



UTAH VALLEY UNIVERSITY Policies and Procedures

Proposed Policy Number and Title: <i>168 Complaints under the Utah Protection of Public Employees Act (TEMPORARY EMERGENCY)</i>		
Existing Policy Number and Title:		
Approval Process*		
<input type="checkbox"/> Regular	<input checked="" type="checkbox"/> Temporary Emergency	<input type="checkbox"/> Expedited
<input type="checkbox"/> New	<input checked="" type="checkbox"/> New	<input type="checkbox"/> New
<input type="checkbox"/> Revision	<input type="checkbox"/> Revision	<input type="checkbox"/> Revision
<input type="checkbox"/> Deletion	<input type="checkbox"/> Suspension	
		Anticipated Expiration Date:
*See UVU Policy 101 <i>Policy Governing Policies</i> for process details.		

Draft Number and Date: <u>Stage 1, Temp Emergency, May 26, 2020</u>
President's Council Sponsor: <u>Linda Makin</u> Ext. _____
Policy Steward: <u>Marilyn Meyer, Jeremy Knee</u> Ext. _____

POLICY APPROVAL PROCESS DATES	
<p>Policy Drafting and Revision Entrance Date: _____</p> <p>University Entities Review Entrance Date: _____ Close Feedback: _____</p> <p>University Community Review Entrance Date: _____ Open Feedback: _____ Close Feedback: _____</p> <p>Board of Trustees Review Entrance Date: _____ Approval Date: _____</p>	<p style="text-align: center;">POST APPROVAL PROCESS</p> <p>Verify:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Policy Number <input type="checkbox"/> Section <input type="checkbox"/> Title <input type="checkbox"/> BOT approval <input type="checkbox"/> Approval date <input type="checkbox"/> Effective date <input type="checkbox"/> Proper format of Policy Manual posting <input type="checkbox"/> TOPS Pipeline and Archives update <hr/> <p>Policy Office personnel who verified and posted this policy to the University Policy Manual</p> <p>Name: _____</p> <p>Date posted and verified: _____</p>



UTAH VALLEY UNIVERSITY

Policies and Procedures

POLICY TITLE	Complaints under the Utah Protection of Public Employees Act (TEMPORARY EMERGENCY)	Policy Number	3xx
Section		Approval Date	
Subsection		Effective Date	
Responsible Office	Office of the Vice President of Planning, Budget, and Human Resources		

1.0 PURPOSE

- 1 **1.1** The purpose of this policy is to establish an independent personnel board and related
2 procedures by which the University implements the *Utah Protection of Public Employees Act* for
3 review of certain types of retaliation complaints from university employees.

2.0 REFERENCES

- 4 **2.1** Utah Code Ann. § 67-21-1 et seq. *Utah Protection of Public Employees Act*

3.0 DEFINITIONS

- 5 **3.1 Abuse of authority:** An arbitrary or capricious exercise of power that: (1) adversely affects
6 the employment rights of another; or (2) results in personal gain to the person exercising the
7 authority or to another person.
- 8 **3.2 Adverse action:** To discharge, threaten, or discriminate against an employee in a manner that
9 affects the employee's employment, including compensation, terms, conditions, location, rights,
10 immunities, promotions, or privileges.
- 11 **3.3 Communicate:** A verbal, written, broadcast, or other communicated report.
- 12 **3.4 Complainant:** An employee who alleges that they have experienced adverse action in
13 violation of this policy.
- 14 **3.5 Employee:** A person who performs a service for wages or other remuneration under a
15 contract of hire, written or oral, express or implied. This includes faculty, staff, full-time, part-
16 time, and student employees.



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17 **3.6 Failure to promote:** To fail to promote the employee if the employee would have otherwise
18 been promoted.

19 **3.7 Gross mismanagement:** Action or failure to act by a person, with respect to a person's
20 responsibility, that causes significant harm or risk of harm to the mission of the public entity or
21 public body that employs, or is managed or controlled by, the person.

22 **3.8 Respondent:** An individual against whom an alleged complaint of adverse action in
23 violation of this policy has been made.

