**Collected Rules and Regulations**

**Equal Employment/Educational Opportunity**

**600.040 Equity Resolution Process for Resolving Complaints of Harassment, Sexual Misconduct and other Forms of Discrimination against a Faculty Member**

**A. General**

The University will act on any formal or informal complaint or notice of violation of the University’s anti-discrimination policies. The procedures described below apply to all such complaints or notice when the Accused is a Faculty Member.

**B. Jurisdiction**

Jurisdiction of the University of Missouri generally shall be limited to conduct which occurs on the University of Missouri premises or at University-sponsored or University-supervised functions. However, the University may take appropriate action, including, but not limited to, the imposition of sanctions under Section 600.040 of the Collected Rules and Regulations against Faculty Members for conduct occurring in other settings, including off-campus, (1) in order to protect the physical safety of students, employees, visitors, patients or other members of the University community, (2) if there are effects of the conduct that interfere with or limit any person’s ability to participate in or benefit from the University’s educational programs, activities or employment, (3) if the conduct is related to the Faculty Member’s fitness or performance in the professional capacity of teacher or researcher or (4) if the conduct occurs when the Faculty Member is serving in the role of a University employee.

**C. Definitions**

1. **University’s Anti-Discrimination Policies**. The University’s Anti-Discrimination Policies include the Equal Employment/Education Opportunity Policy located at Section 320.010 of the Collected Rules and Regulations and the Sex Discrimination, Sexual Harassment and Sexual Misconduct in Education/Employment Policy located at Section 600.020 of the Collected Rules and Regulations.

2. **Complainant**. Complainant refers to the alleged victim of discrimination under the University’s Anti-Discrimination Policies. The University may also serve as the Complainant when the alleged victim does not want to participate in the resolution process.

3. **Accused**. The Faculty Member or Members alleged to have violated the University’s Anti-Discrimination Policies.

4. **Faculty Member**. For purposes of Section 600.040, Faculty Member includes all regular and non-regular academic staff appointments as defined in Sections 310.020 and 310.035 of the Collected Rules and Regulations.

5. **Complaint**. Any verbal or written communication or notice of an alleged violation of the University’s Anti-Discrimination Policies.

6. **Advisors**. The individuals selected by the Complainant and the Accused to provide support and guidance throughout the Equity Resolution Process. Each party is allowed one advisor.

7. **Investigators**. Investigators are trained individuals appointed by the Provost or Provost’s Designee to conduct investigations of the alleged violations of the University’s Anti-Discrimination Policies.

8. **Equity Resolution Hearing Panelists Pool (“Hearing Panelist Pool”)**. A group of at least ten (10) faculty and ten (10) administrators and/or staff selected by the Chancellor or the Chancellor’s designee to serve as hearing panel members in the Hearing Panel Resolution.

9. **Equity Resolution Hearing Panel (“Hearing Panel”)**. A group of three (3) trained Equity Resolution Hearing Panelist Pool members who serve as the Hearing Panel for a specific Complaint. The panel will include at least one faculty member and one administrator or staff member.

10. **Hearing Panelist Pool Chair (“Pool Chair”)**. The Hearing Panelist Pool Chair is selected by the Chancellor or Chancellor’s Designee. The Pool Chair assigns and coordinates the hearing panel members to serve on the Hearing Panel for a specific Complaint and designates the Chair of the Hearing Panel for a specific Complaint. The Pool Chair may serve as a panel member or the Chair of the Hearing Panel for a specific Complaint.

11. **Chair of the Hearing Panel (“Panel Chair”)**. Chair of the Hearing Panel for a specific Complaint is designated by the Hearing Panelist Pool Chair. The Pool Chair may serve as the Chair of the Hearing Panel for a specific Complaint.

12. **Summary Resolution**. Resolution of the Complaint upon the determination by the Provost or the Provost’s Designee that no reasonable person could find the Accused responsible for violating the University’s Anti-Discrimination Policies.

13. **Conflict Resolution**. Resolution using alternative dispute resolution mechanisms such as mediation, facilitated dialogue or restorative justice.

14. **Administrative Resolution**. Resolution of the Complaint by the Provost or Provost’s Designee making the finding on each of the alleged policy violations, the Provost’s Designee recommending sanctions (when applicable), and the Provost making the finding on sanctions.

15. **Hearing Panel Resolution**. Resolution of the Complaint by an Equity Resolution Hearing Panel making the finding on each of the alleged policy violations and recommending sanctions and the Provost making the finding on sanctions.

16. **Record of the Case in the Section 600.040 Process**. The Record of the Case in the Section 600.040 Process includes, when applicable: Letter(s) of notice, exhibits, hearing record (an audio, video, digital or stenographic record of the hearing); the finding on each of the alleged policy violations by either the Hearing Panel, the Provost or the Provost’s Designee; the recommendation of sanctions by the Hearing Panel or Provost’s Designee; the finding of sanctions by the Provost; and the decision on the appeal, if applicable.

