

# Primary and Secondary Schools Grievance Process

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## F. Primary and Secondary Schools Grievance Process

### (1) Definitions.

- (a) **Complainant.** The parent or legal guardian of the affected minor or the non-minor individual who is alleged to be the victim of any prohibited conduct under HOP 3-3031.
- (b) **Participants.** The term “Participants” includes the Complainant, Respondent, Parties, and any witnesses.
- (c) **Parties.** The term “Parties” refers to the individual who is alleged to be the victim of any prohibited conduct under HOP 3-3031 and the individual reported to be the alleged perpetrator of conduct that violates HOP 3-3031.
- (d) **Preponderance of the Evidence.** The greater weight of the credible evidence. Preponderance of the evidence is the standard for determining allegations of conduct that violates HOP 3-3031. This standard is satisfied if the action is deemed more likely to have occurred than not.
- (e) **Primary and Secondary Schools.** These are schools operated by The University of Texas at Austin that provide education to students from kindergarten to 12<sup>th</sup> grade. The schools include, but are not limited to, [UT Elementary School](#), [UT Charter School](#), and [UT High School](#).
- (f) **Reporter.** The individual making a report of an incident under this Policy.
- (g) **Respondent.** The parent and/or legal guardian of the affected minor or the non-minor individual reported to be the alleged perpetrator of conduct that violates this Policy, or the individual reported to be the alleged perpetrator of conduct that violates this Policy.

### (2) Reporting Incidents, Formal Complaints, and Interim Measures.

The University recognizes the rights of Participants to report an incident to the University and to receive a prompt and equitable resolution of the report.

HOP 3-3031 distinguishes between *reporting* incidents and *filing* a Formal Complaint.

- (a) **Reporting Incidents.** Any person may report an incident under HOP 3-3031 to the [Title IX Coordinator](#), via email at [titleix@austin.utexas.edu](mailto:titleix@austin.utexas.edu), via mail at 100 W Dean Keeton, Suite 4. 204, Austin, TX 78712, or by calling 512-471-0419, regardless of whether the person reporting is the person alleged to be subject to the complained-of behavior. Also, any person may report incidents anonymously via [an online reporting form; however, anonymous reports may limit the University’s ability to respond to the allegations.](#)

Reporting an incident informs the Title IX Coordinator of the incident, which allows the institution to provide Supportive Measures (see HOP 3-3031 Section IV. D. above) to the Parties and does not necessarily result in the initiation of a Grievance Process (as outlined below). All Participants who report incidents under HOP 3-3031 will be offered individualized Supportive Measures. A decision to remain anonymous may greatly limit the Title IX Coordinator’s ability to stop the alleged conduct, collect evidence, or take action against individual(s) accused of violating HOP 3-3031. Prompt reporting is encouraged.

- (b) **Filing Formal Complaints.** Any person subject to an alleged incident under this Policy, may [file a Formal Complaint](#) to initiate the Grievance Process. The University recognizes the right of a

Participant to report the incident and to receive a prompt and equitable resolution of the report or Formal Complaint.

The Title IX Coordinator may also file and sign a Formal Complaint based on any incident report received which will initiate the appropriate Grievance Process track.

**(c) Formal Complaint Dismissals.**

(i) The Title IX Coordinator may dismiss a Formal Complaint, at its discretion, for any of the following circumstances:

1. If the Complainant requests in writing to dismiss a Formal Complaint;
2. If the alleged perpetrator was an employee and is no longer employed by the University at the time the Formal Complaint is filed, or is no longer employed at any time during the Grievance Process including the investigation or hearing;
3. Any specific circumstances that prevent the Department of Investigation and Adjudication from gathering evidence sufficient to reach a determination as to the Formal Complaint or any allegations therein; or
4. The conduct alleged does not meet the definition of any conduct prohibited under HOP 3-3031.

(ii) If the Title IX Coordinator dismisses a Formal Complaint, the Title IX Coordinator must provide both Parties a written notice of the dismissal and the reason(s) for the dismissal. Factors the Title IX Coordinator must consider when determining whether to investigate an alleged incident under this Policy include, but are not limited to:

1. The seriousness of the alleged incident;
2. Whether the University has received other reports of Prohibited Conduct by the alleged Respondent;
3. Whether the alleged incident poses a risk of harm to others; and
4. Any other factors the Title IX Coordinator determines relevant.

Under state law, if the Complainant requests in writing that the University not investigate a report, the Title IX Coordinator must inform the Complainant of the decision whether or not to investigate.

