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**SUBJECT: SEXUAL MISCONDUCT**

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I. PURPOSE & POLICY STATEMENT

Southern Utah University is committed to providing a safe and respectful environment for all members of and visitors to the University community. As required by Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, and related applicable laws, the University, through this policy, prohibits all forms of sexual misconduct, including sexual discrimination, sexual harassment, sexual exploitation, sexual violence, domestic violence, dating violence and stalking (collectively “sexual misconduct”). Retaliation against a person for the good faith reporting of any of these forms of sexual misconduct or participation in the investigation thereof is also prohibited.

The University maintains this policy with a commitment to promptly and effectively: (1) eliminating, preventing, and remedying the effects of sexual misconduct; (2) fostering a campus community where sexual misconduct is not tolerated; (3) cultivating a climate where all individuals are informed, supported and protected in reporting sexual misconduct; (4) providing a fair and impartial evaluative and investigative process for all parties; (5) identifying the standards by which violations of this policy will be evaluated and disciplinary action imposed; and (6) identifying university resources and assisting with interim measures for the aid and protection of those involved in the process.

It is the responsibility of every member of the University community to foster an environment free of sexual misconduct. Employees or Students who violate this policy may face disciplinary action up to and including termination or expulsion. It is the responsibility of all University community members to know the information and procedures in this policy. The University conducts ongoing prevention, awareness, and education programs for Employees and Students to facilitate the goals of this policy.

This policy applies to all reports of sexual misconduct occurring on or after the effective date of this policy. Where the date of the sexual misconduct precedes the effective date of this policy, the definitions of misconduct in existence at the time of the alleged incident(s) will be used. The procedures under this policy, however, will be used to investigate and resolve all reports made on or after the effective date of this policy, regardless of when the incident(s) occurred.

A. References:

Americans with Disabilities Act (ADA) (as amended)

Campus Sexual Violence Elimination Act (SaVE) – Reauthorization of the

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Violence against Women Act of 2013 (VAWA)

Family Educational Rights and Privacy Act (FERPA)

Health Insurance Portability and Accountability Act (HIPAA)

Jeanne Clery Disclosure of Campus Security Police and Campus Crime Statistics Act (Clery Act)

Title VII of the Civil Rights Act of 1964

Title IX of the Higher Education Amendments Act of 1972

Utah Code 63G-2 Government Records Access and Management Act (GRAMA)

Utah Code 77-36 Cohabitant Abuse Procedures Act

Utah Code 77-38 Rights of Crime Victims Act

SUU Policy 5.27 Non-Discrimination/ Anti-Harassment

SUU policy 11.2 Student Conduct Code

Utah State Board of Regents Policy R262, Student Safety

Utah State Board of Regents Policy R256, Student Disciplinary Processes

## II. SCOPE OF THE POLICY

This policy applies to all persons employed by or affiliated with Southern Utah University in any way and persons participating in any university program or activity, including but not limited to students, University employees (full time, part time seasonal, temporary, student employees, interns, residence hall assistants -- collectively "employees") independent contractors, vendors, visitors, guests, volunteers or other third parties (collectively "Third Parties"). To the extent that any other university policies address sexual misconduct, this policy takes precedence and controls.

Conduct subject to this policy includes the following:

- A. Conduct that occurs on University premises or other property owned, sponsored,

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or controlled by the University;

- B. Conduct that occurs in the context of a University employment or education program or activity, including, but not limited to, University-sponsored travel, athletics, activities, research, online and internship programs;
- C. Conduct that occurs off campus or via electronic media can be the subject of a complaint or report and shall be evaluated to determine whether the misconduct has continuing effects on the campus community and therefore violates this policy. Allegations of off-campus sexual misconduct involving members of the University community shall be reported to the Title IX Coordinator.