17. **Parties**. The Complainant and the Accused are collectively referred to as the Parties.

**D. Filing a Complaint**

Any student, employee, volunteer, visitor or patient who believes that a Faculty Member has violated the University’s Anti-Discrimination Policies should report the Complaint to the Provost or Provost’s Designee or in the case of allegations of sexual harassment, sexual misconduct or allegations of other forms of sex discrimination as defined in Section 600.020 of the Collected Rules and Regulations, the Title IX Coordinator or Title IX Coordinator’s Designee. Such individuals can also contact campus police if the alleged offense may also constitute a crime.

**E. Interim Remedies**

During the Equity Resolution Process and prior to making a finding whether the alleged violation has occurred, the Provost or Provost’s Designee or in the case of allegations of sexual harassment, sexual misconduct or allegations of other forms of sex discrimination as defined in Section 600.020 of the Collected Rules and Regulations, the Title IX Coordinator or Title IX Coordinator’s Designee, in consultation with the Provost or Provost’s Designee when directly impacting a Faculty Member, may provide interim remedies including, but not limited to, one or more of the following:

* 1. Referral and facilitating contact for the Complainant to on- or off-campus counseling, medical services and/or mental health services.
	2. Implementing contact limitations on the Accused or on all Parties.
	3. Referral of the Complainant to victim advocacy and support services either on and/or off-campus.
	4. Adjusting the work schedules, work assignments, supervisory responsibilities, supervisor reporting responsibilities or work arrangements of the Complainant and/or the Accused.
	5. If the Complainant is a student:

a. Referral of the Complainant to academic support services and any other services that may be beneficial to the Complainant.

b. Adjusting the courses, assignments, exam schedules of the Complainant.

c. Altering the on-campus housing assignments, dining arrangements, or other campus services for the Complainant.

* 1. Informing the Complainant of the right to notify law enforcement authorities of the alleged incident and offering to help facilitate such a report.
	2. Implementing leave from work with pay for the Complainant and/or Accused.
	3. Implementing suspension from campus with pay for the Accused.

**F. Employees and Students Participating in the Equity Resolution Process**

All University employees and students must be truthful when making any statement or providing any information or evidence to the University throughout the process, including to the Investigator, the Provost (or Provost’s Designee), the Title IX Coordinator (or Title IX Coordinator’s Designee), the Hearing Panel and/or the Chancellor (or Chancellor’s Designee), and all documentary evidence must be genuine and accurate. False statements, fraudulent evidence or refusal to cooperate with the Investigator, the Provost (or Provost’s Designee), the Title IX Coordinator (or Title IX Coordinator’s Designee), the Hearing Panel and/or the Chancellor (Chancellor’s Designee) by an employee may be the basis for personnel action or by a student may be the basis for student conduct action pursuant to Section 200.010(B)(14) or other provisions of Section 200.010. Nothing in this provision is intended to require a Complainant to participate in the process.

**G. Rights of the Complainant in the Equity Resolution Process**

1. To be treated with respect by University officials.

2. To be free from retaliation.

3. To have access to campus support resources (such as counseling and mental health services and University health services).

4. To have an Advisor of the Complainant’s choice accompany the Complainant to all interviews, meetings and proceedings throughout the Equity Resolution Process.

5. To refuse to have an allegation resolved through Conflict Resolution or Administrative Resolution Processes.

6. To have an opportunity to present a list of potential witnesses and provide evidence to the Investigator.

7. To have Complaints heard in substantial accordance with these procedures.

8. When the Complainant is not the reporting party, the Complainant has full rights to participate in any Equity Resolution Process.

9. To be informed in writing of the finding, rationale and sanctions.

10. To report the matter to law enforcement (if applicable) and to have assistance in making that report.

11. To have an opportunity to appeal the findings and sanctions.

12. Additional Rights for Hearing Panel Resolution:

 a. To receive notice of a hearing.

b. To have the names of witnesses that may participate in the hearing at least two (2) business days prior to the hearing.

c. To have copies of all pertinent documentary evidence and any investigative report at least two (2) business days prior to the hearing.

d. To be present at the hearing, which right may be waived by either written notification to the Hearing Panel Chair or by failure to appear.

e. To request alternative attendance or questioning mechanisms for the hearing (e.g.: screens, Skype, questions directed through the Chair, etc.).

f. To have present an Advisor during the hearing and to consult with such Advisor during the hearing.

g. To testify at the hearing or refuse to testify at the hearing.

h. To present witnesses and documents deemed relevant by the Chair.

i. To question witnesses present and testifying at the hearing. See Section 600.040.M.6 below for limitations on directly questioning the Accused.

