

Equal Opportunity Policies & Hearings

Training Materials for Participants

Contents

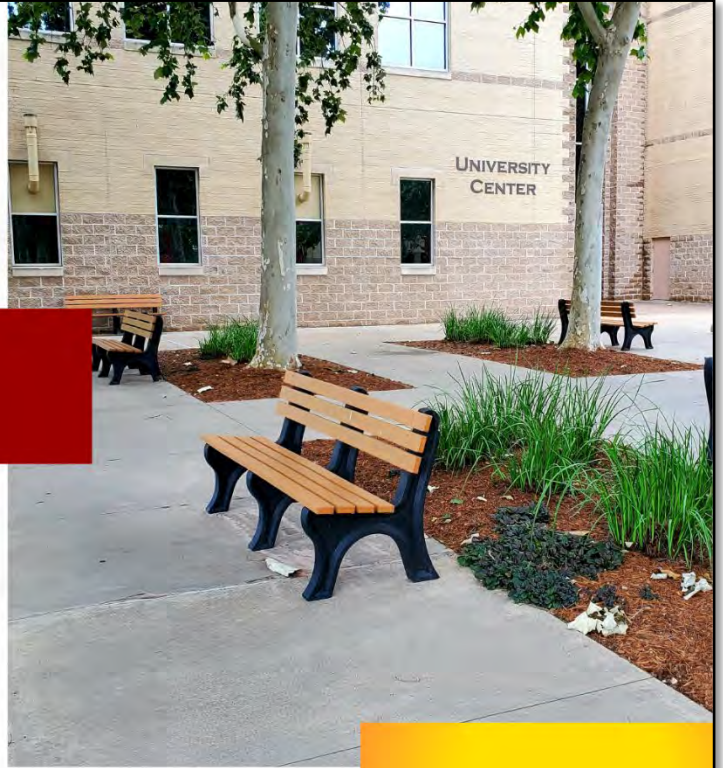
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Section Four

SECTION FOUR

This section overviews the formal complaint process from the preliminary review (dismissal or acceptance stage) to the final investigative report. Other sections will cover the hearing process.

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Slide Contents:

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Narrator Notes:

(same as above)

Content Roadmap (starting section four)

Learn About the Process

This series will overview the types of concerns covered by EOS policies and the various forms of resolution that may be applicable during EOS review.

1	Introduction to Equal Opportunity Services
2	Definitions of Misconduct Under EOS Policies
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6	Understanding the University Panel Hearing Process
7	Hearing Decorum and Preparing for the Hearing



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Learn About the Process (Content Roadmap)

This series will overview the types of concerns covered by EOS policies and the various forms of resolution that may be applicable during EOS review.

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Narrator Notes:

(same as above)

Complaints by the University

There might be situations where the University needs to start a formal complaint process on behalf of the community.

The Equal Opportunity or Title IX Coordinator may sign a complaint, but does not become a party to the case.

They may consider the types of allegations, potential to recur, and ongoing risk to the University community.



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Narrator Notes:

According to section 14.2.3 of the Sexual Misconduct Policy, "The decision for the Title IX Coordinator to file a Formal Complaint is not taken lightly and will be determined based on various factors including, but not limited to, the type of actions alleged in the report, prior reports received, the potential for repeated behavior, and/or the potential on-going risk to the non-participating Complainant and/or the University community." The policy states that the purpose of the process is to "protect the University community," and even if "the Title IX Coordinator initiates a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party." An Equal Opportunity Coordinator may similarly file a formal complaint for discrimination or harassment under the Anti-Discrimination Policy (see policy section 3.4).

Formal Complaint Review Process



Determine University jurisdiction

EOS staff will consider whether the University has possible jurisdiction over the conduct. If not, the complaint should be dismissed. Additional jurisdiction decisions may occur later in the process based on review of the evidence.



Consolidate or file additional allegations

EOS staff may consolidate a complaint with multiple Complainants and/or Respondents if the allegations arise out of the same facts or circumstances. Based on the information available, EOS staff may also give notice to the Respondent(s) of additional allegations.



Consider potential dismissal reasons

As explained in the previous section, EOS staff will consider potential reasons to dismiss the complaint as appropriate.