III. DEFINITIONS

- A. **Campus Security Authority (CSA):** As required by the *Clery Act*, individuals (1) who have significant responsibility for student and campus activities, or (2) serving in a security role for a university activity temporarily or for a designated event and who have a duty to report sexual misconduct and all Clery-reportable crimes. These individuals may not always be University employees.
- B. **Complainant:** Someone who has experienced sexual misconduct and/or who has requested university interim measures or disciplinary action. Use of this term does not imply that a finding of misconduct is assumed or made before an investigation has been completed.
- C. **Consent:** Consent to engage in a sexual encounter must be given by all participating parties; must be clear, knowing, and voluntary; and may be given only by someone who is 18 years of age or older and is not mentally and/or physically incapacitated (see definition of Incapacitation in this policy). Consent is active, not passive. Consent requires an affirmatively communicated willingness through words and/or actions to participate in sexual activity. Silence, in and of itself, may not be interpreted as consent. Consent cannot be obtained by force, including but not limited to: a) The use of physical violence, b) Threats, c) Intimidation, and d) Coercion. Consent to any one form of sexual activity does not automatically imply consent to any other forms of sexual activity. Past consent to sexual activity does not imply ongoing future consent. The current or past existence of a dating or marital relationship does not imply consent. The use of alcohol or drugs does not waive the requirement to obtain consent from all involved to engage in sexual activity and shall not provide a defense for any behavior that violates this policy.

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- b. A person with whom the victim shares a child in common,
- c. A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- d. A person similarly situated to a spouse of the individual who experienced domestic violence under the domestic or family violence laws of the jurisdiction where the act of domestic violence occurred, or
- e. Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the



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- c. Administering alcohol or drugs to another person for the purpose of making that person vulnerable to non-consensual sexual activity;
  - d. Exposing one's genitals to another person without consent;
  - e. Prostituting another individual;
  - f. Knowingly exposing another individual to a sexually transmitted infection or virus without the other individual's knowledge.
- P. **Sexual harassment:** Unwelcome sexual advances, requests for sexual favors, or other verbal actions including lewd or sexually suggestive comments, jokes, questions, innuendoes, remarks about clothing, body, or previous or future sexual activity; physical actions including unwelcome touching, patting, hugging, or brushing against a person's body; written, graphic, or electronic statements or depictions; or non-verbal conduct of a sexual nature (whether the conduct is direct, indirect, or by third persons) when:
- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, education, advancement, or participation in a university activity;
  - b. Submission to or rejection of such conduct by an individual is used as the basis for or a factor in decisions affecting that individual's employment, education, advancement, or participation in a university activity; and/or
  - c. Such conduct is sufficiently severe or pervasive and it unreasonably interferes with an individual's employment or educational performance or creates an intimidating, hostile, or abusive environment for that individual's employment, education, or participation in a university activity.
- Q. **Sexual misconduct:** Sexual misconduct includes but is not limited to acts of, or failed attempts of, dating and relationship violence; domestic violence; discrimination based on sex, pregnancy, pregnancy-related conditions, sexual orientation, or gender identity; hostile environment based on sex, pregnancy, pregnancy-related conditions, sexual orientation, or gender identity (including intimidation and hazing/bullying); sexual harassment; sexual assault (including non-consensual sexual contact or non-consensual sexual intercourse); sexual exploitation; and stalking.

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in a more targeted way, such as offering reasonably available interim protective measures or modifications to the complainant.

- D. When the University agrees BDC -0.hLonr mnampainantctnae mqr,27t@#0VG@0AAR0FF9

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violations. Whether the violation qualifies as minor personal conduct shall be determined by the Student Conduct Administrator.

- E. Individuals are encouraged to report incidents of sexual misconduct in a timely manner. While there is no time limit on reporting violations of this policy, the University's ability to respond may be limited as evidence may be less available and the University may no longer have jurisdiction over complainants or respondents who are no longer affiliated with the University.

**VII. INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS**

- A. The University shall provide prompt, fair, and impartial investigations and disciplinary proceedings. During these proceedings, both the complainant and the respondent shall be provided equitable rights and opportunities, as outlined in these procedures.
- B. The University is committed to ensuring that its resolution process is free from actual or perceived bias or conflicts of interest that would materially impact the outcome. University officials who are designated to conduct and/or participate in sexual misconduct investigations or proceedings shall undergo relevant training. Any party who believes there is bias or conflict of interest may submit a written request to remove the person from the process to the Title IX Coordinator or their designee, or to the Director of Human Resources in the event the party is seeking the removal of the Title IX Coordinator. The written request should include the specific rationale as to why the requestor believes the bias or conflict could materially impact the outcome.