**H. Rights of the Accused in the Equity Resolution Process**

1. To be treated with respect by University officials.

2. To have access to campus support resources (such as counseling and mental health services and University health services), unless suspended from campus pending the completion of the process.

3. To have an Advisor of the Accused’s choice accompany the Accused to all meetings and proceedings throughout the Equity Resolution Process.

4. To refuse to have an allegation resolved through Conflict Resolution or Administrative Resolution Processes.

5. To have an opportunity to present a list of potential witnesses and provide evidence to the Investigator.

6. To receive notice of the policies alleged to have been violated.

7. To have complaints heard in substantial accordance with these procedures.

8. To be informed in writing of the finding, rationale and sanctions.

9. To have an opportunity to appeal the findings and sanctions.

10. Additional Rights for Hearing Panel Resolution:

1. To receive notice of the hearing.
2. To have the names of witnesses that may participate in the hearing at least two (2) business days prior to the hearing.
3. To have copies of all pertinent documentary evidence and any investigative report at least two (2) business days prior to the hearing.
4. To be present at the hearing, which right may be waived by either written notification to the Hearing Panel Chair or by failure to appear.
5. To request alternative attendance or questioning mechanisms for the hearing (e.g.: screens, Skype, questions directed through the Chair, etc.)
6. To have present an Advisor during the hearing and to consult with such Advisor during the hearing.
7. To testify at the hearing or refuse to testify at the hearing.
8. To present witnesses and documents deemed relevant by the Chair.
9. To question witnesses present and testifying at the hearing. See Section 600.040.M.6 below for limitations on directly questioning the Complainant.

**I. Role of Advisors**

Each Complainant and Accused is allowed to have one Advisor of their choice present with them for all Equity Resolution Process interviews, meetings and proceedings. The Parties may select whomever they wish to serve as their Advisor, including an attorney. An Advisor is not required and any party may elect to proceed without an Advisor.

If the Complainant is a student, the student Complainant may request that the Provost (or Provost’s Designee) or Title IX Coordinator (or Title IX Coordinator’s Designee) assign a trained Advisor to provide support throughout the Equity Resolution Process. University trained Advisors are administrators or staff at the University trained on the Equity Resolution Process.

The Advisor may not make a presentation or represent the Complainant or the Accused during any meeting or proceeding. The Parties are expected to ask and respond to questions on their own behalf, without representation by their Advisor. The Advisor may consult with the advisee quietly or in writing, or outside the meeting or proceeding during breaks, but may not speak on behalf of the advisee at any point throughout the process. Advisors who do not follow these guidelines will be warned or dismissed from the meeting or proceeding at the discretion of the Investigator(s) during the investigation, the Provost or Provost’s Designee during the Administrative Resolution process, or the Chair of the Hearing Panel during the Hearing Panel process.

**J. Investigation**

If a Complainant wants to pursue an investigation or if the University wants to pursue an investigation, then the Provost or Provost's Designee promptly appoints a trained investigator or a team of trained investigators to investigate. Within seven (7) business days after the commencement of the investigation, the Investigator(s) will provide the Parties with written notice that an investigation has commenced, either:

1. In person, or

2. Mailed to the mailing address of the respective party as indicated in the official University records and emailed to the Party’s University-issued e-mail account. If there is no local address on file, mail will be sent to the party’s permanent address.

 Once received in person or mailed and e-mailed, notice will be presumptively delivered.

The Parties are allowed to have an Advisor of their choice present with them for all Equity Resolution Process interviews, meetings and proceedings in which they participate. All investigations will be thorough, reliable and impartial. The Investigator(s) will make reasonable efforts to include interviews with the Parties and relevant witnesses, obtain available evidence and identify sources of expert information, if necessary. The Investigator(s) will provide an investigation report to the Provost or Provost’s Designee.

Investigation of reported misconduct brought directly by a Complainant should be completed expeditiously, normally within thirty (30) business days of notice to the University. Investigation of a Complaint may take longer based on the nature or circumstances of the Complaint, such as lack of cooperation by the Complainant, when initial reports fail to provide direct first-hand information or in complex cases. The University may also undertake a short delay (several days to weeks, to allow evidence collection by the law enforcement agency) when criminal charges on the basis of the same behaviors that invoke the process are being investigated.

**K. Summary Resolution**

During or upon the completion of the investigation, the Provost or Provost’s Designee will review the investigation, which may include meeting with the investigator(s). Based on that review, the Provost or Provost’s Designee will make a summary determination whether a reasonable person could, based on the evidence gathered, find the Accused responsible for violating the University’s Anti-Discrimination Policies.

