Minutes
Special Senate Executive Committee Meeting
Thursday, July 23, 2020, 2:30 p.m.
Zoom

Present: Joseph Janes, Robin Angotti, George Sandison, Ana Mari Cauce, David Socha, Shailendra Jain, Justin Jesty, Douglas Ramsay, Chris Laws, Marian Harris, Julie Brines, Ann Huppert, Mike Townsend, Mark Richards
Absent: Jack Lee, Sumit Roy, Philip Taddei, Gautham Reddy, Jeff Hou, Kelty Pierce, Giuliana Conti
Guests: Margaret Shepherd, Valery Richardson, Jill Lee, Amanda Paye, Camille Hatwig, Jacob Vigdor

1. Call to Order and Approval of Agenda.

The meeting was called to order at 2:31 P.M.

The agenda was automatically approved because special meetings do not allow revisions.

2. Consent Agenda.
   a. Approve nominees for Faculty Councils and Committees. [Exhibit A]

The consent agenda was approved.

3. Discussion Items.
   a. New Title IX Regulations from the Department of Education: Background, Guidelines, and Executive Order Implementation. [Exhibit B]
      Jill Lee, Executive Director, UW Compliance Services
      Mike Townsend, Secretary of the Faculty
      Valery Richardson, Title IX Coordinator, UW Compliance Services

Mike Townsend, Secretary of the Faculty, described the sequence of steps leading to the use of an Executive Order in this situation. He said that the administration had at the beginning sought advice from the Senate Leadership on how best to deal with the implementation of the guidelines, especially as it related to faculty. He noted that the Senate Leadership, having considered the scope of the guidelines, had advised the administration to use a time-limited Executive Order for three reasons: the need for flexibility, the subject-matter expertise of administrative officials, and the fact that implementation of the guidelines involves interconnected issues involving a wide range of University offices. In addition, he emphasized that the Senate Leadership had been fully consulted during the drafting of the Order. Finally, he noted that the formal comment period will start when the President submits the Executive Order to the Senate Chair who will distribute it to the SEC members, who in turn will be acting for the Senate in this matter; today’s meeting is only to give the SEC members a preliminary look at the Order, a chance to ask some initial questions, and an opportunity to provide any initial, non-formal, feedback.

President Cauce noted that flexibility is important given the upcoming election and possible change in administration. She went on to emphasize that the University has no choice but to follow the guidelines and that the Executive Order also adds transparency so that the community can see the steps necessary to implement the guidelines.

Valery Richardson, Title IX Coordinator, UW Compliance Services, went over the general Title IX compliance timeline as well as some of the specifics of the new guidelines, using a slide deck herein attached as Addendum C.

Jill Lee, Executive Director, UW Compliance Services, continued with the slide deck and went over some of the specifics of the Executive Order and its implementation.

Margaret Shepherd, Chief of Staff to the President, added that the State of Washington has joined legal actions challenging the promulgation of the guidelines.
In response to questions, several points were made. Richardson said that institutions across the country are facing the challenge of getting these major changes implemented in time. Some schools are responding like the UW, trying to maintain as much of their existing structure as possible, but others are simply making wholesale replacements based on the guidelines. President Cauce expanded on the latter, noting that some schools are now restricting their interventions to those that meet the narrow definitions in the guidelines. She said that she does not agree with that approach because focusing attention on only the most egregious conduct ignores behavior at the base of the pyramid that creates an environment in which such egregious conduct emerges. She added that nationwide other things have diverted attention from the guidelines and the related issues. Finally, Cauce said that the move to on-line instruction has not lessened the problem of discrimination and harassment. Lee opined that perhaps one or two matters a year involving faculty respondents would meet the narrower definitions in the guidelines. Shepherd said that general comments and questions seeking clarifications would be helpful in the next few days before the final draft is sent out for formal comment. More minor comments would be helpful after the formal draft is disseminated. President Cauce closed by thanking all those who have worked on this effort and said that every effort would be made to preserve as much of our current framework as possible.

4. Adjournment.

The meeting adjourned at 3:12 P.M.

Prepared by:  
Mike Townsend
Secretary of the Faculty

Approved by:  
Joseph Janes, Chair
Faculty Senate
2020-21 Nominees for Faculty Councils and Committees

Advisory Committee on Faculty Code and Regulations

- Miceal Vaughan, College of Arts and Sciences, as chair for a term beginning September 16, 2020, and ending September 15, 2021.
- Miceal Vaughan, College of Arts and Sciences, as a member for a term beginning September 16, 2020, and ending September 15, 2021.

Faculty Council on Faculty Affairs

- Miceal Vaughan, College of Arts and Sciences, as an emeritus member for a term beginning September 16, 2020, and ending September 15, 2021.
July 20, 2020

TO: Michael Townsend  
Secretary of the Faculty

FROM: Jill Lee  
Executive Director, Compliance Services

SUBJECT: Senate Executive Committee review of draft executive order

All universities that receive federal funds are subject to the new U.S. Department of Education Title IX regulations that go into effect on August 14, 2020. The Education Department Federal Regulations (“EDFR”) enact sweeping changes and mandate how universities must define, investigate, and adjudicate “formal complaints” of alleged sexual harassment and sexual misconduct under the EDFR. Universities that fail to comply with the EDFR risk a loss of federal funding.

Notably, these changes apply to “formal complaints” against both students and employees. The EDFR grievance procedures require fundamental shifts in the way that universities address such complaints. The University has been working as quickly as possible to review the regulations and the accompanying over 2000-page commentary to ensure that critical steps are in place to achieve compliance by August 14. Work will continue well beyond August 14 to ensure that the required changes are fully implemented and operationalized.

