed holidays that fall on Saturday shall be observed on the preceding Friday. Observed holidays that fall on Sunday shall be observed on the following Monday. For employees whose schedules include Saturdays and/or Sundays, the observed holiday shall be on its actual day of occurrence instead of on the preceding Friday or following Monday.

10.3.5 An employee appointed at a designated percentage of time who is required to work on a holiday shall receive regular pay for the day plus additional pay or time off at the rate of time and one-half for the hours worked. Employees may choose between time off or pay for the additional hours. For example, a full-time employee who works eight hours on a holiday shall be paid at the normal rate for the eight hours plus 1.5 x 8 for a total of 20 hours. An employee who is not appointed at a designated percentage of time and is required to work on any day recognized as a holiday shall be paid at the rate of time and one-half for the hours worked.

10.3.6 Employees in administrative units operating seven days per week shall receive the same number of holidays off or pay in lieu thereof as employees who work in administrative units operating five days per week.

10.3.7 When a holiday falls on an employee's day off, the employee shall receive an additional day off or proportionate time off (based on the percentage time of appointment) as agreed upon between the employee and the supervisor.

10.3.8 To qualify for holiday pay, an employee must either work or be on an approved paid leave (such as vacation) on the employee's regularly scheduled workday before or following the holiday.

## 10.4 Reporting to Work

A full-time employee who is required to report to work for full-time service (eight hours) shall be given a minimum of four hours of work on the day of reporting. In the absence of at least four hours of work, the employee shall receive four hours of pay at the employee's regular straight-time hourly rate or overtime, whichever is applicable. However, an employee who reports for work, and who because of illness or physical disability cannot be employed for the protection of either the employee's own well-being or that of others, shall receive pay only for actual hours worked.

## 10.5 Non-Standard Work Hours

### 10.5.1 Callback

10.5.1.1 An employee who is called in because of an emergency shall receive a minimum of two hours of pay at time and one-half or compensatory time off (at the employee's option) provided the employee:

- a) has completed a regular workday and left the workplace for at least 30 minutes; or
- b) is called in on a non-workday; or
- c) is called in early but will not work a continuous shift.

10.5.1.2 If compensatory time off is chosen, the dates selected must be pre-approved by the supervisor.

10.5.1.3 This rule shall not apply to part-time employees (regardless of hourly or percentage of time status, unless otherwise specified in these Rules); employees living on the premises; or those positions that require frequent on-call duty as described in the job specifications.

10.5.1.4 Reporting and callback procedures could be affected by the University's Emergency Closing Policies and Procedures or by administrative unit closing policies. Please consult either for further information.

### 10.5.2 On-Call

- 1) An employee who has been instructed by their supervisor, in writing, to remain available to work during an off-duty status shall be considered in an on-call status. On-call work shall follow the practice and procedures as established by the Vice President of Human Resources (see Rule 5.3.1) and indicated in the Civil Service pay plan: <https://hr.umn.edu/HR-Community/Compensation-and-Classification/Compensation-and-Classification>. Expectations at time of hire of any on-call time shall be included in the written job description and given to the employee.
- 2) An employee who is called in to work from an on-call status shall receive the designated premium pay. This rule does not apply to those whose jobs are designated as V-class or otherwise exempt.

### 10.5.3 Other Work Arrangements

Types of flexible work arrangements can include flextime, compressed work weeks, job sharing, telecommuting, or reduced-time/part-time arrangements. Please refer to the telecommuting agreement in your department or unit. (Guidelines and more explanation for flexible work arrangements can be found at: <https://hr.umn.edu/Employees/Current-Employees/Working-U-M>.)

## RULE 11 Absences

### 11.1 Absence Without Authorization

When an employee is absent from work without authorization such absence shall be grounds for disciplinary action (Rule 13). An employee absent for three consecutive workdays without authorization shall be considered as having resigned. However, a person may subsequently apply for a retroactive leave of absence without pay to cover the unauthorized time off, and such a request may be considered and granted by the responsible administrator or immediate supervisor (see Rule 11.6 and 11.7).

### 11.2 General Regulations Governing Authorized Absences

Leaves of absence, which may be granted at the discretion of responsible administrator and/or immediate supervisor, include, but are not limited to: vacation, sick leave, and professional meetings. Non-discretionary leaves of absence include, but may not be limited to: jury duty, military duty, and official court appearances (when job-related).

11.2.1 Leaves of absence may be granted only when employees submit requests to their supervisor or responsible administrator within a reasonable time before the desired leave. In the case of sick leave or emergencies, the request should be made as soon as possible after the illness, death, or emergency arises.

11.2.2 Use of vacation leave, sick leave, and accumulated overtime or holiday leave shall be charged in units of one-quarter hour rounded to the nearest quarter hour.

11.2.3 When eligible, an employee shall earn vacation and sick leave during a paid leave of absence.

11.2.4 Employees can access their vacation and sick leave accumulations on MyU at <https://www.myu.umn.edu>.

### 11.3 Vacation

#### General Provisions for Vacation Leave

11.3.1 Full- and part-time Civil Service employees on continuing or temporary appointments who are employed in one administrative unit on a prearranged and assigned schedule of 50 percent time or more shall earn vacation with pay at the following rates:

Vacation accrual based upon straight time paid work hour

\*Accrual rate does not include V-classification and/or sick leave accumulation credit

Years of University Service	Minutes of vacation leave earned per straight-time paid work hour	*Accrual rate	*Vacation leave earned per pay period if you work 40 hours/week	*Days of vacation earned per year based upon 26 pay periods of full-time employment
0-5	3.000 minutes	.05	4.0 hours	13 days
5+ to 8	3.750 minutes	.0625	5.0 hours	16.25 days
8+ to 12	5.250 minutes	.0875	7.0 hours	22.75 days
12+ to 20	5.650 minutes	.094167	7.53 hours	24.483 days
20+ to 25	6.000 minutes	.10	8.0 hours	26 days
25+ to 30	6.375 minutes	.10625	8.5 hours	27.625 days
30+ or more	6.750 minutes	.1125	9.0 hours	29.25 days

11.3.2 Years of employment is based upon the employee's anniversary hire date. If there is a gap in employment, years of employment is based upon the accumulated time of service.

11.3.3 Vacation leave accumulated for any one pay period becomes available for use during the same pay period.

11.3.4 When eligibility for a higher vacation accumulation rate occurs within a pay period, the extra vacation allowance starts

the following pay period.

11.3.5 Employees may request vacation time subject to the convenience of the administrative unit concerned. Within an administrative unit, choice of available vacation time shall be determined by unit seniority.

11.3.6 If an employee must be called in to work while on approved vacation leave, the employee must be paid one and one-half times that employee's regular rate for the hours worked.

11.3.7 Full-time employees in those supervisory and professional classes of work designated by V after the job classification number shall accumulate an additional 1.385 minutes of vacation time (in lieu of overtime) for each straight-time paid hour of service.

11.3.8 Part time employees in V-classifications will be paid straight time hours for all hours worked above their percent appointment up to a maximum of 40 hours per week. If the employee works more than 40 hours per week, they will be compensated in pay or compensatory time at time and one-half pay for all hours worked over 40.

11.3.9 The maximum amount of accumulated vacation time may not exceed the amount of vacation time that may be earned within two work years.

#### **11.4 Pay for Vacation Leave**

11.4.1 Upon separation from the University, all Civil Service employees with ten (10) or more years of service and more than two hundred (200.001) hours of accrued vacation time shall have their unused vacation and compensatory time accrual paid directly into a Health Care Savings Plan (HCSP). The Plan will be administered by Minnesota State Retirement System (MSRS).

11.4.2 Any employee with vacation available for use who changes to a work schedule of less than 50 percent time shall be entitled to be paid for any unused portion of vacation leave.

11.4.3 Any employee who is about to lose vacation because they have been denied a vacation request made in accordance with an administrative unit's leave policy and will reach the maximum accumulation, shall be entitled to take up to one week of vacation to prevent loss of vacation earned upon advance notice of seven (7) calendar days to their supervisor, or shall be allowed to cash out up to (1) one week of vacation earnings based upon percent time of appointment.

11.4.4 In addition, any employee may request to cash out one week of their accumulated vacation time each fiscal year at the unit's discretion.