24 **3.9 Substantial evidence:** Substantial evidence is such relevant evidence as a reasonable person
25 might accept as adequate to support a conclusion.

26 **3.10 Unethical conduct:** Conduct that violates a provision of Title 67, Chapter 16, *Utah Public*
27 *Officers' and Employees' Ethics Act*.

4.0 POLICY

28 **4.1 Policy Statement**

29 **4.1.1** Utah Valley complies with the *Utah Protection of Public Employees Act* and provides
30 procedures to review complaints of retaliation made by university employees who acted in good
31 faith in the course of their duties.

32 **4.2 Scope of this Policy**

33 **4.2.1** This policy applies to Utah Valley University employees, including faculty, staff, full-time,
34 part-time, and student employees.

35 **4.3 Adverse Action Against Employees Prohibited**

36 **4.3.1** An employee may not have an adverse action taken against them because the employee, or
37 a person authorized to act on behalf of the employee, communicates in good faith:

38 **4.3.1.1** The waste or misuse of public funds, property, or workforce;

39 **4.3.1.2** A violation or suspected violation of a law, rule, or regulation adopted under the law of
40 Utah, a political subdivision of Utah, or any recognized entity of the United States;

41 **4.3.1.3** Gross mismanagement;

42 **4.3.1.4** Abuse of authority; or

43 **4.3.1.5** Unethical conduct.



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- 44 **4.3.2** For purposes of section 4.3, an employee is presumed to have communicated in good faith
45 if the employee gives written notice or otherwise formally communicates the conduct described
46 in section 4.3 to:
- 47 **4.3.2.1** A person in authority over the person alleged to have engaged in the conduct described in
48 section 4.3;
- 49 **4.3.2.2** The attorney general's office;
- 50 **4.3.2.3** Law enforcement, if the conduct is criminal in nature;
- 51 **4.3.2.4** The Utah Board of Higher Education or a member of the Utah Board of Higher
52 Education;
- 53 **4.3.2.5** The commissioner of higher education;
- 54 **4.3.2.6** The President of UVU; or
- 55 **4.3.2.7** UVU's Internal Audit Department.
- 56 **4.3.3** The presumption described in section 4.3.2 may be rebutted by showing that the employee
57 knew or reasonably ought to have known that the report is malicious, false, or frivolous.
- 58 **4.3.4** An employee may not have an adverse action taken against them because the employee
59 participates or gives information in an investigation, hearing, court proceeding, legislative or
60 other inquiry, or other form of administrative review held by UVU.
- 61 **4.3.5** An employee may not have an adverse action taken against them because the employee has
62 objected to or refused to carry out a directive that the employee reasonably believes violates
63 federal, state, or local law.
- 64 **4.3.6** No UVU employee may implement rules or policies that unreasonably restrict another
65 employee's ability to document:
- 66 **4.3.6.1** The waste or misuse of public funds, property, or workforce;
- 67 **4.3.6.2** A violation or suspected violation of any law, rule, or regulation;
- 68 **4.3.6.3** Gross mismanagement;
- 69 **4.3.6.4** Abuse of authority; or
- 70 **4.3.6.5** Unethical conduct.



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5.0 PROCEDURES

71 **5.1 Filing a Complaint under this Policy**

72 **5.1.1** A complaint alleging a violation of section 4.3 of this policy must be filed in writing with
73 the Associate Vice President for Human Resources (AVPHR) within 45 calendar days after the
74 occurrence of an adverse action prohibited by this policy.

75 **5.1.2** A complaint filed under this policy should include specific information relevant to the
76 concern, including the time, method, and nature of any underlying reports or activities protected
77 by this policy; the time and nature of any adverse action(s); any individual(s) involved and/or
78 responsible; and desired remedy.

79 **5.2 Appointing an Independent Personnel Board**

80 **5.2.1** The AVPHR or their designee shall endeavor to appoint an independent personnel board
81 within three working days of receiving the complaint.