Identify alternate resolution processes

To the extent that other employee or student conduct processes may address the concerns, EOS staff may also let the parties know about alternate resolution processes.

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Determine University jurisdiction

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Identify alternate resolution processes

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Narrator Notes:

In Section three, we explained the option to draft a formal complaint including potential complaint dismissal reasons to consider at the drafting stage. See Section three for more information. Once the Equal Opportunity Office receives a complaint, the evaluation process begins.

The Formal Complaint Review Process includes a review of jurisdiction where EOS staff will consider whether the University has possible jurisdiction over the conduct. If not, the complaint should be dismissed. Additional jurisdiction decisions may occur later in the process based on review of the evidence.

As explained in the previous section, EOS staff will consider potential reasons to dismiss a complaint as appropriate.

According to section 14.2.6 of the Sexual Misconduct Policy, "The University may consolidate Formal Complaints as to the allegations of Sexual Misconduct against more than one Respondent, or by more than one Complainant against one or more Respondents, where the allegations of Sexual Misconduct arise out of the same facts or circumstances."

To the extent that other employee or student conduct processes may address the concerns, EOS staff may also let the parties know about alternate resolution processes.

Complaint Evaluation Outcomes

Complaint Evaluation Outcomes

Evaluation of the complaint may lead to any of or a combination of the following:



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Evaluation of the complaint may lead to any of or a combination of the following:

Supplements: If the Equal Opportunity staff have questions or the complaint is missing information, the Complainant may supplement their complaint with more information or records.

Acceptance: If the complaint is accepted in part or in full, the parties will be notified of the next steps for full investigation.

Dismissal: If the complaint is dismissed in part or in full, the Complainant has the option to appeal the dismissal.

Narrator Notes:

A complaint evaluation may result in additional questions and supplements (such as when a complaint is missing key information or the Complainant provides additional records), acceptance, or dismissal.

If the complaint is accepted in part or in full, the parties will be notified of the next steps for full investigation.

If the complaint is dismissed in part or in full, the Complainant has the option to appeal the dismissal.

Dismissal Process

Dismissal Process

Preliminary reviews may contain document analysis, evidence review (text, audio, video, etc.), witness interviews and other steps as appropriate.



Notice of Dismissal

Sent to Complainant along with deadline to appeal.



Notice of Appeal

After Complainant appeals a dismissal, the Respondent is given option to add to the record as well.



Record Prepared

EOS prepares comments from parties and appeal record.



Appeal Review

The appeal decision-maker reviews the record.



Final Decision

The parties and EOS receive notice of the decision to **accept, remand or reject** the dismissal.

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Preliminary reviews may contain document analysis, evidence review (text, audio, video, etc.), witness interviews and other steps as appropriate.

Notice of Dismissal: Sent to Complainant along with deadline to appeal.

Notice of Appeal: After Complainant appeals a dismissal, the Respondent is given option to add to the record as well.

Record Prepared: EOS prepares comments from parties and appeal record.

Appeal Review: The appeal decision-maker reviews the record.

Final Decision: The parties and EOS receive notice of the decision to accept, remand or reject the dismissal.

Narrator Notes:

Dismissal Process: Preliminary reviews may contain document analysis, evidence review (text, audio, video, etc.), witness interviews and other steps as appropriate.

According to the Anti-Discrimination Policy, Appendix B, section 2(B), "If the Equal Opportunity Coordinator decides to not proceed with a Formal Complaint, they will notify the Complainant . . . explaining the reason(s) for this decision. This notification will also include a statement informing the Complainant of their ability to refile their complaint if they have additional or new information and that this new complaint will be assessed on its own merits." If a complaint is dismissed, "the Complainant may appeal the dismissal by notifying the Equal Opportunity Coordinator within five (5) business days." At this stage, the Respondent would also have the opportunity to submit information into the record regarding the appeal. The appeal record would be reviewed, and then the parties would receive a notification of whether

the appeal accepted, rejected or remanded the dismissal decision (a remand would require for further action before revisiting the dismissal decision).

For similar steps under the Sexual Misconduct Policy, see sections 10.2 and 10.3 of the policy. See also policy Appendix B, section 4 for more information about the appeal.