The EDFR grievance procedures differ in significant ways from the current Faculty Code Chapter 25, Section 25–71, and Chapter 28. To affirm the University’s commitment to compliance with the EDFR and utilize when possible existing University complaint processes, including the Faculty Code, the President is issuing a new, one-year executive order as an interim measure to ensure compliance before August 14, 2020. This is considered an interim measure until policy changes can be discussed comprehensively with appropriate stakeholders in the Fall. The decision to issue a one-year Executive Order was reached after consultation with the Secretary of the Faculty, who in turn was in contact with the Senate Leadership. The executive order sets forth the EDFR requirements, including the grievance procedures that must be utilized to address conduct that falls within EDFR definitions, and also reserves the University’s ability to address such conduct under its own policies and processes.

To resolve questions about conflicts between the executive order and other University policies or processes, including the Faculty Code, the President has charged Compliance Services with interpreting the order and resolving inconsistencies, in consultation with faculty leadership and other appropriate personnel. The President retains the authority to make final decisions as needed to ensure compliance with federal regulations.
Current faculty code processes for dealing with allegations of sexual harassment involve unit level intake under Faculty Code Section 25-71, University Complaint Investigation and Resolution Office (“UCIRO”) investigation, and Chapter 28 adjudication. Under the EDFR, when the University has notice of allegations of sexual harassment, unit level intake must not take place until the University first follows the protocols set forth in the regulations. Following that, and depending on what results, unit level processes may impacted. UCIRO’s investigation process must include additional steps to comply with the EDFR, and adjudication processes also must include new and different procedures, all of which will require some reworking of these existing processes.

Compliance Services is providing this draft executive order ahead of the upcoming special SEC meeting to facilitate discussion and to receive any initial suggestions and comments. This draft is also being reviewed by the appropriate administrative offices. Following the SEC meeting, Compliance Services, in consultation with the President, will incorporate initial SEC feedback, along with any other edits or suggestions from administrative reviewers. The President then will issue a formal executive order to be distributed to the SEC for the abbreviated 14-day review.

Compliance Services is also providing for review a draft notice regarding the impact of the EDFR for insertion into Executive Orders 31, Nondiscrimination and Affirmative Action, and 51, Sexual Violence Elimination Policy. This will ensure that readers are aware that the EDFR will impact those policies and processes and know to contact the Title IX Coordinator if questions arise. The notice is also an interim measure until policy changes can be discussed in the Fall, which will result in more comprehensive updating and revision to these executive orders.
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1. Purpose

This order affirms the University’s commitment to compliance with Title IX of the Education Amendments of 1972, 20 USC § 1681, and the Department of Education’s Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance regulations under 34 CFR Part 106, effective August 14, 2020 (“Education Department federal regulations” or “EDFR”).

This order is intended to comply with the EDFR and the “grievance procedures” for formal complaints against employees as defined in 34 CFR 106.30 and as provided for in 34 CFR 106.45.¹ To the extent there is a conflict between state or local law and the EDFR as implemented by 34 CFR 106.30, 106.44, and 106.45, the obligation to comply with those sections is not obviated or alleviated by any state or local law.²

Comment: EDFR is the shorthand reference to the regulations under the Executive Order and the Student Conduct Code.

2. Applicability³

The EDFR and this executive order apply prospectively and only to formal complaints against employees accepted under Section 14 on or after August 14, 2020, unless 34 CFR Part 106 or any of its subparts are deemed unenforceable by law and/or by United States courts, and not retroactively to any open or closed matter, including but not limited to investigations, hearings, or adjudications under the Faculty Code.

The EDFR applies to allegations of sexual harassment as defined in Section 8 that occur in the University’s education program or activity, which includes locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the sexual harassment as defined in Section 8 of this policy occurs. This also includes any building owned or controlled by a student organization that is officially recognized by the University.⁴ In accordance with the EDFR, this order only applies to sex discrimination (as defined in Section 10) or sexual harassment (as defined in Section 8) occurring against a person in the United States.⁵

The University retains the authority to take action under other University policies and processes that govern alleged conduct, whether or not the EDFR also applies.

Comment: Ensuring the policy is clear that, even if a formal complaint cannot be initiated because it falls outside of this section, the University may move forward with addressing the allegations under other University policies and processes if the allegations fall within those policies.

¹ 106.8(c) A recipient must adopt and publish grievance procedures...
² 106.6(b)
³ Unofficial regulations, p. 2 and p. 127 (“the Department will not enforce these final regulations retroactively.”)
⁴ 106.44
⁵ 106.8(d)
3. Duration of Executive Order

This executive order will be effective through August 14, 2021, unless the President rescinds this executive order prior to that date. This executive order will have no effect after August 14, 2021 or if rescinded.

Comment: The above provisions were intended to confirm the prospective effect of the regulations and to provide a sunset date. We also wanted to add some language that allows the University to pull the EO sooner if the regs are enjoined, invalidated, or rescinded.

4. University Grievance Processes for Formal Complaints of EDFR Sexual Harassment and Delegation for Conflict Resolution

To address formal complaints of EDFR sexual harassment under Section 14, the University will incorporate the grievance procedures set forth in this executive order into applicable University processes. Where there are conflicts, these grievance procedures control. The complainant and respondent must also be treated equitably throughout the University processes used to address EDFR sexual harassment.6

Compliance Services, in consultation with appropriate administrative or faculty governance personnel, has the delegated authority to interpret the requirements of this order, resolve conflicts between the executive order and other University policies or processes, and advise on the process or procedures to be used. The President retains the authority to make final decisions under this delegation.