**VIII. TRAINING**

- A. The University shall provide training, as required by applicable law to the Title IX Coordinator, deputy coordinators, and other employees involved in providing services relevant to sexual misconduct intervention.
- B. In compliance with applicable federal law, the University shall provide training for employees and students about the prevention and reporting of sexual misconduct and appropriate resources and services provided by the University and the community.

**IX. PROCEDURES**

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employees are encouraged to contact the Employee Assistance Program through Human Resources. Following are some of the university resources that are available:

- a. Title IX Coordinator – (435) 586-5419
- b. University Student Conduct Office – (435) 586-7710
- c. University Intermediary – (435) 586-7710

The following University office provides strictly confidential services:

- d. Counseling and Psychological Services – (435) 865-8621
- F. For further resources and information, please visit the SUU Title IX Website at: [www.suu.edu/titleix/](http://www.suu.edu/titleix/)

**XI. REPORTING AN INCIDENT OF SEXUAL MISCONDUCT**

- A. Faculty, staff, or students who have experienced sexual misconduct should report it to the Title IX Coordinator. Responsible Employees who become aware of sexual misconduct involving others within the university community shall report such issues to the Title IX Coordinator, who is charged with investigating reports of violations of this policy.
- B. The Title IX Coordinator, who oversees all Title IX investigations and coordinates the University's response to sexual misconduct, may be reached at 351 W. University Boulevard, Bennion Administration Building, Suite 111, Cedar City, UT 84720; phone (435) 586 -5419; e-mail [title9@suu.edu](mailto:title9@suu.edu). The names, office addresses, telephone numbers, and e-mail addresses of the Title IX Coordinator and deputy Title IX coordinators can be found on the University's Title IX website at <http://www.suu.edu/titleix>.
- C. Individuals may also submit reports, including anonymous reports, through <https://www.suu.edu/titleix/anonymous-reporting-form.html>
- D. Individuals may choose voluntarily to approach other individual(s) who are creating an uncomfortable environment and tell them to stop. However, individuals are NOT required to directly confront anyone who is the source of a violation of this policy or is closely associated with anyone who is the source of a violation of this policy. Instead, individuals may utilize any of the various avenues of complaint and reporting. Individuals are required to make reasonable

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efforts to bring forward any allegations of sexual misconduct so the university can stop wrongdoing and prevent future occurrences.

**XII. CONFIDENTIALITY AND REPORTING**

- A. To make informed choices when consulting campus resources, complainants should be aware of confidentiality and mandatory reporting requirements. Although the University will consider the requests of a complainant, complainants should be aware that the following levels of confidentiality, as required by state and federal law, apply to university employees who receive reports of sexual misconduct:
- a. *Strictly Confidential*: Conversations with licensed mental health counselors employed by the University or members of the clergy who are working within the scope of their license or religious assignment can remain anonymous except in circumstances when the alleged victim is a minor or a vulnerable adult, or when there is imminent danger to the alleged victim or others in the community. In some cases, these individuals are required to report to SUU Police for *Clery Act* purposes

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- b. Address the immediate physical safety and emotional needs of the complainant.
  - c. Provide the complainant with information about options for police and/or university action (including the option of pursuing both or neither), and information about university policy and procedures.
  - d. Provide referral to relevant resources and encourage complainants to use university and community services for victims of sexual misconduct.
  - e. Initiate or coordinate any necessary interim measures intended to address the immediate effects of sexual misconduct, which may include referral to counseling and/or health services or referral to employee assistance options, support for modification to housing arrangements, altering work arrangements for employees, a safety plan (such as providing campus escorts), implementing contact limitations between the parties, facilitating adjustments to academic deadlines, course schedules, etc. At the recommendation of the Title IX Coordinator or designated deputy coordinator, the responsible university administrator (as defined in #11.2) may also impose an interim suspension or invoke other safety measures temporarily, pending the outcome of the investigation and subsequent proceedings.
  - f. Consider the complainant's request for confidentiality and anonymity and grant requests where appropriate. In cases where a complainant does not want to pursue an investigation, The Title IX Coordinator, or designee, shall inform the complainant that the ability to investigate and/or remediate may be limited.
  - g. Assess the reported conduct for any Clery obligations, including entry in the crime log or issuance of a timely warning, and report to SUU Police when necessary.
- B. If the Title IX Coordinator or designated deputy coordinator determines that there is no reasonable cause to believe that this policy was violated and/or that an investigation is not necessary, he or she shall issue a written notice of dismissal to the complainant.