Notice to the Parties

Notice to the Parties

Once EOS accepts a formal complaint, the parties will receive a notice of:



Grievance process and informal options (if applicable)	Information about option for Personal Advisor
Notice of potential misconduct findings (the allegations)	Notice that parties may review and inspect evidence
Sufficient details about the allegation(s)	Notice of prohibitions against making false statements
Statement that Respondent is presumed not responsible	Contact information and deadlines for next steps

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- Statement that Respondent is presumed not responsible
- Contact information and deadlines for next steps

Image with “check your email” reminder.

Narrator Notes:

Notice of a complaint under the Sexual Misconduct Policy (section 14.3) includes:

"Notice of the University's Title IX Grievance Procedure, if applicable,

Notice of the allegations that may constitute Sexual Misconduct;

Sufficient details, including the identities of the parties involved in the incident, the conduct allegedly constituting Sexual Misconduct, and the date and location of the alleged incident, if known;

A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;

Notice that the parties may have a Personal Advisor of their choice who may be, but is not required to be, an attorney;

Notice that the parties may inspect and review evidence, in accordance with applicable policies; and

Notice of any provision of the University's code of conduct or other policy that prohibits knowingly making false statements or knowingly submitting false information during the grievance process."

Also, as explained in the Anti-Discrimination Policy, Appendix B, section 6(E), "After a Notice of Finding has been issued, any party to the complaint may request to meet with the investigator(s) to discuss the investigation, finding(s), and/or to inspect the investigative file."

Note Sexual Misconduct Policy section 17.4 that, "If an individual makes a materially false statement in bad faith during the course of a grievance procedure under this policy, this conduct may constitute a violation through a separate University policy."

Respondent Options

- The Respondent's standard timeline to reply to the complaint is five business days, but EOS may extend the timeline for good cause. Extension requests must be in writing to become part of the record.
- A Response may be in writing, or the Respondent can request to record their Response on audio with EOS staff.
- The Respondent may be required to acknowledge they received the complaint, but can decline to provide a Response. The complaint investigation will continue even if they provide no response.

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The Respondent's standard timeline to reply to the complaint is five business days, but EOS may extend the timeline for good cause. Extension requests must be in writing to become part of the record.

A Response may be in writing, or the Respondent can request to record their Response on audio with EOS staff.

The Respondent may be required to acknowledge they received the complaint, but can decline to provide a Response. The complaint investigation will continue even if they provide no response.

Narrator Notes:

According to the Anti-Discrimination Policy Appendix B, section 3(A), "A Respondent's response to the complaint is due to the Equal Opportunity office within five business days from the Respondent's receipt of the complaint. Extensions may be granted for good cause." The Sexual Misconduct Policy has the same protocol in section 14.4. Both policies share that, "A response may be provided in writing" or through a recorded interview. Both policies also state that, "While a Respondent is not required to provide a response to the complaint or answer questions related to the investigation, this will not stop the Formal Complaint process from proceeding." Both policies also support that, "A Respondent's failure to acknowledge the receipt of the complaint may be considered a violation of relevant University policies and could result in additional disciplinary action." See section 14.4 of the Sexual Misconduct Policy for similar provisions.

Resolution Agreement

01

Voluntary for the parties (and do not have to meet with each other).

02

Parties provide written consent.

03

Either may withdraw to resume complaint investigation.

04

Informal resolution (**as alternate to formal complaint decision**) is not available for an employee accused of sexual misconduct against a student.

05

Can include educational courses, meeting requirements, long term no contact, counseling, campus restrictions and more.

06

Requires sign off by Title IX/Equal Opportunity Coordinator.

Agreement

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Slide Contents:

1. Voluntary for the parties (and do not have to meet with each other).
2. Parties provide written consent.
3. Either may withdraw to resume complaint investigation.
4. Informal resolution (as alternate to formal complaint decision) is not available for an employee accused of sexual misconduct against a student.
5. Can include educational courses, meeting requirements, long term no contact, counseling, campus restrictions and more.
6. Requires sign off by Title IX/Equal Opportunity Coordinator.

Narrator Notes:

Resolution Agreements for Formal Complaints

According to the Sexual Misconduct Policy section 14.5.1, "The option to informally resolve a Formal Complaint depends on whether the University determines that informal resolution may be appropriate and whether both parties voluntarily agree to attempt informal resolution." The Policy then goes on to require the parties' written consent and explains in section 14.5.4 that, "Any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to a Formal Complaint at any time prior to agreeing to a resolution."