**(d) Interim Measures.** Appropriate University officials will decide if and what interim measures are necessary. Such interim measures may include, but are not limited to, separating the Parties' academic or working situations, prohibiting contact between the Parties involved in a complaint, suspending the right of the Respondent to be present on campus or otherwise altering the status of the Respondent. Other interim measures may be implemented given the facts reported to the Title IX Coordinator. These interim measures may be kept in place through the conclusion of any review, investigation, or appeal process.

Emergency removal of an individual may be necessary. A Respondent may be removed from the University's education program, activity, or work environment on an emergency basis if, after an individualized safety and risk analysis, it is determined that such a removal is justified because the Respondent poses an immediate threat to the physical health or safety of an individual or campus community arising from the allegations of conduct prohibited by this Policy. Under these circumstances, the Respondent will be notified in writing of the emergency removal from the University's education program, activity, or work environment and the Respondent will have an opportunity to immediately challenge the decision following the emergency removal.

**(e) Employee Investigation Leave and Alternative Work Assignment.** An employee Respondent may be placed on investigation leave or alternative work assignment, in accordance with the

University's policy and procedures, during the pendency of a Grievance Process, as outlined in this Policy.

**(3) Standard of Evidence & Presumption of Not Responsible.** All Grievance Process Tracks will use the preponderance of the evidence standard, as defined in this Policy. By law, the burden does not shift to the Respondent when the Respondent asserts an affirmative defense; it is presumed that the Respondent is not responsible for the alleged conduct unless that determination regarding responsibility is made at the conclusion of the Grievance Process.

**(4) Grievance Process**

**(a) Application.** The Primary and Secondary Schools Grievance Process applies in the instances where all of the following conditions are met:

- (i) the Respondent is a student or employee or other university affiliate at the Primary and Secondary Schools at the time of the alleged conduct;
- (ii) the alleged conduct includes Prohibited Conduct as defined in HOP 3-3031 Sec. V. or Additional Conduct Violations as defined in HOP 3-3031 Sec. VII.;
- (iii) the alleged conduct occurred against a person in the United States; and
- (iv) where the individual who is alleged to be the victim of any prohibited conduct under HOP 3-3031 was participating or attempting to participate in an education program or activity at a Primary and Secondary School affiliated to the University. This element is met if the conduct occurred in any of the following: on the school property; during any school activity; in a building owned or controlled by a student organization that is officially recognized by the University; or in instances where the University exercised substantial control over the Respondent and the context in which the alleged conduct occurred.

**(b) Written Notice of the Formal Complaint and Notification of Offices Offering Assistance.** After receiving a Formal Complaint, the Title IX Office will provide a written notice to the Parties of the Formal Complaint and available resources and assistance. The written Notice of the Formal Complaint will include the following:

- (i) A notice of the Grievance Process steps, as outlined in this Policy;
- (ii) A notice of the allegations that potentially constitute Prohibited Conduct under HOP 3-3031, including sufficient details about the alleged conduct, including the identity of the Parties, if known, and the date(s), time(s), and location(s) of alleged conduct known by the University at the time of the Formal Complaint;
- (iii) A statement of the potential HOP 3-3031 violations being investigated;
- (iv) A statement that the Respondent is presumed not responsible for the alleged conduct and that the determination regarding responsibility will be made at the conclusion of the Grievance Process;
- (v) A statement of the range of possible disciplinary sanctions and remedies that may be implemented upon a determination of responsibility;
- (vi) A statement that credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness;
- (vii) Both Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review all evidence;
- (viii) A statement that the Parties may review evidence gathered as part of any investigation;
- (ix) A statement that knowingly making false statements or knowingly submitting false information during the Grievance Process is prohibited and subject to disciplinary action;
- (x) A statement that no person will be required to disclose information protected under a legally recognized privilege. The investigator must not allow into evidence or permit or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person

holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege; and

(xi) Any other information relevant to the written notice.

**(c) Investigation of the Formal Complaint.**

(i) **Investigation.** The Department of Investigation and Adjudication in University Risk and Compliance Services (URCS) handles investigations of alleged violations of HOP 3-3031 by Parties in Primary and Secondary Schools of the University.

(ii) **Respondent Statement.** After the Title IX Coordinator provides written notice of a Formal Complaint to the Parties, the Respondent will be allowed a reasonable time to respond in writing and/or through an interview with the investigator.

(iii) **Notice of Events.** The Department of Investigation and Adjudication will provide written notice to a Participant, whose participation is invited or expected, of the date, time, location, participants, and purpose of all meetings, investigative interviews, or other proceedings in the Grievance Process.