If the Provost or Provost’s Designee decides a reasonable person could find the Accused responsible for violating the University’s Anti-Discrimination Policies, then the Provost or Provost’s Designee will direct the process to continue. The Complaint will then be resolved through one of three processes: Conflict Resolution, Administrative Resolution or Hearing Panel Resolution. There is no right to reconsider or appeal the summary determination to continue the process.

If the Provost or Provost’s Designee decides that no reasonable person could find the Accused responsible for violating the University’s Anti-Discrimination Policies, then the process will end and the Complainant and the Accused will be sent written notification of the determination. The Provost or Provost’s Designee may counsel and suggest training opportunities to correct for inappropriate behavior that does not rise to the level of a violation.

The Complainant may request the Chancellor or Chancellor’s Designee to reconsider the summary determination ending the process. If the Chancellor or Chancellor’s Designee decides a reasonable person could find the Accused responsible for violating the University’s Anti-Discrimination Policies, the Chancellor or Chancellor’s Designee will reverse the determination ending the process and direct the process to continue. The Complaint will then be resolved through one of three processes: Conflict Resolution, Administrative Resolution or Hearing Panel Resolution. This determination to continue the process lies in the sole discretion of the Chancellor or Chancellor’s Designee and such determination is final. Further appeals or grievances are not permitted.

If the Chancellor or Chancellor’s Designee agrees with the summary determination ending the process by the Provost or Provost’s Designee and that no reasonable person could find the Accused responsible for violating the University’s Anti-Discrimination Policies, then the process will end and the Complainant and the Accused will be sent written notification of the determination. This determination to end the process lies in the sole discretion of Chancellor or Chancellor’s Designee and such determination is final. Further appeals or grievances are not permitted.

**L. Conflict Resolution**

The Investigator(s) will determine if Conflict Resolution is appropriate, based on the willingness of the Parties, the nature of the conduct at issue and the susceptibility of the conduct to Conflict Resolution. Conflict Resolution is often used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Administrative and Hearing Panel Resolution processes to resolve conflicts. Mediation is never utilized in cases involving allegations of nonconsensual sexual intercourse or nonconsensual sexual contact. It is not necessary to pursue Conflict Resolution prior to pursuing either the Administrative or Hearing Panel Resolution Process and either party can stop the Conflict Resolution process at any time and request either the Administrative or Hearing Panel Resolution Process. In a Conflict Resolution meeting, a neutral, University-assigned facilitator will foster a dialogue with the Parties to an effective resolution, if possible. The Provost or Provost’s Designee will keep records of any resolution that is reached, and failure to abide by the agreed upon resolution can result in appropriate responsive actions.

**M. Procedural Details for Administrative Resolution and Hearing Panel Resolution**

For both the Administrative Resolution and Hearing Panel Resolution, the following will apply:

1. The standard of proof will be “preponderance of the evidence,” defined as determining whether evidence shows it is more likely than not that a policy violation occurred.

2. Questioning or evidence about the Complainant’s prior sexual conduct is not permitted, though the Investigator, Provost (or Provost’s Designee), Title IX Coordinator (or Title IX Coordinator’s Designee) or Hearing Panel Chair may grant a limited exception in regards to the sexual history between the Parties, if deemed relevant.

3. Unless deemed relevant by the decision maker, character evidence of either the Complainant or the Accused will not be considered.

4. Incidents or behavior of the Accused not directly related to the possible violation(s) will not be considered unless they show a pattern of related misconduct. History of related misconduct by the Accused that shows a pattern may be considered, if deemed relevant by the decision maker.

5. The Administrative Resolution or Hearing Panel Resolution process will normally be completed within sixty (60) business days from the notice of the Complaint. Deviations from this timeframe will be promptly communicated to both parties.

6. The Accused may not directly question the Complainant and the Complainant may not directly question the Accused. However, if both the Complainant and the Accused request the opportunity, direct questioning between the Parties will be permitted in the Hearing Panel Resolution Process. Otherwise written questions will be directed to the Chair in the Hearing Panel Resolution Process, and those questions deemed appropriate and relevant will be asked on behalf of the requesting party.

7. In the Administrative Resolution Process, the Accused and the Complainant may provide a list of questions for the Investigator(s), Provost or Provost’s Designee to ask the other party. If those questions are deemed appropriate and relevant, they may be asked on behalf of the requesting party.

8. The Administrative Resolution process may be used when both Parties elect to resolve the Complaint using the Administrative Resolution Process.

9. At any time prior to the finding on disputed policy violations, the Complainant and/or the Accused may request that the Complaint shift from the Administrative Resolution Process to the Hearing Panel Resolution process. Upon receipt of such a request from either or both Parties, the Complaint will shift to the Hearing Panel Resolution Process.