University processes include, but are not limited to:

- Administrative Policy Statement 46.3, Resolution of Complaints Against University Employees;
- Faculty Code; and
- Librarians Personnel Code.

Comment: The intent is to be clear that Education Department federal regulations supersede any provisions of University policies, processes, or the Faculty Code where there is a conflict, but not the entire process.

5. Intersection of EDFR and Other University Policies, Designation of Office to Receive Complaints, and Authority to Initiate Combined Proceedings

Separate from the EDFR, other University policies address sexual harassment, sexual assault, and other forms of sexual misconduct. These policies include, but are not limited to:

- Administrative Policy Statement No. 46.3, Resolution of Complaints Against University Employees;
- Executive Order No. 31, Nondiscrimination and Affirmative Action;
- Executive Order No. 51, Sexual Violence Elimination Policy;
- Faculty Code; and
- Librarians Personnel Code.

6 106.44a; 106.45(b) and (b)(1)(i)
Depending on the circumstances, each policy or all policies may apply.7

For the purposes of complying with the federal regulations and this order, the University has designated the University Complaint Investigation and Resolution Office (UCIRO) as the office to receive complaints of sexual harassment, sexual assault and other sexual misconduct and to determine whether this executive order and/or other University policies apply.

If the allegations that form the basis of a formal complaint involve conduct that would potentially fall under the EDFR and other University policies, the University may, in its discretion, initiate combined proceedings, and responsible personnel will apply the policies and procedures that correspond to each (See Section 4).8

Comment: This is intended to retain discretion to conduct combined proceedings if the allegations fall within the Education Department federal regulations and other University policies, including Executive Order No. 31 and No. 51.

6. Mandatory Employee Reporting

The following University personnel are required to contact the Office of the Title IX Coordination or designee if they become aware that a member of the University Community may have experienced sexual harassment:

   A. The Provost
   B. Any senior leader reporting directly to the President or Provost
   C. An official of the University who has been delegated by the President, Provost, or a senior leader reporting directly to the President or Provost the specific authority to reduce, demote, revert, suspend, layoff, separate or terminate
   D. Officials as specifically designated by the Vice President of Human Resources, the Vice Provost for Academic Personnel, or the Office of Compliance and Risk Services

7. Definitions

Definitions in this section are intended to be consistent with the EDFR and relevant university policies:

   A. Complainant

The complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment under Section 8.9

   B. Decision-maker(s)

Decision-maker(s) are the individual or individuals delegated authority by the University to make interim decisions and/or determine responsibility and/or afford remedies and/or impose sanctions for sexual harassment under Section 21 and/or decide appeals under Section 14 (C) and Section 24. The decision-maker(s) cannot be the same person(s) as the Title IX Coordinator or the investigator(s).10

7 EO 51
8 Borrowed from SGP 210.1.E.
9 106.30 (a)
10 106.45(b)(7)(i)
Comment: Because the regulations do not define decision-maker(s), it appears as if a faculty panel under the current code could play this role.

C. Education program or activity
Education program or activity includes locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the sexual harassment as defined in Section 8 of this policy occurs. It also includes any building owned or controlled by a student organization that is officially recognized by the University.

D. Employee
Employees include, but are not limited to, academic personnel, staff, temporary staff, academic student employees, and student employees that are employed at all University campuses and locations.

Comment: This is the same definition as EO 31.

E. Grievance Procedure
As used in the EDFR, a grievance procedure is the procedure for addressing formal complaints of sexual harassment as defined in Section 8. Unless a formal complaint has been dismissed under Section 14 or resolved as a result of an informal resolution under Section 16, the University must utilize the grievance procedures for the formal complaint under the Education Department federal regulations. “Grievance procedure” does not mean a grievance under a University labor contract or other process under University policy or the Faculty Code.

Comment: Differentiating this from other “grievance procedures” and anticipating adding a grievance process in the Faculty Code.

F. Investigator
Individual(s) delegated authority to conduct investigations under the EDFR, which includes the University Complaint Investigation and Resolution Office or an individual external to the University designated specifically by the University to conduct an investigation.

Comment: This allows the University to use an external investigator, if need be.

G. Party
The complainant and respondent are a party to the grievance and where a grievance process involves more than one complainant or more than one respondent, references to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.11 Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under the EDFR.12

H. Remedies
Remedies must be designed to restore or preserve equal access to the University’s education program or activity and may include supportive measures under Section 12, as well as disciplinary sanctions or other actions against the respondent at the conclusion of the grievance procedure.13

11 106.45(b)(4)
12 106.30(a)
13 106.45(b)(1)(i)
I. Respondent

The respondent is a University employee who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Section 8.14

8. Definition of Sexual Harassment under the EDFR

Department of Education Federal Regulations (EDFR) define “sexual harassment” as conduct on the basis of sex that satisfies one or more of the following:

A. EDFR Quid Pro Quo Sexual Harassment: An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct;

B. EDFR Hostile Environment Sexual Harassment: EDFR hostile environment sexual harassment is unwelcome conduct 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;15

C. EDFR Sexual assault. EDFR sexual assault includes a sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Specifically EDFR sexual assault means one or more of the following:

1) The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of a complainant, without the consent of the complainant.16

2) The oral or anal sexual intercourse with a complainant, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

3) The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of a complainant, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

4) The touching of the private body parts of a complainant (e.g. buttocks, groin, breasts) for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

5) Sexual intercourse between persons who are related to each other within degrees wherein marriage is prohibited by Washington law.