(iv) **Evidence.** The Parties in the investigation may present any information and evidence that may be relevant to the Formal Complaint, and may have an Advisor of their choice, in addition to a parent or legal guardian if the party is a minor, attend any related interview, meeting, or proceeding in the Grievance Process. Advisors, parents or legal guardians are not permitted to actively participate in meetings or proceedings in the Grievance Process, unless as expressly outlined in this policy. The Parties may present the names of any fact or expert witnesses who may provide relevant information, and how the witnesses may be relevant to the Formal Complaint. The Parties may submit to the investigator any questions they would like asked of any known potential witnesses or parties.

(v) **Witness Interviews.** The investigators will interview relevant and available witnesses. Neither of the Parties will normally attend these interviews; however, if either one is permitted to attend, the other shall have the same right.

(vi) **Investigation Timeframe.** The investigation of a Formal Complaint will be concluded within 90 business days of the Notice of the Formal Complaint. The Parties should be provided updates on the progress of the investigation, as needed.

(vii) **Preliminary Investigation Report and Access to Evidence.** Prior to the completion of the investigation report, the investigator will prepare a written Preliminary Investigation Report (PIR) that will outline each of the allegations that potentially constitutes a conduct violation of HOP 3-3031, provide the timeline of the investigation, and fairly summarize relevant evidence, participant statements, and responses to questions. The investigators will also provide access to all evidence obtained (whether relevant or not) as part of the investigation to both Parties (and the Party's Advisor, if any, upon a Party's signed information release for their Advisor of choice). Both Parties will have 10 business days to inspect, review, and respond to the PIR.

(viii) **Completed Investigation Report.** After reviewing all timely responses, the investigator will prepare the completed investigation report (CIR). The CIR will outline each of the allegations that potentially constitutes conduct that violates HOP 3-3031, provide the timeline of the investigation (e.g. procedural steps), and objectively summarize relevant evidence, participant statements, and responses to questions. The investigator will provide the CIR concurrently to both Parties and each Party's Advisor, if any, upon a Party's signed information release for their Advisor of choice at prior to beginning the adjudication procedure. A copy of the completed investigation report will be issued to the Title IX Coordinator and to the hearing officer assigned to conduct the adjudication procedure.

**(d) Adjudication Procedure.** Absent a Formal Complaint dismissal, the University will provide the adjudication procedure, either electronically and/or in-person, for all Formal Complaints subject to this Grievance Process.

- (i) **Questions Procedure.** The hearing officer will provide the Parties 5 business days to submit a written statement and any questions they would like to ask the other Party or any witnesses. All statements and questions for the other Party must be submitted by the Parties in writing to the hearing officer. The hearing officer will consider all timely responses submitted by the Parties.
  - (ii) The hearing officer will afford each Party or witness 5 business days to submit written responses to the questions. The hearing officer will provide each Party with any response received and allow both Parties to have 5 business days to submit in writing additional questions pertaining to the responses received. The hearing officer will include any response received in the determination letter. No other questions will be allowed once the questions procedure is completed.
  - (iii) **Prior Sexual History.** The sexual predisposition or prior sexual behavior of an individual who is alleged to be the victim of any prohibited conduct under HOP 3-3031 are not relevant except where questions and evidence about the individual's prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged conduct charged by the Complainant or if the questions or evidence concern specific incidents of the individual's prior sexual behavior with the Respondent and are offered to prove the Complainant's consent of the alleged conduct.
  - (iv) **Hearing Officer Determination.** The hearing officer will prepare a written determination, which must include the following:
    - 1. The allegations that potentially constitute a conduct violation;
    - 2. A description of all of the procedural steps of the Grievance Process under this Policy (from the issuing of a Notice of the Formal Complaint to the Determination);
    - 3. The findings of fact supporting the case adjudicator's determination;
    - 4. The conclusion(s) and a rationale as to whether the Respondent is responsible for each allegation;
    - 5. The sanctions, if applicable, designed to restore the Complainant's access to the education program or activity; and
    - 6. The institution's procedures and permissible bases for the Parties to appeal, if applicable.
- (e) **Finding of Violation.** If there is a finding of violation, the determination letter will be provided to the appropriate decision maker for decision regarding disciplinary sanctions as follows:
- (i) If the Respondent is a student, it will be referred to the UT Charter School System Superintendent's Office for disciplinary sanctions decision, in accordance with Primary and Secondary Schools student disciplinary procedures. Prior to issuing a disciplinary sanction, the Superintendent will consult with DIA and the Title IX Office regarding the finding of violation. If the disciplinary sanction is suspension or expulsion, Respondent will be provided with the determination letter and informed that this matter is hearing eligible. Respondent can request a hearing, which will be held in accordance with the hearing procedures as follows:
    - 1. The University will provide a live hearing, either electronically or in-person. The hearing will involve only the hearing officer, the Respondent, an Advisor of their choice, and the sanction decisionmaker. If Respondent is a student, then Respondent's parent or legal guardian will also be invited to attend.
    - 2. The University will provide written notice of the hearing at least 10 business days in advance of the hearing to the Respondent and any Advisor. The notice will include the date, time, location of the hearing, the name of the hearing officer, the purpose of the hearing, a statement of the alleged conduct, and a summary of the evidence and finding, along with the imposed sanction(s).
    - 3. The Respondent may challenge the fairness, impartiality or objectivity of the hearing officer. The challenge must be submitted in writing to the hearing officer through the