82 **5.2.2** The independent personnel board shall not include any individual who:

83 **5.2.2.1** Is in the same department as the complainant;

84 **5.2.2.2** Is a supervisor of the complainant; or

85 **5.2.2.3** Has a conflict of interest in relation to the complainant or an allegation made in the
86 complaint.

87 **5.2.3** The AVPHR or their designee shall convene a three- or five-person independent personnel
88 board either from the Policy 162/165 review panel pools, from staff nominees provided by the
89 PACE President, or from faculty nominees provided by the Faculty Senate President. A majority
90 of the board shall be faculty members if the complainant is a member of faculty, and staff
91 members if the complainant is a member of staff.

92 **5.2.4** The AVPHR or their designee will inform the parties (the complainant and the respondent)
93 of the chosen board members and give each party the option to provide any objections to the
94 board members based on bias or conflict of interest within three working days. Consulting with
95 the Office of General Counsel, the AVPHR or their designee will review and decide on any
96 conflict of interest or bias objections raised by the parties.

97 **5.2.5** The AVPHR or their designee shall arrange for the independent personnel board members
98 to attend a training on these procedures provided by the Office of General Counsel.

99 **5.2.6** The Office of General Counsel will appoint an impartial attorney from outside the Office of
100 General Counsel to preside over the complaint hearing as hearing officer. This attorney must



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101 have no prior involvement in either advocacy or investigatory matters related to the complaint.
102 The hearing officer will ensure order, fairness, due process, efficiency, and civility at the
103 hearing, and ensure a relevant and sufficient evidentiary record for the board's consideration. To
104 advance this aim, the hearing officer may set time limits proportionate to the complexity of the
105 case; exclude irrelevant and unduly repetitious exhibits, witnesses, questions, statements, or
106 other information; and exclude material deemed privileged under the law. The Federal and Utah
107 Rules of Evidence do not apply.

108 **5.3 Pre-Hearing Matters**

109 **5.3.1** An independent personnel board that receives a complaint under this policy shall hear the
110 matter, resolve the complaint, and take action under section 5.5 within the later of:

111 **5.3.1.1** Thirty calendar days after the day on which the complainant files the complaint; or

112 **5.3.1.2** A longer period of time, not to exceed 30 additional calendar days, if the complainant and
113 the independent personnel board mutually agree on the longer time period.

114 **5.3.2** The hearing officer may conduct a pre-hearing conference to formulate or simplify the
115 issues; obtain admissions of fact and documents that will avoid unnecessary proof; arrange for
116 the exchange of proposed exhibits; outline expectations for the hearing; or agree to other matters
117 that may expedite the orderly conduct of the hearing.

118 **5.3.3** The independent personnel board shall consult with the hearing officer during the
119 complaint process about legal, procedural, policy, and other questions as needed. The hearing
120 officer, in consultation with the board, will review and respond to any pre-hearing questions or
121 objections from the parties related to hearing matters.

122 **5.3.4** The AVPHR or their designee will provide to the parties, board members, and hearing
123 officer:

124 **5.3.4.1** The written request for hearing by the complainant,

125 **5.3.4.2** The respondent's written responses (if any), and

126 **5.3.4.3** Material documents related to the decision(s) being challenged.

127 **5.3.5** If the materially relevant documents include confidential information, the documents may
128 be provided via a secure cloud-based storage system where documents may be viewed but not
129 printed. The AVPHR or their designee may ask parties and participants in the complaint process
130 to sign a confidentiality agreement before giving them access to the documents.

131 **5.3.6** At least seven calendar days before the hearing date, the complainant and the respondent
132 shall provide the other party, board members, and hearing officer the following materials:



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133 **5.3.6.1** A *Statement Document* of no more than five pages that addresses the complainant's
134 issues, concerns, and proposed remedy framed in terms of the scope of the complaint. The
135 *Statement Document(s)* shall be provided in electronic format.

136 **5.3.6.2** A complete list of all proposed witnesses that each party will call to testify (in person or
137 via two-way video communication) at the hearing and a brief description of the testimony and/or
138 information such witnesses may provide. The witness list shall be provided in an electronic
139 format.