#### **11.5 General Provisions for Sick Leave and Bereavement Leave**

11.5.1 Full-time and part-time Civil Service employees on continuing or temporary appointments who are employed in one administrative unit on a prearranged and assigned schedule of 50 percent time or more shall accumulate sick leave with pay. Sick leave will accumulate at the rate of 3 minutes per basic straight-time paid work hour.

11.5.2 Sick leave accumulated for any one pay period becomes available for use during that pay period. An employee with sick leave available for use who leaves University employment or who changes to a work schedule of less than 50 percent time shall lose unused sick leave. When a sick-leave accumulation of 400 hours has been reached, one-quarter of any sick leave accumulated thereafter (.75 minute per hour) may be credited to the employee's vacation accumulation if the employee's sick-leave accumulation is maintained at 400 or more hours. Three-quarters of such sick leave accumulated thereafter may be credited to sick leave.

11.5.3 When a sick-leave accumulation of 800 hours has been reached, one-half of any sick leave accumulated (1.5 minutes per hour) thereafter may be credited to the employee's vacation accumulation if the employee's sick-leave accumulation is maintained at 800 or more hours, and one-half of such sick leave accumulated thereafter may be credited to sick leave.

11.5.4 Employees must request and receive approval for use of sick leave from the supervisor or responsible administrator as soon as possible after the onset of illness. Supervisors or responsible administrators may require a statement from a physician

or dentist before approving use of accumulated sick leave. Any documents regarding a University employee's disability, injury, or prolonged illness must be centralized at the Disability Resource Center (<https://disability.umn.edu/>) rather than in the Office of Human Resources or any other location on campus. In the case of extended or chronic illness, the supervisor or responsible administrator may require proof of illness, including statements from a physician or dentist, before granting further sick leave or before allowing the employee to return to work. Abuse of sick leave shall be one form of just cause for disciplinary action.

11.5.5 A supervisor may require an employee to return home or to see a physician, or both, if the employee is unable to perform in an up-to-standard manner because of what appears to be a health condition. Such time shall be charged against sick leave if available.

11.5.6 Accumulated sick leave may be used to supplement Worker's Compensation benefits during periods of lost work time due to on-the-job accidents.

11.5.7 If sick leave is exhausted, an employee may use vacation leave, overtime accruals, or holiday leave subject to the conditions of Rule 11.2 and .4, and Rule 10.3.

11.5.8 Approved sick leave allowance may be used by an employee who is unable to perform duties because of illness or injury; or who would expose other employees or the public to contagious or infectious diseases; or who must keep medical or dental care appointments or for safety leave as defined in Minnesota Statute 181.9413.

11.5.9 Approved sick leave may be used when a woman is unable to perform the duties of her job due to pregnancy. If no sick leave is available, an employee may be required to use accumulated vacation leave in accordance with Rule 11.2, and University policy, federal, and state law.

11.5.10 Approved sick leave may be used to care for or arrange care for an employee's child, including medical and dental appointments. Approved sick leave to care for an employee's sick child is not limited. Up to two (2) days per incident of approved sick leave may be used to care for an employee's child in case of an unscheduled school or day care closing. Employee's child as used in this portion includes adoptive, biological, step-child, or foster child of the employee or employee's spouse or domestic partner.

11.5.11 Up to 160 hours in any 12 month period may also be used by an employee to care for or make arrangements for the care of an ill member of the employee's immediate family or to provide assistance for safety leave to the immediate family. Immediate family as used in this portion of the Rule shall mean adult child, spouse, domestic partner, siblings, parents, parents-in-law, grandchildren, grandparent, stepparent, and wards of the employee or employee's spouse or domestic partner.

11.5.12 Accumulated sick leave of up to 16 hours per year can be used by an employee to participate in a personal health maintenance program and/or University Wellbeing Program activity (e.g., weight control, stress management, stop smoking, biometric screening). An acceptable program is one which is sponsored by, offered by, or accepted by health, medical and fitness/wellness professionals as a health maintenance program and/or an activity of the University Wellbeing Program. Supervisory approval is needed to schedule sick leave for such purposes.

11.5.13 The University provides eligible employees working 50% or more with paid bereavement leave upon the death of an immediate or other family member or University colleague. This leave is granted for purposes of:

- Attending the funeral, services, ceremonies, and/or interment
- Making necessary arrangements
- Travel related to the death
- Bereavement time



The following chart details the provisions related to the death of an immediate or other family member or University Colleague.

<b>Relation to Employee</b>	<b>Provisions</b>
Immediate Family Member	Up to three work days paid bereavement leave and up to two additional work days of leave at the discretion of the responsible administrator/supervisor and upon consideration of the funeral location (local or long distance), cultural expectations, rituals, ceremonies and other pertinent factors
Other Family Member	One work day paid bereavement leave
University Colleague	Reasonable paid bereavement leave to attend the funeral or service. Leave is subject to the needs of the department as determined by the responsible administrator/supervisor.

The employee's immediate family includes;

- Employee's spouse or domestic partner;
- Employee's biological, adoptive, step or foster child or ward
- Employee's parent or parental equivalent
- Employee's sibling
- Employee's spouse/domestic partner's biological, adoptive, step or foster child or ward
- Employee's spouse/domestic partner's parent or parental equivalent
- Employee's spouse/domestic partner's sibling.

Employee's other family member in this instance shall mean:

- Employee's or employee's spouse/domestic partner's children-in-law (or equivalent)
- Employee's grandparents, grandchildren, aunts, uncles, nieces, nephews and first cousins of the employee.

11.5.14 With the approval of the supervisor or responsible administrator, employees may use sick leave to serve as pallbearers or attend funerals of other individuals not identified above.

11.5.15 If an employee becomes ill while on vacation leave and presents satisfactory proof of illness or injury, the supervisor or responsible administrator may approve the use of sick leave in lieu of vacation leave.

## **11.6 Vacation Donation Program**

Employees may have the option of donating vacation for use by qualified employees. Information about the program is available at: <https://policy.umn.edu/hr/vacationdonation> .

## **11.7 Parental Leave**

### **11.7.1 Eligibility for Parental Leave**

11.7.1.1 The University provides parental leave for eligible employees related to the birth, adoption, or gestational surrogacy of children in accordance with Minnesota statutes and the provisions of this policy. Parental leave provided by this policy is available to an employee on a 50% appointment or greater and is becoming a parent through birth, adoption, or gestational surrogacy or to an employee who is a gestational carrier.

11.7.1.2 Employees are encouraged to talk to the responsible administrator/supervisor regarding taking parental leave as soon as reasonably practical.

## **11.7.2 Paid and Unpaid Leaves**

11.7.2.1 Upon request, eligible employees may take six weeks paid leave related to the birth, adoption, or gestational surrogacy of a child. The parental leave will begin at a time requested by the employee, although the leave may not begin more than two weeks prior to the due date or adoption event and no later than thirteen weeks after the birth or adoption event. In the case where the child must remain in the hospital longer than the birth parent, the leave must begin no later than thirteen weeks after the child leaves the hospital. This leave must be consecutive and without interruption and must be taken during the term of appointment. This parental leave shall not be charged against the employee's accumulated vacation or sick leave.

11.7.2.2 The employee may be eligible for other leaves that occur prior to or immediately following the parental leave. These leaves must be consecutive and without interruption and must be taken during the term of appointment. An unpaid leave of absence shall be granted to an employee for a period of up to six months, when requested in conjunction with the birth or adoption of the employee's child. This leave of absence without pay may be extended up to an additional six months upon the employee's request and with responsible administrator approval. In all cases, FMLA runs concurrently with paid parental leave and other applicable paid leaves.

11.7.2.3 During the parental leave, medical coverage will continue to be available for the employee and any dependents under any group insurance policy, group subscriber contract, or health care plan in existence at the time of leave. While on paid leave, the continued coverage will be provided on the same basis as available to the employee during the course of employment. While on unpaid leave, the continued coverage will be available at the employee's expense.

## **11.8 Sick Leave Without Pay**

11.8.1 Upon application, a leave of absence without pay may be granted by the appropriate responsible administrator or supervisor for the entire period of temporary disability due to sickness or injury. The duration of such leave shall be subject to the recommendation of this administrator, governed by applicable University policy and federal and state law.