6) Sexual intercourse with a person who is under the statutory age of consent of Washington.

14 106.30
15 106.30
16 106.30 definition of “Sexual Assault”, which refers to VAWA, 20 U.S.C. 1092(f)(6)(A)(v), which in the regulations, refers to the definition in the FBI Uniform Crime Reporting Manual Summary Reporting System (SRS) for rape at p. 32 and for the remainder, refers to the FBI UCR National Incident-Based Reporting System, p. 38.
D. EDFR Dating Violence: EDFR dating violence is an act or acts of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship will be determined based on the length and type of relationship as well as the frequency of interaction between the individuals involved in the relationship.\textsuperscript{17}

E. EDFR Domestic violence: EDFR domestic violence is an act or acts of violence committed by a current or former intimate partner of the complainant, by a person with whom the complainant shares a child in common, or by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner.\textsuperscript{18}

F. EDFR stalking. EDFR stalking is engaging in a course of conduct directed at a complainant that would cause a reasonable person to fear for the reasonable person’s safety or the safety of others, including the safety of the respondent, or would cause a reasonable person to suffer substantial emotional distress.

1) For the purposes of this section, "course of conduct" means two or more acts including, but not limited to, acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Stalking also includes cyberstalking such as through electronic media, the internet, social networks, blogs, cell phones, or text messages.

2) For the purposes of this section, "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

9. Consent for the Purposes of EDFR Sexual Assault

For the purposes of this subsection, the EDFR do not require the University to adopt a particular definition of consent and, as such, consent is defined by current UW Executive Order No. 51 - Sexual Violence Elimination Policy, as follows:\textsuperscript{19}

A. "Consent" means that at the time of and throughout the sexual contact, there are actual words or conduct indicating freely given agreement between the parties to engage in the sexual contact.

- Past consent does not imply future consent.
- Consent given to one person does not imply consent given to another person.
- Consent to one sexual act does not imply consent to other sexual acts.
- Lack of resistance to sexual contact does not imply consent.
- Consent can be withdrawn at any time.

B. Consent cannot be given or granted by a person who, at the relevant time, cannot understand the facts, nature, extent, or implications of the sexual contact for any reason, including, but not limited to, being asleep, unconscious, mentally or physically impaired due

\textsuperscript{17} 106.30, which refers to VAWA - \textsuperscript{18} 34 U.S.C. 12291(a)(10)

\textsuperscript{18} 106.30, which refers to VAWA, \textsuperscript{19} 34 U.S.C. 12291(a)(8)

\textsuperscript{19} From Executive Order No. 51 - Sexual Violence Elimination Policy (106.30 The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault, as referenced in this section).
to an intellectual or other disability, or mentally or physically incapacitated due to the effects of drugs or alcohol.

- Indicators that a person may be incapacitated by drugs or alcohol and therefore, cannot grant consent include, but are not limited to, stumbling, falling down, an inability to stand or walk on their own, slurred speech or incoherent communication, an inability to focus their eyes or confusion about what is happening around them, passing out, or vomiting.

- A failure to exhibit any of these behaviors does not necessarily mean that a person is capable of giving consent or is not incapacitated.

C. Sexual contact is not consensual when force or coercion is threatened or used to gain acquiescence.

1) Force includes the use of physical violence, physical force, threats, or intimidation to overcome resistance or gain agreement to sexual contact.

2) Coercion includes using pressure, deception, or manipulation to cause someone to agree to sexual contact against his or her will, without the use of physical force. Pressure can mean verbal or emotional pressure.

10. Discrimination on the Basis of Sex under the EDFR

Allegations of discrimination on the basis of sex are not covered by the EDFR and this policy, except those that raise an allegation relating to the University’s treatment of a complainant or a respondent in response to a formal complaint of sexual harassment.\(^{20}\)

For complaint reporting options and procedures for this section, see XXXX.\(^{21}\) The EDFR does not specifically require recipients to use the EDFR grievance process for responding to complaints of sex discrimination as described above. Such complaints are subject to the policies and processes under Executive Order No. 31 and Administrative Policy Statement 46.3.

Comment: This section is not included in the Student Conduct WAC, but since it would likely be an employee who is alleged to have engaged in such discrimination, it is included here. The regulations and the commentary do not specifically require recipients to use the EDFR process for responding to complaints of sex discrimination; however we will double check commentary and raise this question with the AAGs.

11. Retaliation Prohibited

Under the EDFR, neither the University nor other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the EDFR, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the regulations.\(^{22}\)

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same

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\(^{20}\) 106.45(a)  
\(^{21}\) 106.8(a)  
\(^{22}\) 106.71(a)
facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by the EDFR, constitutes retaliation. 23

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this section. 24

For complaint reporting options and procedures, see XXXX. 25 The EDFR does not specifically require recipients to use the EDFR grievance process for responding to complaints of retaliation as described above. Such complaints are subject to the policies and processes under Executive Order No. 31 and/or Executive Order No. 51 and Administrative Policy Statement 46.3.

Comment: This provision may supersede or limit some of the discretion of the Hearing Officer such as issuing a subpoena. Further review of the commentary is needed as the processes are being developed.

The regulations and the commentary do not specifically require recipients to use the EDFR process for responding to complaints of retaliation; however we will double check commentary and raise this question with the AAGs.

12. Supportive Measures for Complainants and Respondents 26

In accordance with the EDFR, complainants and respondents may request supportive measures.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed under Section 14. Such measures are designed to restore or preserve equal access to the University’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University’s educational environment, or deter sexual harassment.

Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

The University must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. The Office of the Title IX Coordinator or designee is responsible for coordinating the effective implementation of supportive measures. 27

13. Accessible Reporting

Any person may report sex discrimination, including sexual harassment under the EDFR or sexual harassment under other University policies (whether or not the person reporting is the person alleged

23 106.71(a)
24 106.71(b)
25 106.71(a)
26 106.45(1)(b)(ix) Describe the range of supportive measures available to complainants and respondents
27 106.30
to be the victim of conduct that could constitute sex discrimination or sexual harassment).\textsuperscript{28} For reporting options and procedures, see XXXX.

14. Formal Complaint

A. **Initiating a Formal Complaint**

For the purposes of complying with the federal regulations and this order, the University has designated the University Complaint Investigation and Resolution Office (UCIRO) as the office to receive complaints of sexual harassment, sexual assault and other sexual misconduct and to determine whether this executive order and/or other University policies apply.

A formal complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment as defined in Section 8 against an employee respondent and requesting that the University investigate the allegation of sexual harassment. At the time of filing a formal complaint under this section, a complainant must be participating in or attempting to participate in the education program or activity of the University.\textsuperscript{29} If the complainant is not participating in or attempting to participate, UCIRO will assess whether other University policies apply.

B. **Dismissal of a Formal Complaint During Investigation or Hearing**

In accordance with the EDFR, if the conduct alleged in the formal complaint would not constitute sexual harassment as defined in Section 8, even if proved, did not occur in the University’s education program or activity, or did not occur against a person in the United States, then the investigator or decision-maker(s) must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under the EDFR.

An investigator or decision maker(s) may dismiss the formal complaint under the EDFR or any allegations therein, if at any time during the investigation or hearing:

1) a complainant notifies the Office of the Title IX Coordinator or designee in writing that the complainant would like to withdraw the formal complaint or any of the formal complaint allegations therein;
2) the respondent is no longer enrolled or employed by the University, but only as permitted by law, regulation, or University policy; or
3) specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal required or permitted under this section, the investigator or decision maker(s) must promptly send written notice of the dismissal and reason(s) simultaneously to the parties.\textsuperscript{30}

Such a dismissal does not preclude action under another provision of the University’s policies and processes.\textsuperscript{31}

\textsuperscript{28} 106.8(a) and 106.30(a) – “and by an additional method designated by the recipient.”
\textsuperscript{29} 106.30(a)
\textsuperscript{30} 106.45(b)(3)(i) and (ii)
\textsuperscript{31} 106.45(b)(3)(i)
Upon receiving notice, the parties may appeal the dismissal under this Section.\textsuperscript{32}

Comment: If UCIRO dismisses a formal complaint, there will be an appeal process built into their process. If a comprehensive proceeding has been initiated and the panel dismisses a formal complaint, the appeal could likely continue to the president under the Faculty Code.

C. Appeal of Dismissal of Formal Complaint During Investigation or Hearing

1) Requesting an Appeal of a Dismissal

A party may appeal a dismissal of a formal complaint or any allegations therein, on the following bases:

a) Procedural irregularity that affected the decision to dismiss;

b) New evidence that was not reasonably available at the time the dismissal was made, that could affect the decision to dismiss; and

c) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the decision to dismiss.

If one of the grounds is to consider newly discovered evidence, then that evidence must be provided with the appeal.

A request for an appeal of a dismissal must be submitted in writing to the investigator or decision-maker(s) within five business days of the notice of dismissal of formal complaint. The appeal is the party’s opportunity to provide their position regarding why the appeal should be granted.

Comment: This appeal of a dismissal of a formal complaint has been bifurcated because the regulations do not dictate all aspects of the appeal process (e.g. timeframe to appeal, who the decision-maker is, except that it can’t be the investigator or Title IX Coordinator). Compliance Services is developing the process for reviewing an appeal of a dismissal during the investigation. In regard to the Faculty Code, this would avoid all appeals at this stage going to the President. But, if the dismissal occurs during a hearing, under the Faculty Code, it may make sense to just utilize the Presidential appeal process (see Section 24).

2) Initiating an Appeal of a Dismissal

Once a request for an appeal of a dismissal of a formal complaint or any allegations therein has been filed, the decision-maker(s) must:

a) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

b) Ensure that the decision-maker(s) for the appeal complies with the standards set forth in Section 19.A.\textsuperscript{33}

3) Response to Appeal of a Dismissal

Both parties must have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the dismissal. For the appealing party, the written statement must accompany the appeal.

\textsuperscript{32} 106.45(b)(8)(i)

\textsuperscript{33} 106.45(b)(8)(iii)
For the non-appealing party, a written statement is due within five business days of receipt of notice of the appeal.

4) Decision on Appeal of a Dismissal

Appeals of a dismissal of a formal complaint may be decided by a single decision-maker, who may be a staff member, and such appeals must be decided within five business days of the deadline for the non-appealing party’s response.

The decision-maker(s) must issue a written decision describing the result of the appeal and the rationale for the result and must provide the written decision simultaneously to both parties.  

If the dismissal of the formal complaint is upheld, the allegations may be addressed under other applicable University policies.

Commentary: This aligns the timeframe with the student conduct WAC, but is not required by the regulations

The decision on appeal of a dismissal for a faculty respondent may be made by a staff member or a faculty panel, depending on when it happens within the process.

15. Consolidation of Formal Complaints

A decision maker(s) may consolidate formal complaints as to allegations of sexual harassment under Section 8 against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment under Section 8 arise out of the same facts or circumstances.