The same policy states in section 14.5.7 that, "Informal resolution may not be used to resolve Sexual Misconduct allegations where a University employee is alleged to have engaged in Sexual Misconduct against a student."

The Resolution Agreement may include educational courses, requirements to meet with officials, long term no contact provisions, counseling, campus restrictions and more.

For more information about Resolution Agreements under the Anti-Discrimination Policy (which are only available for non-violent offenses), see section 3.9 of the policy. According to Appendix A, section 2 of the same policy, "Either party can request an informal resolution to resolve a report. . . . [and] the parties may agree upon a variety of resolutions." The same section explains that, "The Equal Opportunity office will determine whether informal resolution is an appropriate mechanism of potential resolution based on the nature of the allegations. Informal resolution requires the consent of both parties."

Back to Investigation



Witness Interviews

Witnesses may be identified by parties or the investigation.



Document Requests

EOS may request documents from the parties or other departments.



Video Review

EOS may review video or other evidence from the parties or seek out other records.



Party Interviews

EOS team will determine time and place for interviews as appropriate.



Records Preserved

Federal law requires certain records to be preserved.

Slide Contents:

Witness Interviews: Witnesses may be identified by parties or the investigation.

Document Requests: EOS may request documents from the parties or other departments.

Video Review: EOS may review video or other evidence from the parties or seek out other records.

Party Interviews: EOS team will determine time and place for interviews as appropriate.

Records Preserved: Federal law requires certain records to be preserved.

Narrator Notes:

Back to the Investigation Process.

According to the Sexual Misconduct Policy, "A preliminary investigation may begin prior to receiving a response from a Respondent." The Policy then provides possible steps in an investigation similar to those listed in the Anti-Discrimination Policy Appendix B, section 5(B) that:

The investigator(s) will attempt to interview the Complainant, the Respondent(s), and any witnesses, as appropriate. The investigator(s) will also gather and review any information they deem pertinent, as well as any information submitted by the Complainant, the Respondent(s), and/or any witnesses. Both Complainant and Respondent will be provided equal opportunity to identify witnesses and provide other . . . evidence.

The Sexual Misconduct Policy also provides in section 14.6.4 that, "Both Complainant and Respondent will be provided 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."

Equal Opportunity staff may request documents from the parties or other departments, as well as review video or other evidence (or inspect if copies are not available).

Federal law requires certain records to be preserved once made part of the investigative file.

Amnesty or Immunity



Good Faith Witnesses and Participants

May receive amnesty or immunity violation under the University's Student Code of Conduct for conduct by the student occurring at or near the time of the incident, regardless of the location or conduct outcome, through participation in good faith in reporting or an investigation of sexual misconduct.

Some Persons May Not Qualify

However, a person who participates or assists an act of sexual misconduct is not eligible for this protection.

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Good Faith Witnesses and Participants

- May receive amnesty or immunity violation under the University's Student Code of Conduct for conduct by the student occurring at or near the time of the incident, regardless of the location or conduct outcome, through participation in good faith in reporting or an investigation of sexual misconduct.

Some Persons May Not Qualify

- However, a person who participates or assists an act of sexual misconduct is not eligible for this protection.

Narrator Notes:

Amnesty or Immunity

According to the Sexual Misconduct Policy, section 18.1:

To encourage reporting, the University will not take any disciplinary action against a student enrolled at the University who in good faith reports being the victim of, or a witness to, an incident of Sexual Misconduct for a violation under the University's Student Code of Conduct for conduct by the student occurring at or near the time of the incident, regardless of the location at which the incident occurred or the outcome of the University's disciplinary process regarding the incident, if any. The University may investigate to determine whether a report of an incident of Sexual Misconduct was made in good faith. A determination that a student is entitled to amnesty is final and may not be revoked.

The Policy also states in section 18.3, "Immunity, as described in this section, does not apply to individuals who participate or assist in the reported alleged incident."

Before the Investigative Report is Final

Before the Investigative Report is Final



Draft Report Provided to the Parties

The parties will receive a copy of the draft investigation report before it becomes final.



