



UTAH VALLEY UNIVERSITY

Equity and Title IX Office

TO: UVU President's Council

CC: Policy Office

FROM: Ashley Wilson, Title IX Coordinator, Nicole Ferguson, Assistant Attorney General for UVU, and Cathy Jordan, UVU Associate General Counsel

DATE: April 13, 2023

RE: Compliance Revision to UVU Policy 162, *Title IX Sexual Harassment*

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The Title IX Office, in collaboration with the Office of General Counsel, recommends that UVU implement a limited scope revision to UVU Policy 162 under the “compliance change approval process” outlined in UVU Policy 101, section 4.2.4.

Background

On August 14, 2020, the U.S. Department of Education implemented its final regulations regarding sexual harassment under Title IX of the *Education Amendments of 1972*. These regulations serve as the legal basis of UVU Policy 162 and prescribe a transparent grievance process with strong procedural protections for all parties involved to ensure consistent Title IX enforcement.

Proposed Revisions

The proposed revisions to Policy 162 are limited in scope to incorporate these final regulations with particular attention to the “Grievance Process for Formal Complaints of Sexual Harassment,” outlined in 34 C.F.R. § 106.45 (2020). The proposed revisions (listed with Policy 162 section in which they will be implemented) are:

- **Section 2.8.** Add reference for “Grievance Process for Formal Complaints of Sexual Harassment,” 34 C.F.R. § 106.45 (2020) to Reference section.
- **Section 2.9.** Add reference for “Retaliation,” 34 C.F.R. § 106.71 (2020)
- **Sections 3.6 and 3.10.** Add the definition of “exculpatory evidence” and “inculpatory evidence” consistent with 34 C.F.R. § 106.45 (2020). As neither term has been defined in the federal regulations, definitions were included from *Black’s Law Dictionary* (11<sup>th</sup>



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edition 2019).

- **Section 3.14** Update the definition of “retaliation” consistent with 34 C.F.R. § 106.71(a) (2020).
- **Section 4.7.2.1(5)** Update the URL to the Title IX webpage.
- **Section 4.10.1.** Added “sanctioning officials” consistent with 34 C.F.R. § 106.45 (2020).
- **Section 5.2.1.1** Update this section to include “sanctioning official, or a person designated to facilitate an informal resolution process” consistent with 34 C.F.R. § 106.45 (2020).
- **Section 5.6.11** Update this section to:
  - o Include “advisors” and “electronic or hard copy” consistent with 34 C.F.R. § 106.45 (2020).
  - o Include “draft investigative report” consistent with 5.6.10 of Policy 162
  - o Remove “Access to the evidence will be provided for a sufficient duration of time to allow each party to meaningfully respond to the evidence before the completion of the final investigative report” consistent with 34 C.F.R. § 106.45 (2020).
- **Section 5.6.12** Update this section to correct from “5” to “10 business days” and include “which the investigator will consider prior to completion of the investigative report” consistent with 34 C.F.R. § 106.45 (2020).
- **Section 5.8.3.5** Update this section language to “The hearing officer shall ensure that all evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint is available at the hearing. The hearing officer shall give each party equal opportunity to refer to this evidence during the hearing, including for purposes of cross-examination. This evidence (1) shall include that upon which the University does not intend to rely in reaching a determination regarding responsibility and (2) shall include inculpatory and exculpatory evidence obtained from a party or other source” consistent with 34 C.F.R. § 106.45 (2020).
- **Section 5.8.4.2** Update this section to include “including those challenging credibility” consistent with 34 C.F.R. § 106.45 (2020).
- **Section 5.8.5.2(3)** Update this section to replace the phrase “by the parties” with “by the person holding such privilege” consistent with 34 C.F.R. § 106.45 (2020).



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- **Section 5.8.5.2(4)**
  - o Replace the term “presented” with “offered” consistent with 34 C.F.R. § 106.45 (2020).
  - o Include “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” consistent with 34 C.F.R. § 106.45 (2020).
  
- **Section 5.9.9** Update this section to include “simultaneously” consistent with 34 C.F.R. § 106.45 (2020).