16. Informal Resolution

In accordance with the EDFR, the University cannot offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student when those allegations may be covered by the EDFR. The University also cannot require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment under the EDFR. In addition, the University cannot require the parties to participate in an informal resolution process of the EDFR allegations and cannot utilize an informal resolution process until a formal complaint is filed.

After a formal complaint is filed, at any time prior to reaching a determination regarding responsibility the University may facilitate an informal resolution process, such as mediation, provided that the University provides to the parties a written notice disclosing:

- the allegations,
- the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations,
provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and

- any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The University must also obtain the parties’ voluntary, written consent to the informal resolution process.\(^{38}\)

17. Reassignment and Administrative Leave

At any time after allegations have been made, the University may reassign an employee, including a faculty member or student employee, from teaching, work locations or assignments, or other duties in accordance with University policies or provisions.

In accordance with the EDFR, the University may also place a non-student employee respondent on administrative leave after a formal complaint has been initiated under Section 14.\(^{39}\) There may be circumstances that warrant administrative leave for student-employees as a supportive measure or as part of the University’s response to a formal complaint. The specific facts of a particular matter will dictate whether the University may place a student-employee on administrative leave and the process to be followed.

This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.\(^{40}\)

18. Emergency Removal from Employment

The University may remove a student-employee respondent from the University’s education program or activity on an emergency basis, which may include or impact University employment. Prior to making this decision, the University must undertake an individualized safety and risk analysis to determine whether an immediate threat to the physical health or safety of any student or other individual arising from the allegation of sexual harassment justifies removal and, if so, must provide the student-employee respondent with notice and an opportunity to challenge the decision immediately following the removal.

This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

19. General Provisions for EDFR Grievance Procedures

A. Conflict of Interest or Bias

In a grievance proceeding, any individual designated by the University as a Title IX Coordinator, investigator, decision-maker, or any person designated by the University to facilitate an informal

\(^{38}\) 106.45(b)(9)(i)-(ii)
\(^{39}\) 106.44(d)
\(^{40}\) 106.44(c) and (d)
resolution process, must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.41

B. Standard and Burden of Proof

The University uses a "preponderance of evidence" standard and the burden of proof rests with the University.42

C. Evidence

The following evidentiary provisions apply solely in grievance proceedings under the EDFR. No other evidentiary standards can be imposed, such as under the Washington State Rules of Evidence.

1) Gathering and Evaluating Evidence and Presenting Relevant Evidence

The burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties.43 The parties will be provided an equal opportunity to present witnesses and other inculpatory and exculpatory evidence.44

Comment: It appears as if this may supersede permitting discovery.

2) Relevant Evidence

All relevant evidence will be objectively evaluated – including both inculpatory and exculpatory evidence – and credibility determinations cannot be based on a person’s status as a complainant, respondent, or witness.45 Relevant evidence cannot be excluded, except as follows under a) through c), below:

Comment: Under the regulations, “relevance” is the only standard that may be used to assess evidence. So, this provision would supersede Chapter 28-53.C. – Evidence where it conflicts.

a) Evidence of Prior Sexual Disposition or Prior Sexual Behavior

Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.46

Comment: The Faculty Code does not address this type of evidence, so this provision would supersede the discretion of the panel to admit such evidence.

b) Confidential Records

The University cannot access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity,

41 106.45(1)(iii) – not defined
42 106.45(b)(5)(i)
43 106.45(b)(5)(i)
44 106.45(b)(5)(ii)
45 106.45(1)(ii) and 106.45(b)(5)(i)
46 106.45(b)(6)(i)
and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party’s voluntary, written consent to do so for a grievance proceeding under the EDFR.

If a party is not an “eligible student,” as defined in [FERPA] 34 CFR 99.3, then the University must obtain the voluntary, written consent of a “parent,” as defined in 34 CFR 99.3.47

c) Privileged Information
The University cannot require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.48

D. Timeframes and Continuances
The University’s grievance proceeding under the EDFR must include reasonably prompt time frames for conclusion of the grievance proceeding, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the University offers informal resolution processes. The University may create a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause include considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.49

Comment: The commentary discusses that the recipient must have “designated” reasonably prompt timeframes, meaning that the timeframes must be documented in some way. Since the Faculty Code does not contain a timeline for the completion of a “hearing,” this will need to be addressed in process documents or notices.

This may also curtail the discretion of the hearing officer to grant continuance or for the hearing panel to adjourn.

E. Confidentiality
The University must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of the EDFR, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.50

The University, however, cannot restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.51

47 106.45(b)(5)(i)
48 106.45(b)(1)(x)
49 106.45(b)(1)(v)
50 106.71(a)
51 106.45(b)(5)(iii)
F. Advisors

The University must provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. In accordance with the EDFR, the University must not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the University may establish restrictions regarding the extent to which the advisor may participate in the grievance proceedings, as long as the restrictions apply equally to both parties.\(^{52}\)

G. Notice of Meetings and Hearings

The University must provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.\(^{53}\)

20. University Investigations

Investigations of formal complaints under the EDFR are designed to provide a prompt, fair, and impartial complaint investigation and resolution, and to equitably protect the rights of individuals participating in the investigation.\(^{54}\) No University employee or official can initiate an investigation, process, or adjudication to investigate EDFR allegations and impose disciplinary sanctions without a formal complaint under Section 14.