Opportunity to Comment

The parties each receive a deadline of no less than ten business days to comment on the draft report.



Possible Revision or Final Report Notice

Based on the comments of the parties, EOS may revise the report as appropriate, or finalize, and give the respective new notice to the parties.

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Slide Contents:

Draft Report Provided to the Parties

- The parties will receive a copy of the draft investigation report before it becomes final.

Opportunity to Comment

- The parties each receive a deadline of no less than ten business days to comment on the draft report.

Possible Revision or Final Report Notice

- Based on the comments of the parties, EOS may revise the report as appropriate, or finalize, and give the respective new notice to the parties.

Narrator Notes:

Before the Investigative Report is Final

According to the Anti-Discrimination Policy, Appendix B, Section 5(G), "After reviewing all available evidence, the Equal Opportunity office will prepare a draft investigative report for review by the parties. The parties have ten business days to submit any comments about the report, if they so choose."

The Sexual Misconduct Policy also specifies in section 14.7 that, "Prior to the completion of the investigative report, the Title IX investigator(s) will send to each party and their Advisor, if any, a draft copy of the investigative report and all evidence obtained as part of the investigation, including all inculpatory or exculpatory evidence. The parties will be given ten business days to review the draft report and evidence and provide a written response before the investigative report becomes final."

Based on the comments of the parties, Equal Opportunity staff may revise the report as appropriate, or finalize, and give the respective new notice to the parties.

The Policy describes, "The Title IX investigator(s) will finalize the investigative report after considering the responses from the parties and will provide a copy to the parties and their Personal Advisors, if any, at least ten business days prior to the hearing."

What about surprise new evidence?

What about surprise new evidence?

Evidence must have been able to significantly impact the finding(s).

Submit new information to the Title IX/Equal Opportunity Coordinator.

The Coordinator may re-open the case if the information significantly impacted the finding(s) and the information was not previously available to the party.

But the Coordinator must inform the other party so they have the option to respond to the information before the decision to re-open as appropriate.

Once re-opened, the case restarts at investigation stage.

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Narrator Notes:

What about surprise new evidence?

As shared in the Anti-Discrimination Policy, Appendix B, section 7:

If a party has new information they believe would have significantly impacted the finding(s) . . . they may submit that information to the Equal Opportunity Coordinator. If the Equal Opportunity Coordinator determines that the submitted information should be reviewed and the information was not available for the party to present during the investigation, the case may be re-opened. The Equal Opportunity Coordinator will inform the party who did not bring forth the new evidence of the request to re-open the investigation and the basis for the request. The [party] will have the opportunity to respond to this information, and the Equal Opportunity Coordinator will consider the response(s) in deciding whether to