11.8.2 During this leave, the responsible administrator or the Vice President or appropriate human resources personnel may periodically require that the employee submit a certificate from the attending physician or from a designated physician. Any documents regarding a University employee's disability, injury, or prolonged illness must be centralized at Disability Resource Center (<https://disability.umn.edu/>) rather than in the Office of Human Resources or any other location on campus. Supervisors should contact and work with the Disability Resource Center for additional information regarding requesting physician certification. In the event of failure or refusal to supply such certificate, or if the certificate does not clearly show sufficient disability to prevent the employee from performing assigned duties, the responsible administrator, with the approval of the appropriate human resources personnel may cancel such leave and require the employee to report for duty on a specified date.

11.8.3 Sick leave without pay may be granted to an employee who is considered permanently and totally disabled according to any disability insurance program in which the University participates. Should employees on such leave recover to the point that they are employable, they shall be treated as though they were laid off and will be eligible to compete for vacancies in accordance with the policies and regulations covering laid-off employees. An employee on this type of leave will not be allowed to replace or bump an incumbent from the employee's most recently held position, unless approved by the hiring authority. If an employee who is receiving workers compensation benefits chooses to take a position outside the University instead of accepting a suitable position (as defined by workers compensation law) at the University of Minnesota, the employee will be considered to have resigned and their administrative unit may terminate them.

## **11.9 Other Leaves Without Pay**

11.9.1 An employee may request a leave of absence without pay. This leave must be approved in advance by the responsible administrator or immediate supervisor. Seniority and vacation and sick leave are not earned during unpaid leaves.

11.9.2 Employees who are drafted or volunteer for military service during times of war or declared emergencies shall be entitled to military leaves of absence without pay, not to exceed four years, for service in the armed forces of the United States or of the state of Minnesota. Employees shall accumulate seniority during these periods of military service.

11.9.3 For determining vacation accumulation rates, military leave without pay shall be counted the same as normal straight-time hours that would have been worked. Vacation leave is accumulated during a military leave of absence without pay for all military service (reserve or regular armed services component) in time of war or declared emergencies, or when an employee is drafted. Additionally, vacation is accumulated during a reservist's initial period of active duty for training of three or more consecutive months and during all active and inactive duty for training in the military forces. The complete policy on military leaves may be viewed on the worldwide web at or may be obtained from the Office of Human Resources.

## 11.10 Leaves of Absence With Pay

11.10.1 Upon request an employee shall be granted a leave of absence with pay for:

11.10.1.1 service on a jury provided the employee is regularly employed at a designated percentage of time of 50 percent or more. An employee serving on a jury is expected to report for work during any work hours when the jury is recessed. The employee may be requested to render some additional services to the administrative unit in order to minimize the interruption of service caused by this absence.

11.10.1.2 voting in any state-wide general or state-wide primary election, or in an election to fill a vacancy in the office of U.S. President, U.S. Senator or U.S. Representative during the election day pursuant to Minnesota Statute 204C.04.

11.10.1.3 court attendance in connection with an employee's official duty. Such attendance shall include transportation to and from the employee's headquarters to court. Any absence, as an individual rather than as an officer or an employee of the University, whether voluntary or in response to a legal order to appear and testify in private litigation, shall be taken as vacation leave, leave of absence without pay, or as deduction from authorized accumulated overtime.

11.10.1.4 tour of duty in the reserve military forces of the United States or National Guard, not to exceed 15 workdays in any calendar year.

11.10.2 The responsible administrator has the discretion to determine whether a leave of absence with pay will be granted for:

11.10.2.1 a reasonable amount of time in University service, collegiate, campus or University committees, governance bodies, etc.;

11.10.2.2 appearance before a court, legislative committee, for other judicial or quasi-judicial body as a witness in action involving the federal government, the state of Minnesota, or a political subdivision thereof, or the University, in response to subpoena or other direction by proper authority;

11.10.2.3 attendance at professional and scientific meetings and other approved educational activities; (Regents Policy, Employee Development, Education and Training, Section VI, VII);

11.10.2.4 educational leave for not more than four hours per week (or more if make-up schedule for additional time is approved by supervisor) to be used for such purposes as attending class on a Regents' Scholarship; (Regents Policy, Employee Development, Education and Training, Section V): <https://regents.umn.edu/policy/all#board-of-regents>.

11.10.2.5 the time required to complete an investigation and decide whether disciplinary action is warranted; and the time period between an employee's receiving a notice of termination of employment and the effective date of termination (Rule 7.6; Rule 13.2).

11.10.3 Compensation for hours not worked or for extra hours worked due to University-wide or individual campus closings for weather or other emergencies is covered in an emergency closing policy and procedure document. The current emergency closing policy may be viewed at: <https://policy.umn.edu/operations/emergencyclosing> or a copy may be requested from the Office of Human Resources.

## **11.11 Reinstatement From Leave of Absence**

11.11.1 Except as otherwise provided by these Rules, an employee granted a leave of absence must return to employment in the same classification and administrative unit at the expiration of the leave. This employee may return to employment before the leave expires upon approval of the responsible administrator.

11.11.2 An employee who is laid off before the leave expires because that individual's position has been abolished shall be entitled to re-employment consideration in accordance with these Rules (Rule 12.3).

## **RULE 12 Seniority, Layoff, and Resignation**

This rule refers only to employees moving from a civil service job to a civil service job unless otherwise indicated.

### **12.1 Seniority Unit**

12.1.1 Seniority unit is determined at the college or appropriate senior administrative level, with the approval of the appropriate human resources office. Employees must be informed of the seniority unit in which they have rights at the time they become eligible to earn seniority, usually after they have passed probation. (See Rule 12.2 for other examples of eligibility to earn seniority.

12.1.2 Prior to an individual employee's change in assigned seniority unit, the employee must be notified of:

- a) the current seniority unit in which the employee has rights;
- b) the seniority unit the employee will have rights in during a transition period;
- c) the seniority unit the employee will have rights in after the organizational change in the unit is complete; and
- d) the dates these changes become effective.

### **12.2 Unit and Classification Seniority**

12.2.1 Unit seniority shall mean cumulative length of service (total paid straight-time work hours) in all classifications held within a seniority unit by an employee; an employee accumulates and retains unit seniority in each of the seniority units in which the employee has worked. Unit seniority shall be acquired only after the completion of the probationary period, but shall begin at the date of entry into the class in the seniority unit.

12.2.2 Classification seniority shall be acquired only after the completion of the probationary period in each classification, but shall begin at the date of entry into each classification.

12.2.3 Temporary employees do not accumulate classification seniority until they have completed more than one calendar year of service of 50 percent time or more within the same classification, within the same administrative unit. Classification seniority shall be retroactive to the date of entry into the classification in the administrative unit. Employees moving from continuing to temporary positions forfeit all rights and benefits given to a continuing position and will be governed by the rules for temporary employees.

12.2.4 Classification seniority shall mean length of service (total paid straight-time hours) in a particular classification; an employee accumulates and retains classification seniority in each of the classifications in which the employee has worked. Temporary employees who have become continuing employees in accordance with Rule 6, Section 6, shall be granted unit seniority. Unit seniority shall begin on the first day after the two-consecutive-calendar-year anniversary and is not retroactive to the date of entry into the classification in the administrative unit. When an employee holds a particular classification within an administrative unit and has passed probation, and a vacancy exists on another shift in that classification and administrative unit that employee, if qualified, shall be granted a change between work shifts in order of classification seniority if the employee has applied for such change in writing.

12.2.5 When overtime is required, the employee who usually performs the work shall be given first opportunity to work the overtime (including holidays). If the employee chooses not to accept overtime, other employees who are able to perform the work and wish to work overtime shall be permitted to work such overtime in classification seniority order with the most senior employee in that classification being given first consideration. If all employees decline to work such overtime, the person with the least amount of classification seniority shall be required to work the overtime (See Rule 10.2.)

12.2.6 Unit and Classification seniority credits accrued up to the time of transfer from a unit shall be reinstated upon an employee's re-employment in that original unit (regardless of administrative or collegiate unit), provided the employee has not terminated employment with the University during the interim or had that appointment reduced below 50 percent time for a period of four consecutive calendar months.

12.2.7 Unit and Classification seniority credits of a former employee who is re-employed shall begin on the date of re-employment unless seniority is reinstated under Section 4 of this rule. When the former employee is re-employed to a temporary position, classification and unit seniority credits cannot be reinstated.