_The provision that an employee or official may not initiate a process until there is a formal complaint is intended to supersede policies and the Faculty Code that permit someone who is not covered under Section 6 (who must refer the allegation to the Office of the Title IX Coordinator) to initiate a process, such as Human Resources under the APS 46.3 local investigation provisions and the Chair of the Faculty Adjudication Panel under the Faculty Code._

A. Notice of Investigation

Upon initiation of a formal complaint, the investigator must provide, to the parties who are known, written notice including:

- Notice of the University’s grievance process, including any informal resolution process;
- Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in Section 8, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under Section 8, and the date and location of the alleged incident, if known;
- An explanation regarding presumptions regarding non-responsibility and good-faith filing;
- Inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence under Section B, below;

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\(^{52}\) 106.45(b)(5)(iv)  
\(^{53}\) 106.45(b)(5)(v)  
\(^{54}\) EO 51ish
If, in the course of an investigation, the investigator decides to investigate allegations about the complainant or respondent that are not included in the notice provided, above, the investigator must provide notice of the additional allegations to the parties whose identities are known.\(^{55}\)

**B. Investigation**

During the course of the investigation, the assigned investigator will gather evidence, and conduct interviews of the complainant, respondent, and witnesses. During the investigation, the complainant and the respondent will have the opportunity to identify witnesses and provide the investigator with evidence.\(^{56}\) Advisors may accompany and provide support and advice, but may not participate directly in the investigation.

The parties will be provided with an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.\(^{57}\)

Prior to completion of the investigative report, the investigator will send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.\(^{58}\)

Upon completion of the investigation, the investigator will create an investigative report that fairly summarizes relevant evidence, which may include recommended findings and conclusions, and at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party’s advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

The final investigation report and all evidence related to the allegations are included in the record for the hearing.

*Comment: UCIRRO will be placing restrictions on the role of the advisor, language TBD.*

**21. Hearings**

In accordance with the EDFR, if a formal complaint has not been dismissed or resolved during the investigation, after the investigative report is complete, a hearing will be convened to permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Under Section 5, above, if the formal complaint involves conduct that falls under the EDFR and other University policies, the University may, in its discretion, conduct a combined hearing and apply those policies and procedures that correspond to each. A facilitator may be appointed by Compliance Services to help ensure this policy is properly followed and that facilitator may be a staff member.

\(^{55}\) 106.45(b)(2)(i) and (ii)  
\(^{56}\) EO 51  
\(^{57}\) 106.45(b)(5)(vi)  
\(^{58}\) 106.45(b)(5)(vii)
Academic Medical Centers may elect to develop separate disciplinary processes to address EDFR, and any such processes will be reviewed for compliance with EDFR and applicable University codes, policies, and processes. See Section 4.

Comment: Academic medical centers that receive federal financial assistance are not exempt from Title IX. Recognizing that AMCs are unique, however, the Education Department in its commentary states that AMCs may but are not required to hold a live hearing. Regardless, AMCs must afford each party the opportunity to submit written questions, provide each party with the answers, and allow for additional follow up. This reference to separate processes is a placeholder should AMCs wish to explore creating a separate process, which would need to be reviewed to ensure it complies with the regulations.

A. Scheduling the Hearing

The hearing date cannot be scheduled less than ten (10) days after the investigative report was provided to the parties.

B. Evidence from Investigation

The University must make the evidence that was subject to inspection and review in the investigation available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.\(^{59}\)

C. Separating Parties in the Hearing

At the request of either party, the University must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.\(^{60}\)

D. Electronic Hearings

Hearings under this section may be conducted with all parties physically present in the same geographic location or, at the University’s discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.\(^{61}\)

E. Advisor in Hearings

Under the EDFR, if a party does not have an advisor present at a live hearing relating to the formal complaint of sexual harassment, the University will provide without fee or charge to that party, an advisor of the University’s choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party for the purposes of the formal complaint.\(^{62}\)

Comment: Compliance Services will work with faculty leadership to determine who may play the role of an advisor. Although it is likely the respondent will have an attorney, it is possible the complainant will not.

\(^{59}\) 106.45(b)(5)(vi)
\(^{60}\) 106.45(b)(6)(i)
\(^{61}\) 106.45(b)(6)(i)
\(^{62}\) 106.45(b)(6)(i)
F. Procedures for Cross-Examination in Hearing

Under the EDFR, the decision-maker(s) in a hearing must permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party’s advisor and never by a party personally. 63

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.64  Questions that are duplicative or repetitious may be determined to be irrelevant.65

Comment: Where the Hearing Officer is granted the discretion to regulate the hearing under Chapter 28-53.D., the Hearing Officer would have to conduct the EDFR part of the hearing accordingly.

G. Recording of the Hearing

The hearing will be recorded via an audio or audiovisual recording or transcript. The recording or transcript will be made available to the parties for inspection and review.66

22. Determination Regarding Responsibility

The decision-maker(s) will issue a written determination regarding responsibility and, if found responsible, sanction(s) and any remedy(ies) utilizing the standard of proof under Section 19.B.67

Under the EDFR, if a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility. A statement does not include a document, media content, verbal or written communications, or other verbal conduct that constitutes the alleged sexual harassment.68

The decision-maker(s) also cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.69

In a hearing involving allegations under other University policies, the determination of responsibility is made based on those relevant policies and processes.

The written determination will include:

- Identification of the allegations potentially constituting sexual harassment under the EDFR;

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63 106.45(b)(6)(i)
64 106.45(b)(6)(i)
65 Unofficial commentary, p. 812
66 106-45-(b)(6)(i)
67 106.45(b)(7)(i)
68 OCR blog
69 106.45(b)(6)(i)
• A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
• Findings of fact supporting the determination;
• Conclusions regarding the application of the University’s code of conduct to the facts;
• A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the respondent, and whether remedies designed to restore or preserve equal access to the University’s education program or activity will be provided by the University to the complainant; and
• The University’s procedures and permissible bases for the complainant and respondent to appeal.⁷⁰

The written determination will be provided to the parties simultaneously.