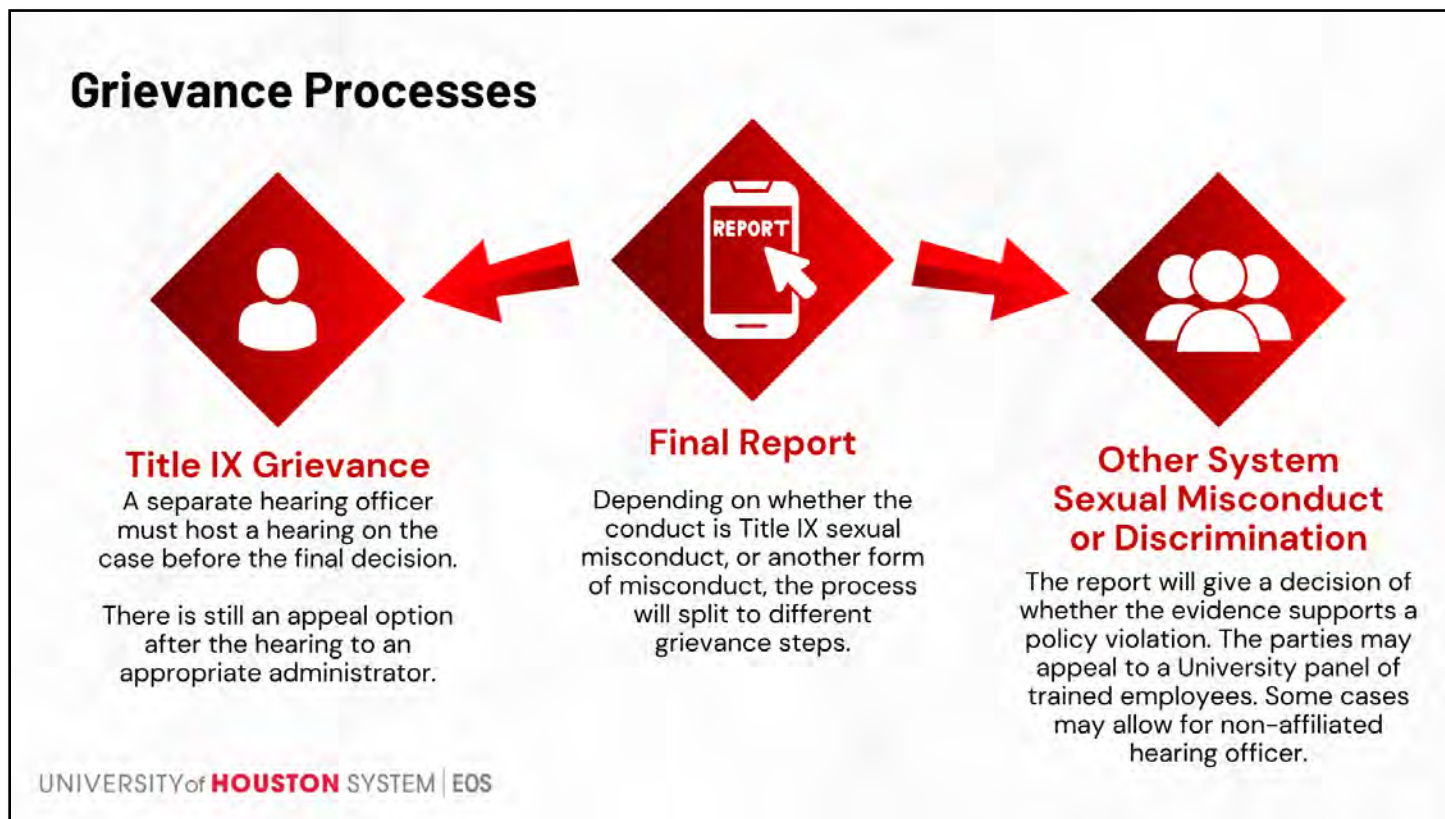
re-open the investigation. If the Equal Opportunity Coordinator decides to re-open the investigation, the parties will be notified, and the process will resume at the formal investigation[.]

The same steps are included in Appendix C, section 2 of the Sexual Misconduct Policy, which may lead to an investigation being reopened.

A hearing is not the appropriate forum to present surprise new evidence, especially as the other party may not have time to review new contents or may not be present at the hearing to give any comment on the admission of the evidence. As stated in the Anti-Discrimination Policy, Appendix B, section 8(D), "No advisor, witness, document, or tangible evidence will be permitted at the hearing unless such information was timely submitted. No new information [as described in the Policy] will be presented to the hearing panel before or during the hearing."

However, the Title IX Coordinator may review and determine if the investigation should be re-opened.

Grievance Processes



Slide Contents:

Final Report

- Depending on whether the conduct is Title IX sexual misconduct, or another form of misconduct, the process will split to different grievance steps.

Title IX Grievance

- A separate hearing officer must host a hearing on the case before the final decision.
- There is still an appeal option after the hearing to an appropriate administrator.

Other System Sexual Misconduct or Discrimination

- The report will give a decision of whether the evidence supports a policy violation. The parties may appeal to University panel of trained employees. Some cases may allow for non-affiliated hearing officer.

Narrator Notes:

Grievance Processes:

The Report contains different levels of information depending on the requisite grievance process.

For a Title IX allegation, the report summarizes the investigation but does not conclude the process, and next the University holds a hearing about the evidence collected during the investigation. That Title IX Grievance Process is described in Part five of this series.

As stated in the Sexual Misconduct Policy, section 2, "This Policy includes two separate grievance processes in order to comply with Title IX regulatory requirements and continue to address Sexual Misconduct that occurs outside of Title IX jurisdiction: Title IX Grievance Procedures and UH System Sexual Misconduct Grievance Procedures."