## **12.3 Layoff, Bumping, and Job Transfer**

### **12.3.1 Layoffs**

12.3.1.1 A responsible administrator may lay off an employee because of abolition of position; shortage of work or funds; reorganization of the administrative, collegiate, departmental unit; or other reasons beyond the employee's control that do not reflect discredit on the employee's services.

12.3.1.2 When two or more persons have equal unit seniority in the unit in which the layoff is to be made, the order of layoff shall be determined by the classification seniority of the individuals involved. If the unit and classification seniorities of the affected persons are equal, the responsible administrator shall decide the order of layoff.

12.3.1.3 At least twenty-eight (28) days before the effective date of an employee's layoff from a continuing position, the responsible administrator shall give written notice to the employee, with a copy to the appropriate human resources office. This written notice shall include an explanation of the employee's bumping rights and, in case bumping rights are not exercised, regulations concerning unemployment benefits.

12.3.1.4 Instead of layoff an employee may choose transfer or demotion into a position for which the employee is qualified within the unit where the layoff occurs if a vacancy exists.

### **12.3.2 Bumping Rights**

12.3.2.1 In accordance with the above, employees whose jobs have been eliminated, or whose appointment(s) are involuntarily reduced to below 75 percent, or employees on 50 to 74 percent appointments whose appointments are involuntarily reduced to below 50 percent, shall be allowed to the following, in the order listed:

- 1) bump the least senior (based on unit seniority) employee who is performing essentially the same duties within the same unit and classification.

12.3.2.2 If this is not possible, an employee may:

- 2) bump into the position identified by the following criteria:
  - a) The position is in the same classification and unit;
  - b) The duties are not essentially the same;
  - c) The bumping employee is qualified for the position;
  - d) The employee to be bumped is less senior (based on unit seniority) than the bumping employee. If more than one position meets the above criteria, the employee to be bumped shall be the least senior (based on unit seniority) employee in that set of positions.

12.3.2.3 If this is not possible, an employee may:

- 3) bump into the position identified by the following criteria:
  - a) the position is in a previously held classification in which the bumping employee passed probation in the same unit;
  - b) the position is in the same unit;
  - c) the bumping employee is qualified for the position;
  - d) the employee to be bumped is less senior (based on unit seniority) than the bumping employee.

12.3.2.4 If the bumping employee is eligible to bump to more than one previously held classification, this bumping option shall be applied to those classifications in the inverse order in which they were held. If more than one position in a particular classification meets the above criteria, the employee to be bumped shall be the least senior (based on unit seniority) employee.

12.3.2.5 If none of the above options are possible in the order listed, the employee may:

- 4) exercise the right to any posted vacancy within the system as identified by the following criteria, and shall be hired in classification seniority order: See 12.3.3.1:
  - a) the position is in a previously held classification in which the employee passed probation;
  - b) the employee is qualified for the position.

12.3.2.6 Rate-arranged employees follow the same criteria for bumping as other employees; however, they are only eligible to bump into the same classification in the same established salary range.

### **12.3.3 Layoff List**

12.3.3.1 Employees who have successfully completed probation and who cannot or do not exercise their bumping rights and are under layoff notice or have been laid off shall be placed on a University layoff list provided the employee submits a written request to be placed on the layoff list. These employees shall be rehired (if qualified to perform the work), in classification seniority order ahead of all other applicants (except for recalled employees), for vacancies within a previously held classification for which they apply.

12.3.3.2 An employee who is being terminated during the probationary period may choose not to exercise the option to bump another employee from a previously held continuing (non-temporary) position. The employee being terminated may then be placed on the layoff list, in accordance with Rule 7.5.

12.3.3.3 An employee on the layoff list must be recalled when a vacancy occurs in the unit and classification from which the layoff occurred, provided the employee is qualified to perform the work.

12.3.3.4 After receipt of recall notice, the employee shall have seven workdays during which to indicate intent to return and at least 22 additional workdays to report to work. Failure to accept recall shall constitute a resignation that includes removal from the layoff list.

12.3.3.5 Employees on the layoff list may apply for any vacancy, but are not entitled to hiring preference as laid-off employees except where the vacancy occurs in a previously held classification.

12.3.3.6 Rate-arranged employees follow the same protocol for access to the lay-off list as other employees but may only exercise layoff list rights in the same classification in the same established salary range.

### **12.3.4 Job Transfer List**

12.3.4.1 An employee who has passed probation and is determined by the University to be eligible for job transfer under state or federal disability laws shall be placed on the job transfer list. <https://hr.umn.edu/Supervisors/Supervising>.

12.3.4.2 An employee who has passed probation but whose on-the-job injury now prevents the employee's performance of the essential functions of the position shall be placed on the job transfer list.

12.3.4.3 An employee who has been notified of failure to pass probation or dismissal and who is subsequently injured on the job or asserts a disability for the first time shall not be eligible for placement on the job transfer list.

12.3.4.4 An employee on the job transfer list shall be hired for vacant positions for which the employee is qualified to perform the essential functions at the same or lower pay range as the employee's last position, ahead of all other applicants except eligible employees on the layoff list.

### **12.3.5 Re-employment**

12.3.5.1 Classification and unit seniorities of an employee who is re-employed from a layoff list shall begin on the date of re-employment, except when re-employment is in a temporary position. If re-employment occurs in the previous administrative unit of employment, the classification and unit seniorities at the time of termination shall be restored, except when re-employment is in a temporary position.

12.3.5.2 When an employee is re-employed from the layoff or job transfer lists, unused sick leave and time accumulated toward eligibility for vacation allowance shall be restored, effective on the date of re-employment.

12.3.5.3 An employee's name shall remain on the layoff or job transfer lists for a period not to exceed two years or until the employee has returned to work at the University within that time. An employee has the right to refuse re-employment to the first position of equivalent classification, same campus or experiment station location, and reasonably close salary offered, but must accept the second position or be removed from the layoff list. An employee on the job transfer list has the right to refuse re-employment to the first position at the same or lower pay range as the employee's last position and reasonably close salary offered, but the employee must accept the second position or be removed from the job transfer list.

12.3.5.4 An employee who has exhausted rights on the layoff list shall be considered as having resigned in good standing.

### **12.3.6 Layoffs and broadbanded classifications**

12.3.6.1 For civil service positions which are broadbanded, both the classification and the level within the classification will be considered for purposes of bumping rights and placement on the layoff list. When a layoff occurs, the administrative unit will have the responsibility to identify the current level of work of the affected employee.

12.3.6.2 The employee can bump the least senior employee performing essentially the same work and at their same level (if qualified); can bump the least senior employee performing different work at their same level (if qualified); and can bump the least senior employee at a lower level (if qualified) even if the employee never was classified at the lower level. The employee cannot bump to a higher level, even if qualified.

12.3.6.3 The employee will be placed on the layoff list for the class and the level from which they were laid off, all lower levels within the same broadbanded classification, and all other classifications for which they have passed probation. The employee will be referred and has hiring rights for those classifications and levels for which they meet the required qualifications on the posted job requisition.

### **12.4 Resignation and Reinstatement**

12.4.1 An employee may resign by presenting a resignation in writing to the responsible administrator. To resign in good standing, an employee must give the responsible administrator or immediate supervisor at least 10 work day's prior notice. An employee may request withdrawal of the resignation if at least 10 workdays notice was given and the employee requests withdrawal of the resignation in writing before the actual termination date. The decision to accept the request for withdrawal is at the discretion of the responsible administrator.

12.4.2 As long as the University has a record on file, a former employee who was employed on a prearranged and assigned schedule of at least 50 percent time and who is re-employed in a position of at least 50 percent time shall have any or all of these items reinstated: unused sick leave, classification and unit seniority credit (if applicable under Rule 12.2, and except when re-employed to a temporary position), vacation leave accumulation rate and eligibility, and waiver of probationary period within a formerly held classification (if applicable under Rule 7.2). Reinstatement is not possible for former employees who have negotiated a settlement agreement with the University.

## **RULE 13 Discipline, Dismissal, and Protection from Retaliation**

### **13.1 Discipline**

13.1.1 Supervisors may discipline employees only for just cause. Disciplinary action may take the form of oral warning, written warning, suspension without pay, reduction in pay, and dismissal. Discipline shall be commensurate with the severity of the infraction and shall take into consideration factors such as, but not limited to, the employee's length of service, job history, and nature of the problems. A supervisor may require an employee to take a leave of absence with pay in order for the supervisor to conduct an investigation that may result in disciplinary action.