10. The Resolution Processes will proceed regardless of whether the Accused chooses to participate in the investigation, the finding or the hearing.

11. For good cause, the Provost or Provost’s Designee in the Administrative Resolution Process and the Chair of the Hearing Panel in the Hearing Panel Resolution may, in their discretion, grant reasonable extensions to the time frames and limits provided.

**N. Administrative Resolution.**

Administrative Resolution by the Provost or Provost’s Designee can be pursued for any behavior that falls within the University’s Anti-Discrimination Policies. Administrative Resolution may be used when both Parties elect to resolve the Complaint using the Administrative Resolution Process.

The Administrative Resolution process consists of:

1. A prompt, thorough and impartial investigation by the Investigator;

2. A finding by the Provost or Provost’s Designee on each of the alleged policy violations; and

3. A finding by the Provost on sanctions for findings of responsibility.

The Investigator(s) will provide an investigation report to the Provost or Provost’s Designee. The Provost or Provost’s Designee can, but is not required to, meet with and question the Investigator and any identified witnesses. The Provost or Provost’s Designee may request that the Investigator conduct additional interviews and/or gather additional information. The Provost or Provost’s Designee will offer to meet with the Complainant and will meet with the Complainant if the Complainant agrees to meet. The Provost or Provost’s Designee will attempt to meet with the Accused to review the alleged policy violations and the investigation report. The Accused may choose to admit responsibility for all or part of the alleged policy violations at any point in the process. If the Accused admits responsibility, in whole or in part, the Provost or Provost’s Designee will render a finding that the individual is in violation of University policy for the admitted conduct. For any disputed violations, the Provost or Provost’s Designee will render a finding utilizing the preponderance of the evidence standard. The Provost’s Designee may recommend appropriate sanctions but only the Provost will find sanctions or remedial actions. The findings and sanctions are subject to appeal.

At any point during the Investigation and Administrative Resolution process and prior to the finding on disputed policy violations, either party may request that the matter be referred to the Hearing Panel Resolution process.

At least three (3) business days prior to rendering a finding on disputed policy violations, the Provost or Provost’s Designee will provide the Parties with written notice of intent to render a finding using the Administrative Resolution process, either:

1. In person, or

2. Mailed to their mailing address of the respective party as indicated in official University records and emailed to the party’s University-issued email account. If there is no local address on file, mail will be sent to the party’s permanent address.

Once received in person or mailed and emailed, notice will be presumptively delivered.

If, after the three (3) business days described above, the Provost or Provost’s Designee has not received a request in writing from either party that the matter be referred to the Hearing Panel Resolution process, the Provost or Provost’s Designee may render a finding on the disputed violations. Once the finding has been made, the right to the Hearing Panel Resolution process is waived and the Administrative Resolution process is complete. The finding of the Administrative Resolution process remains subject to appeal.

When a Provost’s Designee makes the finding on each of the alleged policy violations, the Provost’s Designee will recommend sanctions, but the Provost will make the finding on sanctions and remedial actions.

The Provost or Provost’s Designee will inform the Accused and the Complainant of the finding on each of the alleged policy violations and the finding on sanctions, if applicable, in writing within five (5) business days of the findings, without significant time delay between notifications. Notification will be made in writing and will be delivered either:

1. In person, or
2. Mailed to the mailing address of the respective party as indicated in official

University records and emailed to the party’s University-issued email account. If there is no local address on file, mail will be sent to the party’s permanent address.

Once received in person or mailed and emailed, notice will be presumptively delivered.

**O. Hearing Panel Resolution.**

1. **Equity Resolution Hearing Panelist Pool**

The University will create and annually train a pool of not less than ten (10) faculty and ten (10) administrators and/or staff as hearing panelists to serve as hearing panel members in the Hearing Panel Resolution Process. Panelists are selected by the Chancellor or Chancellor’s Designee and serve a renewable, one-year term. Panelist selections should be made with attention to representation of groups protected by the University’s Anti-Discrimination Policies. The Chancellor or Chancellor’s Designee will select a **Hearing Panelist Pool Chair** (“**Pool Chair**”). The Pool Chair assigns and coordinates the hearing panel members to serve on the Hearing Panel for a specific Complaint and designates the Chair of the Hearing Panel for a specific Complaint. The Pool Chair may serve as a panel member or the Chair of the Hearing Panel for a specific Complaint.

 2. **Equity Resolution Hearing Panel (“Hearing Panel”)**

When a Complaint is not resolved through the Administrative Resolution Process, the Hearing Panelist Pool Chair will assign three members from the Hearing Panelist pool to serve on the specific Hearing Panel and will also designate the **Chair of the Hearing Panel**. The Hearing Panel will include at least one faculty member and one administrator or staff member. Up to two alternates may be designated to sit in throughout the process as needed. The Chair of the Hearing Panel helps ensure that the process adheres materially to the procedural elements of the Hearing Panel Resolution process.