Department of Investigation and Adjudication within 5 business days after notice of the identification of the hearing officer and must state reasons for the challenge. The Chief Compliance Officer or their designee will be the sole judge of whether the hearing officer can serve with fairness, impartiality, and objectivity. In the event the hearing officer recuses themselves, an alternative hearing officer will be assigned by the Department of Investigation and Adjudication.

4. The hearing officer will conduct the hearing and provide the Respondent an opportunity to make statements and present written or verbal arguments regarding the evidence outlined in CIR, the hearing officer's determination, and any imposed sanction. New evidence will only be considered if it was unknown or unavailable at the time of the determination.
5. The hearing officer will produce a final written determination that affirms, reverses, or modifies their initial written determination. The final determination will be sent to sanction decisionmaker for final sanction determination, if needed. The final determination letter, which will include any imposed sanction, will be provided to all parties.

(ii) If the Respondent is staff, it will be referred to the Chief Human Resources Officer for disciplinary sanctions decision, in accordance with the University's policies for discipline and termination of staff.

#### **(5) Appeal of Determination.**

##### **(a) Complainant or Respondent**

(i) **Basis for Appeal.** Either Party may appeal in writing the determination regarding a Respondent's responsibility under the Grievance Process or from the University's dismissal of a Formal Complaint (or any allegations in the Formal Complaint) within 10 business days of notification of such a determination, on the following bases:

1. A procedural irregularity that affected the outcome of the matter;
2. There is new evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made that could affect the outcome of the matter;
3. A challenge to the application of the standard of proof to the evidence; or
4. The Title IX Coordinator, investigator(s), or decision maker had a conflict of interest or bias for or against the Parties (generally, or specifically in this matter) that affected the outcome of the matter.

(ii) **Impartial Appellate Officer.** The appellate officer must not be the same person as the Title IX Coordinator, investigator(s), or decision maker in the Grievance Process. Both Parties will be notified in writing when an appeal is filed, and the appeal procedures will apply equally for both Parties.

(iii) **Statement of Support.** Any non-appealing Party (or the University) will have 7 business days from the notification of an appeal to submit a written statement in support of the outcome.

(iv) **Final Determination.** The decision maker on the appeal will release a written decision within 21 business days from the date of the appeal that either:

1. Affirms the determination regarding the Respondent's responsibility and its attendant disciplinary sanctions and remedies, if applicable;
2. Remands the matter back to investigation stage for the investigator to remedy any procedural irregularity or consider any new evidence; or
3. Reverses the determination of the Respondent's responsibility and the attendant disciplinary sanctions and remedies, if applicable.

(b) **Staff.** Staff respondents are eligible to appeal or grieve an assigned discipline outcome if they are both within the scope of HOP [5-2420](#) and the assigned discipline is something grievable under that policy. If both of those conditions are not met, the staff respondent is not eligible to appeal or grieve the assigned discipline outcome.

(6) **Grievance Process Documentation.** University Risk and Compliance Services will retain all of the documentation included in the Grievance Process for seven years, in accordance with state and federal records laws and University policy. All documentation of records is private and confidential to the extent possible under law. Student records of the Grievance Process are disciplinary records under FERPA. Employee records of the Grievance Process are subject to the Freedom of Information Act (FOIA) and the Texas Public Information Act (TPIA) and included in the employee's official employment record.

(7) **Grievance Process Timeframe.** The entire Grievance Process for Primary and Secondary Schools, including any appeal, will generally be completed in no more than 165 business days from the Notice of the Formal Complaint.

However, at its discretion, the University may temporarily delay the Grievance Process or provide a limited extension of its usual time frames for good cause with written notice to the Parties of the reasons for and the delay. Good cause considerations may include, but are not limited to, the absence of a Party, the Party's Advisor, or a witness; concurrent law enforcement activity or civil proceeding; or the need for language assistance or other accommodation.

Delayed decisions will be made on a case-by-case basis. The University will not, as a matter of course, wait for the outcome of a concurrent criminal or civil justice proceeding to take action on a Formal Complaint in its Grievance Process. The University has an independent duty to respond to Formal Complaints of violations of this Policy.

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