13.1.2 Supervisors must make a record of disciplinary action except for oral warnings, with a copy to the official personnel file and a copy to the employee. Disciplinary actions entered into an employee's Human Resources file shall be removed from departmental files after one calendar year, if no further disciplinary actions have been taken during that year. Records of suspension shall be retained in the official personnel file for eighteen (18) months, with the exception of suspensions for issues related to sexual or racial misconduct, which shall be retained in the employee's official personnel file for five (5) years; and physical abuse or violence which shall remain in the employee's official personnel file with the totality of the circumstances retained.

13.1.3 Disciplinary action, other than that imposed under Section 13.4.1, shall become effective when the supervisor communicates the action to the employee. An employee may appeal any disciplinary action in accordance with Rule 14, other than that imposed under Section 13.4.1.

### **13.2 Dismissal**

13.2.1 Employees who have passed probation, and temporary employees who have completed more than one calendar year of service in a 50 percent time or more appointment within the same classification, within the same administrative unit (see Rule 6.6), may be dismissed from a position for just cause. Just cause is not required for dismissal of any other employee.

13.2.2 A written notification of reasons for dismissal shall be handed to the employee by the supervisor or responsible administrator or sent by registered mail to the employee's last known address with return receipt requested. A copy of this notification shall be placed in the employee's official personnel file. The statement shall allow 10 workdays prior to the effective date of dismissal. These 10 days may be given as a leave of absence with pay. In cases of alleged misconduct the employee shall be placed on leave without pay during this period.

13.2.3 The employee may appeal a dismissal during the six-week period in accordance with Rule 14 other than a dismissal under Section 13.4.1. The appeal shall not affect the effective date of the dismissal.

13.2.4 An employee who willfully practices or has attempted to practice any deception or fraud concerning the employee's eligibility for appointment may, upon discovery and proof thereof, be dismissed or otherwise appropriately disciplined. Charges alleging such deception or fraud may be initiated by the responsible administrator under which the employee is working at the time, or by the Vice President, in conformity with the provisions of those rules relating to notice of dismissal and hearing.

13.2.5 Absence for three consecutive workdays without authorization shall be considered a resignation, in accordance with Rule 10.5.

### **13.3 Protection from Retaliation**

13.3.1 Supervisors may not take disciplinary action against an employee who, in good faith, reports a violation of any federal or state law or regulation to the employer, a governmental body or law enforcement official. Employees may report any good faith concerns to the University's confidential reporting service (toll-free 1-866-294-8680 or via a confidential Web link (<https://secure.ethicspoint.com>)). Disciplinary action may not be taken against an employee who is requested by a public agency to participate in an investigation, hearing, or inquiry as well as an employee who refuses to participate in any activity that the employee has an objective basis in fact to believe violates state or federal law and the employee informs the employer that the refusal is based on that reason.

13.3.2 University Policy "Reporting and Addressing Misconduct" outlines the procedure to report concerns without fear of



retaliation. This policy can be found at: <https://policy.umn.edu/operations/misconductreporting> or a copy may be requested from the Office of Human Resources.

13.3.3 Supervisors may not take disciplinary action against an employee who refuses to perform non-work-related tasks on paid work time.

### **13.4 Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence ~~Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination~~**

13.4.1 Notwithstanding other provisions in these Civil Service Employment Rules, decisions and appeals regarding disciplinary action in response to complaints against employees for alleged violation of Board of Regents Policy: ~~Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence~~ Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination and Administrative Policy: ~~Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence~~ Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination are excluded from these Civil Service Employment Rules and shall be addressed under Administrative Policy: ~~Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence~~ Sexual Harassment, Sexual Assault, and Other Forms of Sex Discrimination and related administrative procedures.

## **RULE 14 University Conflict Resolution**

14.1 This policy applies to all University of Minnesota employees not represented by a union, but all Civil Service Rules, including Rule 14, cover only employees specified in Rule 1, Section 2 of these rules. For the most current policy, refer to [www.umn.edu/ocr](http://www.umn.edu/ocr) or contact the Office for Conflict Resolution. The Office of Institutional Compliance has additional resources available at: <https://www.compliance.umn.edu/complianceReportResources.htm>

14.2 The Office for Conflict Resolution will consult with the Consultative Committee periodically regarding Rules interpretation issues that have arisen in matters brought to that office, and report the Rules that have been cited in petitions filed by Civil Service employees (Rule 3.2.4).

## **RULE 15 Health and Safety and MERTKA**

15.1 At the time of hire or re-employment, employees shall be informed by their supervisors of the Minnesota Employees Right-To-Know Act (MERTKA), regarding potentially hazardous substances or situations encountered in the workplace.

15.2 Administrative units are responsible for providing and maintaining work areas that meet the health and safety standards required by State and Federal law. Each administrative unit should have a designated safety coordinator to be the unit liaison with the University's Department of Environmental Health and Safety. Supervisors shall take steps for the safety of employees within the work area.

15.3 Employees shall report health and safety concerns and problems to their supervisors. Supervisors must respond promptly to the concerns and/or problems until such time as the problem is resolved. Supervisors should consult with their unit safety coordinator to determine if there is a need to make use of the services of the Department of Environmental Health and Safety Services. These services include such items as fire safety evaluations, measurement of noise and radiation levels, and analysis of biological, chemical, and all other hazards.

15.4 Employees shall immediately report on-the-job accidents and injuries to their supervisors. The supervisor shall take appropriate steps to insure that the employee's injury is not further aggravated and to enable the employee to obtain care for the injury. This may include the provision of first aid services, medical services, ambulance services, or transportation to a hospital or it may require taking or sending the employee home. The supervisor shall report these incidents, whether or not injury resulted, to the administrative unit and submit an accident report (First Report of Injury) to the Workers Compensation Office.

15.5 Additional information and policies regarding health and safety are available from the Office of Human Resources and other appropriate University administrative units.

15.6 Insurance and Workers Compensation.

The University of Minnesota shall offer insurance coverage that includes, but is not limited to: group life, health, medical,

workers compensation, and dental benefits. Contact Employee Benefits <https://hr.umn.edu/Benefits/U-M-Employment-Benefits> for additional information.

## DEFINITIONS

The following words and terms, wherever used in these Rules, shall have the meaning indicated below. Definitions are to be considered as part of the Rules for the purpose of grievance.

**Administrative unit.** Any administrative, department, collegiate, campus, or central unit.

**Administrative authority.** Official University authorization to manage the business and/or fiscal activities of an administrative unit.

**Adoption event.** Adoption of a child up to 18 years of age who is adopted through public, private, domestic, international or independent means and who is not the stepchild of the adoptive parent.

**Appointing authority.** Any administrator, department head, or supervisor who has been delegated authority to appoint and terminate employees.

**Appropriate Human Resources Office/Personnel.** Describes the collegiate, campus, or central administrative human resources office responsible for area in which employee works.

**Appropriate Senior Administrator.** Describes the most senior administrator for the collegiate, campus, or central administration human resources office responsible for area in which employee works.

**Bumping.** Seniority-based process by which one employee may take the job of another in order to avoid layoff. A Civil Service employee may bump only within their own seniority unit.

**Calendar week.** 12:01 a.m. Sunday to midnight Saturday. (Should not be confused with the workweek, which may be different.)

**Callback.** The act of requiring an employee to report to work in an emergency outside the employee's regular work hours, as covered in Rule 10.5.1.

**Civil Service Employee.** The University of Minnesota civil service staff does professional and/or supervisory, non-academic work and is not currently represented by a union. Job classification numbers begin with 0, 3, 7 or 8 (see also Temp or casual appointment definitions).

**Classification.** Descriptive title given to a position or a group of positions with similar duties and responsibilities.

**Classification Seniority.** Classification seniority shall mean length of service (total paid straight-time hours) in a particular classification; an employee accumulates and retains classification seniority in each of the classes in which the employee has worked. Classification seniority for continuing appointments shall be acquired only after the completion of the probationary period in each classification, but shall begin at the date of entry into each classification. Classification seniority for temporary appointments shall be acquired only after the completion of more than one calendar year of service in a 50 percent time or more appointment within the same classification, within the same administrative unit but shall begin at the date of entry into the classification.