Comment: For staff, work still needs to be done to incorporate the appointing authority into the sanctioning decision. It appears that the decision process can be bifurcated as long as the determination issued contains both a determination regarding responsibility and the sanction, if any. Since a faculty panel makes the decisions under the Faculty Code it shouldn’t be an issue for faculty.

23. Effective Date of Final Determination

The determination regarding responsibility and, if found responsible, sanction(s) and any remedy(ies) becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which filing an appeal would no longer be considered timely.⁷¹

Once the proceeding is complete, the Office of the Title IX Coordinator or designee will ensure the remedy or remedies have been effectively implemented.⁷²

Comment: Since the regulations permit the University to determine time frames, the time frames under the current Faculty code can be utilized.

24. Appeal of a Determination Regarding Responsibility⁷³

Under Section 5, above, if the formal complaint involves conduct that falls under the EDFR and other University policies, the University may, in its discretion, conduct a combined appeal and apply those policies and procedures that correspond to each.

A. Requesting an Appeal

Both parties may appeal a determination regarding responsibility on the following bases:

1) Procedural irregularity that affected the outcome of the matter;

⁷⁰ 106.45(b)(7)(ii)
⁷¹ 106.45(b)(7)(iii)
⁷² 106.45(b)(7)(iv)
⁷³ 106.45(viii) - Include the procedures and permissible bases for the complainant and respondent to appeal
2) New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter; and

3) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The appeal is the party’s opportunity to provide their position regarding why the appeal should be granted. If one of the grounds is to consider newly discovered evidence, then that evidence must be provided with the appeal.

B. Initiating an Appeal

Once a request for an appeal of a written determination of a formal complaint under the EDFR has been filed, the University will:

1) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties; and

2) Ensure that the decision-maker(s) for the appeal complies with the standards set forth in Section 19.74

C. Response to Appeal

Once an appeal is requested under the EDFR, both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. For the appealing party, the written statement must accompany the appeal. For the non-appealing party, a written statement is due within five business days of receipt of notice of the appeal.

D. Decision on Appeal

The decision-maker(s) will issue a written decision describing the result of the appeal and the rationale for the result and will provide the written decision simultaneously to both parties.75

25. Sanctions

A respondent who engages in behavior in violation of the EDFR is subject to corrective or disciplinary action, up to and including termination of employment.76 The available sanctions for a respondent are based on the policies and processes that govern the respondent’s relationship with the University.77

Comment: The regulations do not specify the types of disciplinary actions the recipient may or must take, but the grievance process must “describe the range of disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies.”78 So, this may need to be on a website and will need to be in the notice under Section 20.A.

74 106.45(b)(8)(iii)
75 106.45(b)(8)(iii)
76 EO 31 and 51
77 106.45(b)(1)(vi) - A recipient’s grievance process must...Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility.
78 106.45(b)(1)(vi)
Notice Regarding Impact Of 2020 Education Department Federal Regulations:

In compliance with the recent federal regulations implementing Title IX of the Education Amendments of 1972, 34 CFR Part 106, the University published Executive Order __, Compliance with Education Department Sexual Harassment Regulations. In addition to other requirements, the Education Department’s federal regulations define prohibited conduct and set forth grievance procedures for “formal complaints” of such conduct. To address those “formal complaints”, the University will incorporate the grievance procedures set forth in Executive Order ___ into applicable University processes, including this executive order. Where there are conflicts, those grievance procedures will control. If the allegations that form the basis of a “formal complaint” involve alleged conduct that would potentially fall under the federal regulations and other University policies, then the University may, in its discretion, initiate a combined proceeding, and responsible personnel will apply the policies and procedures that correspond to each.

For the purposes of complying with the federal regulations and Executive Order __, the University has designated the University Complaint Investigation and Resolution Office (UCIRO) and Title IX Investigation Office (TIXIO) as the offices to receive complaints of sexual harassment, sexual assault and other sexual misconduct and to determine whether Executive Order ___ applies.

Individuals with questions should contact the Office of the Title IX Coordinator.
Senate Executive Committee
Special Meeting:

Compliance With New Education Department Federal Regulations

July 23, 2020
Background

- Universities that receive federal funds must comply with the new Education Department Federal Regulations ("EDFR") as of August 14, 2020
- New regulations apply to all students and employees
- New regulations more narrowly define sexual harassment and prescribe how institutions must respond to reports of that conduct
Achieving Compliance

Phase I – by August 14, 2020
- Issue emergency rules and interim executive order
- Identify practices and protocols
- Communicate with University community and coordinate with process partners

Phase II – September 2020 through August 2021
- Assess court rulings or political changes
- Convene stakeholders to review needed policy and protocol revisions
- Finalize rules and policies
Interim Executive Order

- Sets forth EDFR requirements while allowing additional time to re-work existing University processes as needed
- Delegates authority to Compliance Services for implementation and calls for consultation with faculty leadership
- Preserves flexibility to allow the University to also address conduct under its own policies and processes
- Ends August 14, 2021, unless rescinded earlier
Executive Order: Next Steps

- Receive/incorporate initial comments (SEC meeting and administrative review)
- Issue formal executive order and distribute for SEC 14-day review
- Issue revised Executive Orders 31 and 51 with notice of regulatory impact and distribute for SEC 14-day review
Questions and Initial Comments