 3. **Notice of Hearing**

a. At least seven (7) business days prior to the hearing, or as far in advance as is reasonably possible if an accelerated resolution process is scheduled with the consent of the Parties, the Provost or Provost’s Designee will send a letter to the Parties with the following information:

1) A description of the alleged violation(s) and applicable policy or policies that are alleged to have been violated.
2) Reference to or attachment of the applicable procedures.
3) An indication that the Parties may have the assistance of an Advisor of their choosing, at the hearing, though the Advisor’s attendance at the hearing is the responsibility of the respective Parties.
4) The time, date and location of the hearing.

5) A list of the names of each of the Hearing Panel members and alternates.

6) A copy of the preliminary investigative report or summary

 b. This Notice of Hearing letter will be made in writing and will be delivered

either:

1) In person, or
2) Mailed to the mailing address of the respective party as indicated in official University records and emailed to the party’s University-issued email account. If there is no local address on file, mail will be sent to the party’s permanent address.

Once received in person or mailed and emailed, notice will be presumptively delivered.

4. **Pre-Hearing Witness Lists, Documentary Evidence and Objection to Hearing Panel Member(s)**

At least four (4) business days prior to the hearing, the Complainant and the Accused will provide to the Investigator a list of the names of the proposed witnesses and copies of all proposed documentary evidence and may also object in writing to any hearing panel member or alternate. At least two (2) business days prior to the hearing, the Investigator will have the names of proposed witnesses, copies of all pertinent documentary evidence and a copy of the investigative report available for the Complainant and the Accused, and a copy of the same will be sent to the Hearing Panel Chair.

5. **Objection to or Recusal of Hearing Panel Member**

Upon receipt, the Investigator will forward to the Hearing Panelist Pool Chair any written objection by the Complainant or the Accused to any hearing panel member. Hearing Panel members will only be unseated and replaced if the Hearing Panelist Pool Chair concludes that the panel member’s bias precludes an impartial hearing of the Complaint. Additionally, any panel member or Chair of the Hearing Panel who feels they cannot make an objective determination must recuse himself or herself from the proceedings in advance of the hearing.

6. **Request for Alternative Attendance or Questioning Mechanisms**

The Complainant and the Accused should request alternative attendance or questioning mechanisms (screens, Skype, questions directed through the Chair, etc.) at least two (2) business days prior to the hearing. The request should be made to the Chair of the Hearing Panel. The University will make reasonable accommodations for both the Complainant and the Accused in keeping with the principles of equity and fairness.

 7. **Requests to Reschedule the Hearing Date**

 For good cause, the Chair of the Hearing Panel may grant requests to reschedule

the hearing date.

8. **Conduct of Hearing**

The Chair of the Hearing Panel (“Chair” in this subsection) shall preside at the hearing, call the hearing to order, call the roll of the Hearing Panel and alternates in attendance, ascertain the presence or absence of the Investigator, the Complainant and the Accused, confirm receipt of notice of hearing, report any extensions requested or granted and establish the presence of any Advisors. Formal rules of evidence shall not apply.

 a. **Investigator’s Report and Testimony**

The Investigator(s) will first present the written investigative report and may give a narrative report of the investigation, and then be subject to questioning by the Complainant, the Accused and the Hearing Panel. The Investigator(s) may also call witnesses who will be subject to questioning by the Investigator, the Complainant, the Accused and the Hearing Panel. The Investigator may also submit documentary evidence. The Investigator(s) will remain present during the entire hearing process.

 b. **Complainant’s Evidence**

The Complainant may give testimony and be subject to questioning by the Investigator, the Accused (through the Chair as discussed in Section 600.040.M.6 above) and the Hearing Panel. The Complainant may also call and question witnesses who may also then be questioned by the Accused, the Investigator and the Hearing Panel. The Complainant may also submit documentary evidence.

 c. **Accused’s Evidence**

The Accused may give testimony and be subject to questioning by the Investigator, the Complainant (through the Chair as discussed in Section 600.040.M.6 above) and the Hearing Panel. The Accused may also call and question witnesses who may also then be questioned by the Complainant, the Investigator and the Hearing Panel. The Accused may also submit documentary evidence.