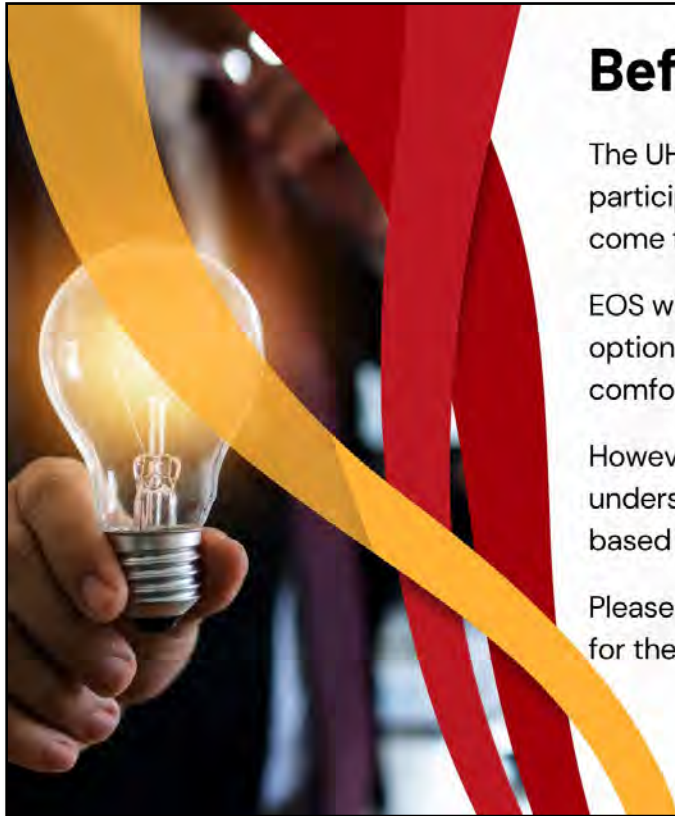
According to the Sexual Misconduct Policy, Appendix C, section 1.1, "At the conclusion of an investigation of a Formal Complaint and a determination that the alleged Sexual Misconduct is considered UH System Sexual Misconduct, as defined in this Policy, the investigative report will contain the Title IX investigator's finding(s) and recommendation."

The other grievance process is for Other System Sexual Misconduct or violations alleged under the Anti-Discrimination Policy.

According to the Anti-Discrimination Policy, Appendix B section 8(A), "An appeal of the finding(s) must be submitted in writing to the Equal Opportunity Coordinator within five business days of receiving the finding(s)." The same provision is included in the Sexual Misconduct Policy, Appendix C, section 3.

Therefore for Anti-Discrimination Policy allegations and non-Title IX allegations under the Sexual Misconduct Policy, the final report may give a conclusion to the parties. However, the parties have an opportunity to appeal. That appeal would take them into the System grievance process described in Part six of this series. The possible grounds for this appeal are "any error or procedural defect occurring during the investigation that could have significantly impacted the finding," as stated in Appendix C, section 3.2 of the Sexual Misconduct Policy and Appendix B, section 8 of the Anti-Discrimination Policy.

Before a Hearing



Before a Hearing

The UH System encourages the involved parties to participate in the hearing process to help decision-makers come to informed decisions.

EOS will share information about the hearing process and options for participation to help each party feel more comfortable with the process.

However, participation is voluntary and not required, and we understand that each person's decision to participate is based on their own individual factors.

Please note that each process also includes comment stages for the option to submit information in writing as well.

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The UH System encourages the involved parties to participate in the hearing process to help decision-makers come to informed decisions.

EOS will share information about the hearing process and options for participation to help each party feel more comfortable with the process.

Before the hearing, parties for a sexual misconduct hearing will receive evidence related to the draft report.

Per section 1.7 of Appendix C in the Sexual Misconduct Policy, "Once findings have been made, any party to the Formal Complaint may request to meet with the investigator(s) to discuss the investigation and finding(s), and/or to inspect the investigative file." The same provision is in the Anti-Discrimination Policy, Appendix B, section 6.

While the parties will have time to prepare with materials and their advisors, participation in a hearing is voluntary and not required, and we understand that each person's decision to participate is based on their own individual factors.

Please note that each process also includes comment stages for the option to submit information in writing as well.

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