**Committee.** Civil Service Consultative Committee of the University of Minnesota.

**Compensatory time.** Time off allowed for time worked in excess of forty (40) hours in a work week. Non-exempt employees shall be compensated at time and one-half (also see overtime definition).

**Continuing position.** A position within a classification of the University Civil Service that is considered by an administrative unit to be a regular, ongoing non-temporary position. Employees must serve a probationary period. Temporary appointments will become continuing appointments with all rights and benefits thereof after more than two calendar years of service in a temporary appointment of 50 percent time or more within the same classification, within the same administrative unit including reclassification of the position. In these cases, a probationary period will be considered to be completed.

**Demotion.** An employee's change from a position in one classification to a position in another classification assigned to a lower pay range in the same schedule, or, an employee's change from a position in one classification to a position in another classification on a different schedule where the midpoint of the new classification's range is lower than the midpoint of the old classification's range by 4 percent or more.

**Discharge, Dismissal.** Involuntary termination.

**Discretionary increase.** Wage and salary increases (incremental, percentage, or lump sum) that may vary in amount from employee to employee (within limits prescribed in the compensation plan) based on performance appraisals.

**Domestic partner.** Two persons of the same or different sex who are (1) engaged in a committed relationship, and (2) not related by blood closer than permitted under Minnesota marriage laws.

**Employee's child.** Includes adoptive, biological, step-child, or foster child of the employee or employee's spouse.

**Exempt.** Classification of work not regulated under the Fair Labor Standards Act. For further information, call the Office of Human Resources.

**Flex-time.** Work arrangement in which employees choose their own work hours within the limits established by the area manager. Core hours are established and employees are allowed to determine their stop and start times. Flextime does not alter the total number of hours worked in a week.

**Foster parent.** One who has undergone a foster care placement proceeding to assume child-rearing responsibilities but not full legal responsibility for a child.

**Full-time appointment.** One hundred percent time for the period of appointment.

**Gestational Surrogacy.** A legal agreement between intended parent(s) and a gestational carrier to carry an embryo to term as a means for the intended parent(s) to become parent(s) of a child. Under this policy, both the intended parent(s) and the gestational carrier would be eligible for paid parental leave.

**Illness.** Includes both mental and physical illness.

**Job transfer list.** A record of former employees who have passed probation and whose University on-the-job injuries prevent performance of the essential functions of their positions, or who are determined by the Office of Human Resources to be eligible for job transfer under state or federal disability laws, without delinquency or misconduct on their part.

**Just cause.** A standard or test often applied to determine the appropriateness of disciplinary action. The factors that may be considered in determining just cause include but are not limited to: (1) Forewarning; (2) Reasonableness of the rule or standard that was violated; (3) The presence of a supervisory or other type of investigation to verify employee culpability and the circumstances of the violation; (4) Establishment of proof at a level consistent with the disciplinary action being taken; (5) Prior consistent enforcement of the rule or standard that has been violated; (6) Disciplinary action proportional to the offense.

**Layoff list.** A record of former employees who have been laid off due to lack of work or funds within the past 24 months, without delinquency or misconduct on their part.

**Nondiscretionary increase.** Wage and salary increases (incremental, percentage, or lump sum) that are granted to all employees or to specific groups of employees (e.g., all those on a particular schedule or in a particular classification) across the board, without regard to the employee's job performance.

**Nonexempt.** Classification of work regulated by the provisions of the Fair Labor Standards Act. For further information, call the Office of Human Resources.

**Non-public employee.** Refer to the Minnesota Public Employee Labor Relations Act 179A. Contact the Office of Human Resources for additional information. These are appointments <36%.

**Official employee personnel file.** The official employee personnel file is the file maintained by the Office of Human Resources at the respective campuses (Crookston, Duluth, Morris, Rochester and Twin Cities). All disciplinary, performance appraisal, payroll, and similar documents must be filed in this file to be used in any action related to an employee's appointment.

**On-call:** Employees, at times outside of their scheduled work hours, who are required to be available to respond to telephone calls or return to work (see "return to work" definition) if necessary. On-call work shall follow the practice and procedures as established by the Vice President for Human Resources.

**Overtime.** Overtime is the work time in excess of 40 hours worked or paid time off per workweek on one or more University jobs (also see work time definition). Full-time V-classifications are not eligible for compensated overtime. Part-time V-classifications are eligible for compensated overtime for hours worked beyond 40 hours per workweek. Exempt employees (non-V) are eligible for compensated overtime for hours worked beyond 40 hours per workweek.

**Part-time appointment.** An appointment at less than one hundred percent time for the period of the appointment. These are appointments >36%. <http://www.revisor.leg.state.mn.us/stats/179A/03.html>

**Performance appraisal plan.** A plan shall include the following elements: goals of the performance program, appraisal forms, and rating standards and factors.

**Position.** A group of current duties assigned or delegated by responsible authority, requiring the full-time or part-time employment of one person.

**Position classification plan.** The schedule of classifications and revisions adopted by the Board of Regents on September 22, 1945, together with the subsequent amendments and revisions adopted by the Board of Regents.

**Probationary period.** Part of the selection process during which an employee new to a position is required to demonstrate fitness for the position by actual performance of the position's duties.

**Promotion.** An employee's change from a position in one classification to a position in another classification that is assigned to a higher pay range on the same schedule, or an employee's change from a position in one classification to a position in another classification on a different schedule where the midpoint of the new classification's range is higher than the midpoint of the old classification's range by 4 percent or more. Probation is required.

**Qualifications:** Criteria for a specific job for which an employee is hired. Qualifications include required and preferred qualifications. Required qualifications are what you have to have in order to perform the job duties. Preferred qualifications are what would be helpful to have, but which an employee can receive training for if they do not possess them at the time of hire.

**Qualified:** Possesses the required qualifications for a particular position.

**Recall.** When a vacancy occurs in an administrative unit and in a classification from which an employee was laid off and the employee is qualified to perform the work, the employee must be notified of their right to return to work.

**Reclassification.** A change in classification of an individual position by raising it to a higher classification, reducing it to a lower classification, or moving it to another classification at the same level on the basis of significant changes in the kind, difficulty, or responsibility of the work performed. No probation is required unless requested by the supervisor and approved by the Vice President.

**Regularly scheduled.** Working hours scheduled in a recurring pattern on a continuing basis.

**Responsible administrator.** The administrator who has administrative authority for the unit, department, college, campus, or central administration for which the employee works.

**Return to work.** Reporting back to work after a lay-off or leave of absence.

**Return to work (from on-call status).** An employee who is working in an on-call status and must return to the work place.

**Seniority credit.** Credit given in personnel processes to the length of service of an employee in a particular kind of work in a specific seniority unit, determined and granted in the manner established by these Rules.

**Seniority unit.** The unit in which employees earn seniority. This can be a department, a group of departments, an administrative unit, a college, or an entire campus. Seniority units are determined at the collegiate or vice presidential level, with the approval of the Vice President.

**Shift differential.** Base salary supplements that compensate employees for the inconvenience of working certain hours other than the traditional business hours of 8:00am – 5:00pm.

**Straight time pay.** Base hourly rate of pay for an employee.

**Supervisor.** A person who exercises major supervisory functions over another employee or employees. These functions are hiring, evaluating, assigning work, disciplining, and dismissing.

**Telecommuting.** A work arrangement in which an employee carries out all or some of the duties of the job at home or another alternate work location. The toolkit for implementing this work arrangement can be found at:

<https://hr.umn.edu/Employees/Current-Employees/Working-U-M>

**Temporary appointment.** Appointment to a posted position that has a specified beginning and ending date. It may be part-time or full-time (<2 years, > 36%). A temporary employee does not serve a probationary period and does not have the rights that accrue to an employee on a continuing appointment (>2 years, > 36%), except as defined in these Rules. Employees on a temporary appointment shall be notified, in writing, of the temporary nature of their appointment. Temporary appointments will become continuing appointments with all rights and benefits thereof after more than two (2) calendar years of service in a temporary appointment of 50 percent time or more within the same position, including reclassifications of that position, within the same administrative unit. In these cases, a probationary period will be considered to be completed. (See Rule 6.5.6)

**Temporary or Casual Appointments** (0001, 0007, 0011) appointments are not covered under the rules.

- <https://policy.umn.edu/hr#Hiring>
- Technical Consultant Appointments
- <https://hr.umn.edu/Supervisors/Recruiting-and-Hiring/Hiring-Temporary-or-Casual-Employees>

**Temporary no-post.** A temporary position of 12 (twelve) months or less that has not been posted and is filled by an applicant not referred by the appropriate human resources office. Temporary no-post positions are not covered by Civil Service Rules. (See Rule 1.2)

**Termination.** Discontinuance of University employment.

**Transfer.** An employee's change from a position in one administrative unit to a position in the same schedule and pay range in another administrative unit, a change of classification within the same administrative unit when the new position is assigned to the same schedule and pay range as the former position; or an employee's change from a position in one classification to a position in another classification on a different schedule where the difference in the midpoints of the two ranges is less than 4 percent. Probation is required.