 9. **Rights of the Hearing Panel**

a. The relevancy and admissibility of any evidence offered at the hearing shall be determined by the Chair, whose ruling shall be final unless the Chair shall present the question to the Hearing Panel at the request of a member of the Hearing Panel, in which event, the ruling of the Hearing Panel by majority vote shall be final.

b. To question witnesses or evidence introduced by the Investigator, the Complainant or the Accused at any time during the hearing process.

 c. To call additional witnesses and submit documentary evidence.

 d. To exclude a witness proposed by the Investigator, the Complainant or the

 Accused if it is determined his or her testimony would be redundant or

not relevant.

e. To dismiss any person from the hearing who interferes with or obstructs the hearing or fails to abide by the rulings of the Chair of the Hearing Panel (“Chair” in this subsection).

f. To have present a legal advisor to the Hearing Panel, who shall be designated by the General Counsel of the Board of Curators.

g. To have the names of witnesses that may be called by the Investigator, the Complainant and the Accused at least two (2) business days prior to the hearing.

h. To have copies of all pertinent documentary evidence and the investigative report at least two (2) business days prior to the hearing.

i. Procedural questions which arise during the hearing and which are not covered by these general rules shall be determined by the Chair, whose ruling shall be final unless the Chair shall present the question to the Hearing Panel at the request of a member of the Hearing Panel, in which event, the ruling of the Hearing Panel by majority vote shall be final.

 10. **Findings**

The Hearing Panel will deliberate with no others present, except any legal advisor

to the Hearing Panel, to find whether the Accused is responsible or not

responsible for the policy violation(s) in question. The panel will base its

finding on a preponderance of the evidence (i.e., whether it is more likely

than not that the Accused committed each alleged violation). If an Accused is

found responsible by a majority of the panel, the panel will recommend

appropriate sanctions. The Chair of the Hearing Panel will prepare a written panel report and deliver it to the Provost or Provost’s Designee detailing the finding, how each member voted, the information cited by the panel in support of its finding and any information the Hearing Panel excluded from its consideration and why. If the Accused is found responsible, the report should conclude with recommended sanctions. This report is typically submitted to the Provost or Provost’s Designee within two (2) business days of the end of deliberations. Deviation from the 2-day period will be communicated to the Parties, along with an expected time for completion.

The Provost or Provost’s Designee will inform the Accused and the Complainant of the hearing panel report and the Provost’s finding of sanctions, if applicable, within five (5) business days of receipt of the panel report, without significant time delay between notifications. Notification will be made in writing and will be delivered either:

1. In person, or
2. Mailed to the mailing address of the respective party as indicated in official University records and emailed to the respective party’ University- issued email accounts. If there is no local address on file, mail will be sent to the party’s permanent address.

Once received in person or mailed and emailed, notice will be presumptively delivered.

**P. Sanctions**

If the Accused is found responsible for a violation of the University’s Anti-

Discrimination Policies, the Hearing Panel or Provost’s Designee (when

a Provost’s Designee is used in the Administrative Resolution Process) will recommend

sanctions but the Provost will make the finding of sanctions and remedial actions.

**1. Factors Considered when Finding Sanctions/Remedial Actions** include but are not limited to:

 a. The nature, severity of, and circumstances surrounding the violation.

 b. The disciplinary history of the Accused.

c. The need for sanctions/remedial actions to bring an end to the discrimination, harassment and/or retaliation.

d. The need for sanctions/remedial actions to prevent the future recurrence of discrimination, harassment and/or retaliation.

e. The need to remedy the effects of the discrimination, harassment and/or retaliation on the Complainant and the University community.

**2. Types of Sanctions**

The following sanctions may be imposed upon any Faculty Member found to have violated the University’s Anti-Discrimination Policies. Multiple sanctions may be imposed for any single violation. Sanctions include but are not limited to:

 a. Warning – Verbal or Written

 b. Performance Improvement Plan

 c. Required Counseling

 d. Required Training or Education

 e. Loss of Annual Pay Increase

 f. Loss of Supervisory Responsibility

 g. Recommendation of discipline in a training program, including

recommendation of termination, suspension or other corrective or

remedial actions

 h. For Non-Regular Faculty, immediate termination of term contract and

employment

i. For Regular, Untenured Faculty, immediate termination of term contract

and employment. Notice of not reappointing would not be required.

j. Suspension without pay (while the appeal is pending this is a suspension

with pay)

 k. Non-renewal of appointment

l. For Regular, Tenured Faculty, suspension without pay (while the appeal is pending, but not for the duration of the dismissal for cause proceedings, this is a suspension with pay), removal from campus and referral to the Chancellor to initiate dismissal for cause as detailed in Section 310.060 of the Collected Rules and Regulations.

**3. When Implemented**

Sanctions are implemented immediately by the Provost or Provost’s Designee unless the Chancellor or Chancellor’s Designee stays their implementation pending the outcome of the appeal. Suspension without pay is automatically a suspension with pay during the appeal but immediately converts to a suspension without pay upon the conclusion of an appeal upholding the sanction.