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preventive educational and training programs, or providing remedies for the individual harmed by the offense. Informal resolution also includes options such as discussions with the parties, making recommendations for resolution, and conducting a follow-up review after a period of time to ensure that the resolution has resolved concerns effectively.

- c. Participation in informal resolution does not prohibit either party from terminating informal resolution and/or requesting an investigation at any point during the informal resolution process. Where a report was closed after informal resolution, the matter may later be reopened at the discretion of the Title IX Coordinator or designated deputy coordinator when requested by the complainant and/or if the Title IX Coordinator or designated deputy coordinator determines there is a risk to the safety of the University community or based upon some other compelling reason, in the judgement of the Title IX Coordinator.

D. Administrative Resolution

- a. At any point in the process outlined in this policy, where the respondent admits responsibility, culpability and/or the allegations to be investigated, thereby negating the need for investigation, the Title IX Coordinator or designated deputy coordinator, may omit or cease further investigation and move to the next appropriate step in the process, as outlined in this policy.

XVI. INVESTIGATION

- A. If the Title IX Coordinator or designated deputy coordinator determines an investigation is necessary, the University shall conduct a thorough, reliable, and impartial internal administrative investigation by interviewing witnesses, collecting any documentary evidence, and preparing a written report of findings. The purpose of the investigation is to establish whether there is a reasonable basis, based on a preponderance of the evidence, for concluding that the alleged violation of this policy has occurred. The University reserves the right to engage an outside investigator to conduct the investigation at the Title IX Coordinator's or his/her designee's discretion.
- B. Complainants and respondents shall be treated with respect throughout the investigation process, disciplinary process, and other proceedings:

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a. Complainants and respondents can expect prompt and equitable resolution of allegations of prohibited sexual misconduct.

b. Complainants can expect resolution of complaints within 60 days of the date of the complaint. (SUT 5.60.15)

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- C. Complainants and respondents may request accommodations necessary under the *Americans with Disabilities Act (ADA)* through the Title IX Coordinator or designated deputy coordinator, who will refer the request to the appropriate ADA coordinator and then implement approved accommodations.
- D. When proceeding to investigation, the Title IX Coordinator, or their designee, will coordinate with the complainant to obtain written notice of the allegations, including a statement describing the incident, when and where the misconduct occurred, and, if the complainant desires, information regarding the complainant's contemplated avenues of desired resolution. The complainant shall be asked to provide and preserve all corroborating or potentially relevant evidence in any format, list potential witness names, and affirm the statement. From this information, the Title IX Coordinator or designated deputy coordinator shall prepare a summary of allegations and relevant information from the complainant's statement for the respondent. The complainant will review the summary and statement, make any necessary corrections, and affirm the summary.
- E. The Title IX Coordinator, or their designee, may serve as an investigator and/or may assign the matter to other appropriate Title IX Investigator(s).
- F. Unless the complainant has requested, and been granted, anonymity, by requesting investigation on the complaint and/or affirming the summary of allegations, the complainant is giving the investigator consent to discuss the information provided with other persons who may have relevant factual knowledge of the circumstances of the complaint and is authorizing the collection and examination of all records and other documentation relevant to the complaint. If the complainant requests and is provided anonymity in the investigation, the investigation shall proceed to the fullest extent possible in light of the complainant's request. The complainant shall be advised that the ability of the University to investigate and/or remediate may be limited by the request of anonymity. The University may also proceed without honoring the request for anonymity for good cause, including risk to the safety of the complainant and/or others.
- G. If the complainant refuses to affirm the summary, the coordinator may (1) note that the allegations have been withdrawn and end the investigation, or (2) note the complainant has refused to affirm the summary and proceed to investigation to determine what occurred and to maintain a safe environment free from sexual misconduct.

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