**Unit seniority.** Unit seniority shall mean cumulative length of service (total paid straight-time work hours) in all classifications held within a unit by an employee; an employee retains unit seniority in each of the units in which the employee has worked. For an employee who is hired into a continuing appointment, seniority shall be acquired only after the completion of the probationary period, but shall begin at the date of entry into the class in the unit. For an employee who is hired into a temporary appointment, unit seniority shall be acquired only after the completion of two calendar years of service in a 50 percent time or more appointment, within the same position, including reclassifications of that position, within the same administrative unit. (See Rule 6.6) Unit seniority shall begin on the first day after the three-year anniversary and is not retroactive to the date of entry into the class.

**V-class.** A designation given to some supervisory and professional classifications that allows full-time employees in those classifications to accrue an extra one-half day of vacation per month in lieu of being paid for overtime. V-class part-time employees shall be paid or receive compensatory time off at the straight-time rate for all hours worked in excess of their appointment percentage up to the total number of hours that would constitute full-time employment. (See Rule 11.2.) In order to be eligible for this designation, the classification must be exempt from the United States Fair Labor Standards Act.

**Vacancy.** A position opening that exists when a new position is created or when an existing position opens up due to the termination (dismissal, resignation, promotion, etc.) of an employee. A position is not vacant for purposes of permanent shift selection when the incumbent is on approved leave. Adjusting the work shift or the responsibilities of an incumbent's individual position does not create a vacancy.

**Vice President.** The Vice President for the Office of Human Resources of the University of Minnesota or a designated representative.

**Work shift.** This term means both a period of work that has a predetermined starting and ending time and the regularly scheduled configuration or pattern of work periods and days off. This configuration may repeat itself on a weekly, biweekly, or longer-term basis.

**Work time.** Time scheduled for employees to be on work duty; and time spent on authorized paid leaves of absence such as vacation leave, sick leave, compensatory time off, paid military leave, and so forth.

**Workweek.** A fixed and regularly recurring period of 168 hours; seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. The beginning of the workweek shall be established by the responsible administrator and, once established, it remains fixed. However, it may be changed by the responsible administrator if the change is justifiable for business reasons. Different workweeks may be established for different employees or groups of employees.

**Work year.** One year at 100 percent time = 2,080 straight-time paid work hours; one year at 75 percent time = 1,560 straight-time paid work hours; one year at 50 percent time = 1,040 straight-time paid work hours.

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# Resolution Related to Amendments to University Policies Related to Sex Discrimination

**Tina Marisam**  
**Associate Vice President & Title IX Coordinator**  
**Office for Equity and Diversity**

**Carrie Ryan Gallia**  
**Senior Associate General Counsel**  
**Office of the General Counsel**

**July 22, 2024**





# Items for Board Action

- The purpose of this item is for the Board to act on the resolution to amend the University's policies related to sex discrimination.
- The proposed amendments will revise the following University policies and rules to comply with new federal Title IX regulations:

## Board of Regents Policies

- *Faculty Tenure*
- *Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence*
- *Student Conduct Code*

## Administrative Policies:

- *Discrimination*
- *Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence*
- *Conflict Resolution for Faculty, P&A, Civil Service, and Student Workers*

## *Civil Service Employment Rules*



## Current Legal Landscape

- On July 2, District of Kansas enjoined the enforcement of the new regulations in four states and in schools attended by plaintiff-organization members and children.
- On July 15, we learned that the University of Minnesota is among those schools.
- The Department of Education has stated that, where an injunction is in place, it will continue to enforce the 2020 regulations while challenging all injunctions.
- We continue to watch other cases.
- In light of the present injunction, the resolution we present to you has two options for approval today and implementation later, when legally permissible.



## **Changes to Administrative Policies on *Discrimination* and *Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence* Made Since the June 10 Meeting**

- Added charts containing contact information for campus Title IX and Equal Opportunity offices, law enforcement resources, confidential resources, UReport, and external reporting resources.
- Added that supervisors must communicate with the University's Sponsored Project Administration about prohibited conduct and related administrative action that may need to be reported to a grant-funding agency under the agency's rules.
- Added that the campus Title IX or Equal Opportunity office, as appropriate, is responsible for the record-keeping requirements set forth in the policies.



## **Changes to Administrative Policies on *Discrimination* and *Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence* Made Since the June 10 Meeting**

- Added that Equal Opportunity & Title IX oversees the University's compliance with federal and state nondiscrimination laws.
- Added that the campus Title IX or Equal Opportunity office, as appropriate, may appoint a designee to hold the process rights accorded to complainants in a grievance process when there is not a participating complainant.
- Added a statement that the revised policies and associated procedures apply to all reports of prohibited conduct, except that definitions from the policies in place at the time the reported prohibited conduct occurred will be used to make the decision on responsibility.
- Other technical corrections identified during review.



## **Changes to the Administrative Policy on *Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence* Since the June 10 Meeting**

- Added Administrative Procedure: *Sexual Harassment, Sexual Assault, Stalking, and Relationship Violence Reported to Have Occurred Between August 15, 2020 and July 31, 2024.*
- This procedure applies the 2020 regulatory requirements to sex discrimination that is reported to have occurred between August 15, 2020 and July 31, 2024, as is required by the regulations.



# Implementation Timeline

- July 22:** Present policies to the Board for action.
- July 23-31:** Prepare for policy implementation in the event the injunction lifts.
- ?:** Be ready for new policies and procedures to take effect.



Equal Opportunity & Title IX  
274 McNamara Alumni  
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(612) 624-9547  
<https://eot.umn.edu>



# BOARD OF REGENTS DOCKET ITEM SUMMARY

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**Board of Regents**

**July 22, 2024**

**AGENDA ITEM:** Recommendation of the Eastcliff Property Task Force

Review       Review + Action       Action       Discussion

*This is a report required by Board policy.*

**PRESENTERS:** Regent Mary A. Davenport, Chair, Eastcliff Property Task Force

## **PURPOSE & KEY POINTS**

The purpose of this item is to act on the recommendation of the Eastcliff Property Task Force. As part of a broader review of the University’s strategic property planning in alignment with the MPact 2025 Systemwide Strategic Plan, the Board established the Eastcliff Property Task Force (task force) in September 2022. The task force was charged with considering the retention or disposition of Eastcliff in alignment with the guiding principles for the acquisition and disposition of property as defined by Board of Regents Policy: *Real Estate and Facilities*. There have been no changes to the recommendation since it was reviewed at the Board’s July 2024 meeting.

### **2022 Initial Recommendation**

The task force made an [initial recommendation at the December 2022 meeting](#). That initial recommendation concluded that maintaining Eastcliff as the presidential residence using University operating and capital funds is not central to fulfilling the University’s mission or the objectives of the MPact 2025 Systemwide Strategic Plan (MPact 2025). Given that, the task force recommended that current public resources used to support Eastcliff operating and capital costs should be reallocated to support the implementation of MPact 2025 goals.

The recommendation also included a request for additional time to explore if a transition from public resources to philanthropic support could provide the necessary funding to retain Eastcliff. Exploring the potential transition from public support to philanthropic support was encouraged by members of the Eastcliff Advisory Board and donors who have a strong affinity for Eastcliff.

### **2024 Final Recommendation**

With support from the University of Minnesota Foundation (UMF), the task force now recommends that private donations pay for future capital costs for Eastcliff improvements, as well as establishing a permanent operating endowment that will fund much of Eastcliff’s operating costs. UMF completed a feasibility study that demonstrated there is philanthropic support for Eastcliff that will allow the University to invest most of the funds currently used for Eastcliff expenses into mission-



focused activities in the future. This aligns with Board policy and the task force's initial recommendation.