140 **5.3.6.3** Copies of all documents, exhibits, reports, and any other information (collectively
141 referred to hereinafter as "exhibits") in support of the parties' respective positions on the issues
142 and proposed solution. All exhibits shall be provided in an electronic format to the extent
143 possible; the parties may also submit the documents in hard copy in binders.

144 **5.3.6.4** Notice of whether the complainant will bring a support person to the hearing, the email
145 address and phone number of the support person, and whether the support person is an attorney.
146 UVU employees who have a conflict of interest may not serve as support persons.

147 **5.4 Conducting a Hearing**

148 **5.4.1** At the hearing, the respondent bears the burden of proof to establish by substantial
149 evidence that their action was justified by reasons unrelated to the employee's good faith actions
150 under section 4.3 of this policy.

151 **5.4.2** Parties and witnesses must appear in person or remotely via two-way videoconferencing at
152 the hearing. Written statements may not be considered in the decision unless the party/witness
153 appears at the hearing and agrees to answer questions about their statements.

154 **5.4.3** If the complainant fails to appear at the hearing at the specified time and place without
155 good cause, the complaint will be deemed abandoned and therefore closed. In the event the
156 respondent fails to appear at the hearing at the specified time and place without good cause, the
157 complaint will still be heard by the independent personnel board.

158 **5.4.4** The hearing officer is charged with conducting the hearing in a thorough, fair, equitable,
159 and impartial manner; the board is charged with addressing and deciding the matter in this
160 manner, as well.

161 **5.4.5** While the hearing is a closed proceeding, the hearing (except for the board's deliberations)
162 will be recorded by the AVPHR or their designee. The proceedings of the hearing may be
163 transcribed by the University.

164 **5.4.6** The hearing officer will conduct the hearing and will regulate the introduction of evidence
165 for the board's consideration in accordance with section 5.2.6.



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166 **5.4.7** The hearing officer will open the hearing by naming the parties and shall state, in a neutral
167 manner, the nature of the actions taken thus far in the complaint process. The hearing officer may
168 also remind the board and parties of this policy and the procedures herein. All participants at the
169 hearing should be identified at the beginning of the hearing.

170 **5.4.8** Each party has up to 120 minutes to present their portion of the case (testimony of the party
171 and that party's witnesses and questioning of the other party's witnesses). The opening and
172 closing statements and questioning by the hearing officer or board are not included in this 120-
173 minute time limit. The hearing officer or designee will keep track of the amount of time each
174 party takes to present their portion of the case. The hearing officer may extend the amount of
175 time equitably to each of the parties if a party shows the need for such an extension.

176 **5.4.9** If the complainant has brought a support person, either the complainant or the support
177 person should present the opening statement, testimony, and closing statement. For example, the
178 complainant could present the opening statement, while the support person questions the
179 witnesses and presents the closing statement, but the witnesses may not be questioned by both
180 the complainant and the complainant's support person. A support person may not answer
181 questions on behalf of a party. After issuing a warning, the hearing officer has authority to
182 exclude from the hearing any party, support person, or other participant whose behavior the
183 board finds unduly disruptive.

184 **5.4.10** The order of the hearing shall be as follows:

- 185 1) Opening statement by respondent
- 186 2) Opening statement by complainant
- 187 3) Testimony of respondent, including presentation of exhibits
- 188 4) Testimony of respondent's witnesses, including any exhibits
- 189 5) Testimony of complainant, including presentation of exhibits
- 190 6) Testimony of complainant's witnesses, including any exhibits
- 191 7) Closing statement by respondent
- 192 8) Closing statement by complainant

193 **5.4.11** The respondent's opening statement should briefly summarize their response to the
194 complainant's concerns and requested remedy. The complainant's opening statement should
195 briefly summarize the nature of the complaint and requested remedy. There should be no cross
196 examination during the opening statements. In most cases, a five-minute opening statement will
197 suffice, though the hearing officer may adjust as appropriate.