**Q. Appeal**

 **1. Grounds for Appeal**

Both the Complainant and the Accused are allowed to appeal the findings in the Administrative Resolution Process or the finding in the Hearing Panel Resolution Process. Appeals are limited to the following:

a. A procedural error occurred that significantly impacted the outcome of the Administrative or Hearing Panel Resolution Process (e.g. substantiated bias, material deviation from established procedures, etc.).

b. To consider new evidence, unavailable during the original resolution process or investigation that could substantially impact the original finding or sanction.

c. The sanctions fall outside the range typically imposed for this offense, or for the cumulative disciplinary record of the Accused.

**2. Requests for Appeal**

Both the Complainant and the Accused may submit a request for appeal to the Chancellor or Chancellor’s Designee. All requests for appeal must be submitted in writing to the Chancellor or Chancellor’s Designee within three (3) business days of the delivery of the findings. When any party requests an appeal, the other party (parties) will be notified and receive a copy of the request for appeal.

 **3. Response to Request for Appeal**

Within three (3) business days of the delivery of the notice and copy of the request for appeal, the other party (parties) may file a response to the request for appeal. The response can address that sufficient grounds for appeal have not been met and/or the merits of the appeal.

 **4. Review of the Request to Appeal**

The Chancellor or Chancellor’s Designee will make an initial review of the appeal request(s). The Chancellor or Chancellor’s Designee will review the request for appeal to determine whether:

 a. The request is timely, and

b. The appeal is on the basis of any of the three grounds listed above, and

c. When viewed in the light most favorable to the appealing party, the appeal states grounds that could result in an adjusted finding or sanction.

The Chancellor or Chancellor’s Designee will reject the request for appeal if all three of the above requirements are not met. The decision to reject the request for appeal is final and further appeals and grievances are not permitted. The Chancellor or Chancellor’s Designee will normally render a written decision whether the request for appeal is accepted or rejected within seven (7) business days from receipt of the request for appeal.

 **5. Review of the Appeal**

If all three requirements for appeal listed above are met, the Chancellor or Chancellor’s Designee will accept the request for appeal and proceed with rendering a decision on the appeal applying the following additional principles:

a. Appeals are not intended to be full re-hearings of the Complaint and are therefore deferential to the original findings. In most cases, appeals are confined to a review of the written documentation and record of the Administrative Resolution or Hearing Panel Resolution, and pertinent documentation regarding the grounds for appeal. Appeals granted based on new evidence should normally be remanded to the original decision maker (Hearing Panel, Provost or Title IX Coordinator) for reconsideration.

b. Sanctions are implemented immediately unless the Chancellor or Chancellor’s Designee stays their implementation pending the outcome of the appeal. Suspension without pay is automatically a suspension with pay during the appeal but immediately converts to a suspension without pay upon the conclusion of an unfavorable appeal.

c. The Chancellor or Chancellor’s Designee will normally render a written decision on the appeal to all Parties within seven (7) business days from accepting the request for appeal.

d. Once an appeal is decided, the outcome is final. Further appeals and grievances are not permitted.

 **6. Extensions of Time**

For good cause, the Chancellor or Chancellor’s Designee may grant reasonable extensions of time (e.g.: 7-10 business days) to the deadlines in the appeal process.

**R. Records**
In implementing this policy, records of all Complaints, resolutions, and hearings will be kept by the Provost or Provost’s Designee. An audio, video, digital, or stenographic record of the hearings will be maintained and will be filed in the office of the Provost or Provost’s Designee and, for the purpose of review or appeal, be accessible at reasonable times and places to the Accused and the Complainant. The “Record of the Case in the Section 600.040 Process” includes, when applicable: letter(s) of notice, exhibits, hearing record (an audio, video, digital or stenographic record of the hearing); the finding on each of the alleged policy violations by either the Hearing Panel, the Provost or the Provost’s Designee; the recommendation of sanctions by the Hearing Panel or Provost’s Designee; the finding of sanctions by the Provost; and the decision on the appeal, if applicable. The Record of the Case in the Section 600.040 Process will be kept for a minimum of seven (7) years following final resolution.

**S.** **Dismissal for Cause Referral**

 If the recommended sanction for a Regular, Tenured Faculty member is referral to the Chancellor to initiate Dismissal for Cause, the Record of the Case will be forwarded to the appropriate Faculty Committee on Tenure. Because the Dismissal for Cause proceeding is not a re-hearing of the Complaint, the Record of the Case will be included as evidence and the findings will be adopted for proceeding as detailed in Section 310.060: Procedures in Case of Dismissal for Cause in the Collected Rules and Regulations.

**T. Amendments**

The President of the University is authorized to amend this Board Rule by Executive Order on or before February 6, 2017.