Among the benefits of retaining Eastcliff is honoring the significant impact of the Brooks family's donation and the property's 60-plus years as the home for the University's presidents and their families. Eastcliff is a unique University asset that not only provides housing for the President that is convenient to the Twin Cities campus, but also a venue that can be used to recognize significant accomplishments by the University community and build key relationships on behalf of the University.

## **BACKGROUND INFORMATION**

The Board appointed the following individuals to the task force:

- Regent Mary Davenport, chair
- Interim Senior Vice President of Finance and Operations Julie Tonneson
- Vice President of University Services Alice Roberts-Davis
- University of Minnesota Foundation President and CEO Kathy Schmidlkofer
- Chief Public Relations Officer Chuck Tombarge
- Associate Vice President of Facilities Management Bill Paulus
- Assistant Vice President and Assistant Chief Operating Officer Janelle Broesch – *senior vice president delegate*

The task force was staffed by the Office of the Board of Regents.

# Eastcliff Property Task Force—Final Report

July 1, 2024

## Task Force Charge

The Eastcliff Property Task Force (Task Force) was appointed by the Board of Regents on September 9, 2022, and was charged with considering the retention or disposition of Eastcliff in alignment with the guiding principles stated in Board of Regents Policy: *Real Estate and Facilities*.

## Guiding Principles

In developing this recommendation, the Task Force relied on the guiding principles outlined in Board of Regents Policy: *Real Estate and Facilities*, which are as follows:

### **Subd. 1. Acquisition and Disposition of Property.**

Acquisition and disposition of property has a significant impact on the future of the University and as a result, the University must be circumspect in its decision-making. The following guiding principles will be considered as the University acquires and disposes of property:

- (a) **Support the University's teaching, research, and outreach mission and align with the Systemwide Strategic Plan.** Acquisitions must support the University's teaching, research, and outreach mission — either directly or for mission-supporting activities and infrastructure — and align with the Systemwide Strategic Plan. Dispositions may occur when it is determined that the property is no longer required to fulfill the University's mission, or the disposition of the property better meets the University's needs as defined by the Systemwide Strategic Plan.
- (b) **Align with campus plans.** Future acquisitions and dispositions should be contemplated in the campus plans for each campus. Priority consideration will be given for expansion at the edge of the existing campus or for properties within the campus boundaries as identified in the campus plan. Sites that are not adjacent to the campus or other University properties will be prioritized based on access (e.g., transit, bike, pedestrian) or as needed for mission-critical support.
- (c) **Provide strategic value when balanced against scarce resources and minimize financial liability.** The University will prioritize properties for acquisition if a specific, mission-supporting use has been identified for the property long-term. The University will

also consider the financial impacts of holding property, including minimizing the University's long-term financial liability in order to minimize the capital and operating costs of the property until it is developed for the specific, mission-supporting use. Acquisitions and dispositions of property being held for a future use shall include proformas and cost-benefit analyses over identified time horizons.

- (d) **Positively impact areas adjacent to the University or limit negative impact.** Property may be acquired or disposed of to provide benefit and enhancement to the local area. In limited instances, property may also be acquired in an effort to preclude conflicting uses that negatively impact adjacent campus properties.

## Recommendations

### 2022 Initial Recommendation

The Task Force delivered a preliminary two-part recommendation to the Board in December 2022. First, based on analysis using the guiding principles in Board policy, the Task Force concluded that maintaining Eastcliff as the presidential residence using University operating and capital funds was not central to fulfilling the University's mission. Based on that, the Task Force recommended current public resources used to support Eastcliff be reallocated to support the implementation of systemwide strategic plan goals. Second, recognizing the significant impact Eastcliff has had across time, the Task Force recommended that a feasibility study by the University of Minnesota Foundation (UMF) be completed to ascertain whether it would be possible to obtain the philanthropic support necessary to offset ongoing operating and capital expenses.

### 2024 Final Recommendation

The feasibility study recommended in December 2022 was subsequently completed and concluded that sufficient private funds can be raised over five years to transition Eastcliff away from University operating and capital support. Given this finding, the Task Force now reaffirms its December 2022 recommendation and refines it as follows:

1. **Retain** Eastcliff as the University's presidential residence and a significant event venue;
2. **Raise**, in collaboration with UMF, sufficient philanthropic support over the next five years to create an endowed fund to provide directed ongoing operating expenses, as well as one-time funding for capital expenses included in the 10-year capital plan;
3. **Redirect** most of the University's financial resources currently expended on Eastcliff to high-priority systemwide strategic plan goals; and
4. **Streamline** governance oversight of the facility.

### Key Findings for the Recommendation

The Task Force's determination to retain Eastcliff was based on the following key findings:

- Since 1961, Eastcliff has served as the official residence of the University of Minnesota president, as required by the Brooks family's original donation. It provides the president housing that is easily accessible to the Twin Cities campus. Retaining Eastcliff honors the significant impact the Brooks family's donation of Eastcliff has had on University history.

- Eastcliff also provides a unique and valuable asset for the Board and president to recognize significant accomplishments by the University community and build key relationships on behalf of the University. The property provides the flexibility to host events that range from small gatherings to large recognitions.
- Transitioning Eastcliff operating and capital funding from public resources to philanthropic support aligns with Board policy and the Task Force’s initial recommendation from December 2022.
- The University of Minnesota Foundation (UMF) completed a feasibility study that demonstrated there is sufficient philanthropic support for Eastcliff without diverting resources from other University philanthropic needs.
- Since the 2022 initial recommendation, the University refined operating and capital cost projections and adjusted the proposed total needed to establish an operating endowment.
- University financial support will be needed during the transition and, more modestly, on an ongoing basis (as outlined below), which will balance the need to invest in current and future systemwide strategic plan goals while also signaling a University commitment that will benefit fundraising efforts.
- The financial transition will be staged over five years. If sufficient philanthropic support is not obtained during that time, the Board may reconsider whether retaining Eastcliff is in the best interests of the University.
- The expiration of the State of Minnesota’s lease at Eastcliff, coupled with the fact that President Cunningham is already living in temporary housing, provides an opportunity to complete needed capital improvements without disrupting anyone living in the residence.

## Transition of Financial Support

The recommendation to transition Eastcliff operating and capital funding from public resources to primarily philanthropic support aligns with Board policy and the Task Force’s initial recommendation from December 2022. If approved, the University and UMF will work together to raise the necessary philanthropic support over the next five years. If philanthropic support is not sufficiently obtained during that time, the Board may reconsider whether retaining Eastcliff is in the best interests of the University.

## Capital Projects

- The current 10-year capital plan for Eastcliff is estimated to cost \$6 million (in 2023 non-escalated dollars), which includes a variety of projects that maintain the home, increase usability and security, and address outdated facilities.
- The Task Force recommends that all renovations currently identified by the 10-year capital plan be completed between the time the State of Minnesota’s lease ends and President Cunningham’s move-in date given inflationary costs and the disruptions caused by construction. The renovations will begin as soon as possible after the current lease ends.
- UMF would fundraise one-time funding for the full capital amount. Like other capital projects, the University would provide upfront financing, to be reimbursed from philanthropic funds.
- UMF would also seek potential in-kind donations from Minnesota businesses.
- Capital projects beyond those identified in the current 10-year plan would be fundraised for on an as-needed basis.

## Operating Costs

Current Eastcliff operating expenses average approximately \$300,000 annually. This recommendation proposes to fund those operating expenses with:

- \$50,000 from the University as the equivalent of a presidential housing allowance.
- \$50,000 from the University in the portion of salaries/expenses of University employees who are essential to maintaining Eastcliff's operations.
- \$200,000 from an operating endowment for all other operating expenses. UMF would raise the needed principal amount of \$4.5 million over the next five years to establish the new operating endowment fund.

## Governance

To help facilitate the Board's oversight of Eastcliff, the Task Force recommends streamlining the governance of Eastcliff in the following ways:

- Eliminate the Eastcliff Technical Advisory Committee.
- Add three representatives to the Eastcliff Advisory Board with technical expertise in facilities management, interior design and/or architecture, and landscape architecture. This avoids having two different groups review projects and make decisions or recommendations.
- Increase the Board approval threshold for capital improvements and significant expenditures from \$25,000 to \$100,000.
- Direct the Office of the Board of Regents to draft revised bylaws to reflect these changes for action by the Board next fall.