198 **5.4.12** Each party may testify and offer relevant evidence (i.e., exhibits) to all parties and board
199 members in support of their positions. At any time, the independent personnel board members



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200 may ask questions of either party. At the end of a party's testimony, the other party shall have the
201 opportunity to ask any questions regarding the testimony and exhibits, limited to the scope of
202 testimony provided by the party.

203 **5.4.13** In addition to their own testimony and submission of exhibits, each party may call
204 witnesses, who shall not be allowed in the hearing room until called to testify. Each witness shall
205 provide their own information and testimony to the board and may be questioned and cross-
206 examined by the board at any time. At the end of each witness's testimony, the other party and
207 board members shall have the opportunity to ask any questions of the witness regarding the
208 witness's testimony, limited to the scope of testimony provided by the witness.

209 **5.4.14** At the conclusion of a party's presentation, the hearing officer will call for any final
210 questions from the other party or board member regarding the presentation.

211 **5.4.15** The closing statements of both parties should summarize their positions and set forth
212 proposed remedies. In most cases, a 15-minute closing statement will suffice, though the hearing
213 officer may adjust as appropriate.

214 **5.5 Recommendation and Decision**

215 **5.5.1** The independent personnel board members are prohibited from discussing any matter
216 related to the hearing with the parties, witnesses, and/or others (except the hearing officer) before
217 or after the hearing. Violation of confidentiality may result in dismissal from the board and/or
218 other corrective or disciplinary action. Parties, board members, hearing officers, support persons,
219 and others who attend the hearing may be required to sign confidentiality acknowledgments
220 before participating in the hearing process.

221 **5.5.2** Independent personnel board deliberations and voting shall occur in closed sessions from
222 which all other persons (except the hearing officer) are excluded. Votes shall be cast by secret
223 ballot. A majority vote by the members of the independent personnel board who attended the
224 hearing shall be required for recommendations. The hearing officer shall be present during the
225 deliberations but shall have no vote.

226 **5.5.3** At the conclusion of a hearing, the independent personnel board shall prepare a written
227 report and recommendation concerning the complaint. The independent personnel board shall
228 submit the report and recommendation to a final decision-maker, who shall be the vice president
229 of the division in which the complainant is employed. If the relevant vice president has a conflict
230 of interest, the final decision-maker shall be the University President.

231 **5.5.4** The independent personnel board shall determine whether the respondent established by
232 substantial evidence that the respondent's action was justified by reasons unrelated to the
233 complainant's good faith actions under section 4.3.



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234 **5.5.5** If the independent personnel board finds that adverse action is taken in violation of section
235 4.3, the independent personnel board may recommend to the final decision-maker:

236 **5.5.5.1** Reinstatement of the complainant at the same level as before the adverse action;

237 **5.5.5.2** The payment of back wages;

238 **5.5.5.3** Full reinstatement of fringe benefits;

239 **5.5.5.4** Full reinstatement of seniority rights; and/or

240 **5.5.5.5** If the adverse action includes failure to promote, a pay raise that results in the
241 complainant receiving the pay that the complainant would have received if the complainant had
242 been promoted.

243 **5.5.6** The final decision-maker shall render a decision and enter an order within seven calendar
244 days after the day on which the final decision-maker receives the recommendation.

245 **5.5.7** The Office of General Counsel shall assign an attorney who did not serve as the hearing
246 officer or previously advise the respondent on the complaint to provide legal counsel to the final
247 decision-maker.

248 **5.6 Notices**

249 **5.6.1** Human Resources shall post notices and use other appropriate means to keep employees
250 informed of their protections and obligations under Utah Code § 67-21.

251 **5.6.2** Human Resources shall provide an employee with a copy of Utah Code § 67-21

252 **5.6.2.1** Upon hire;

253 **5.6.2.2** Upon request; and

254 **5.6.2.3** Upon filing a complaint under this policy.

POLICY HISTORY		
Date of Last Action	Action Taken	Authorizing Entity
	New policy approved as a temporary emergency.	UVU Board of Trustees

255