

SOUTHERN UTAH UNIVERSITY
Policies and Procedures

Policy # 5.60
Date Approved: 03/24/17
Date Amended: 08/07/20
Reviewed w/ No Changes:
Office of Responsibility:

SUBJECT: SEXUAL MISCONDUCT

Utah Board of Higher Education Policy R842 Restrictions on Faculty/Staff Relationships with Student

III. SCOPE OF THE POLICY

This policy applies to all employees of the University and any persons participating, or attempting to participate, in any University Program or Activity. To the extent that any other University policies address sex discrimination, sexual harassment, or retaliation, as defined in this policy, this policy and its procedures govern.

IV. DEFINITIONS

- A. **Actual knowledge:** Notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any official of the University who has authority to institute corrective measures on behalf of the University. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the University with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the University.
- B. **Complainant, victim, or alleged victim:** An individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- 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. 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.
- D. **Dating Violence:** as defined at 34 U.S.C. 12291(a)(10), dating violence means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

1. The length of the relationship.

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2. The type of relationship.
 3. The frequency of interaction between the persons involved in the relationship.
- E. **Discrimination:** For purposes of this policy, adverse action towards University employees or students in the terms or conditions of employment; University admission or education; access to University programs, services, or activities; or other University benefits or services, on the basis of their inclusion or perceived inclusion (in the case of sexual orientation, gender identity, or gender expression) in the protected classes of sex, pregnancy, pregnancy-related conditions, sexual orientation, gender identity, or gender expression that has the effect of denying or limiting participation in a University program or activity.
- F. **Domestic Violence:** as defined in 34 U.S.C. 12291(a)(8), domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth (ages 11-24) victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- G. **Formal Complaint:** A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the University with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method designated by the University. As used in this paragraph, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

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1. Rape—Any penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent
2. Sodomy—Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent becausec 0 Tw (t)-2 ()-10 (hn)-10 en/er pegi 0 Tw (t)-2 (pe)4 (b 0 Twc)10

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- O. **Sexual Assault Response Team (SART):** A committee of trained interdepartmental University staff working collaboratively to provide services for the University community by offering specialized sexual assault intervention services, including but not limited to ensuring the immediate safety of the alleged victim, taking interim measures as necessary, and remediating the effects of substantiated sexual misconduct.

- P. **Stalking:** as defined at 34 U.S.C. 12291(a)(30), stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

- Q. **Supportive Measures:** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The University must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

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- B. The nondiscrimination policy statement contained in Section IV of this policy, the University's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the University will respond.
- C. The University must prominently display the contact information and policy statement described in V(a) on its website and in each handbook or catalog that it makes available to applicants for admission and employment, students, employees, or all unions or professional organizations holding collective bargaining or professional agreements with the University.

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4. Consistent with Utah Code section 62A-4a-403, anyone who reasonably suspects any incident of sexual harassment or abuse involving a minor shall immediately report to campus police or the local police department. Employees who become aware of allegations involving a minor shall notify the Title IX Coordinator and their supervisor that they have reported the allegation to the police.
- B. **Who May Report:** All other faculty, staff, and students who become aware of sex discrimination or harassment are encouraged to report such issues, with the consent of the alleged victim, to the Title IX Coordinator.
- C. **Who May Not Report:** Licensed mental health counselors and medical professionals working within the scope of their license, or designated advocates authorized by the Title IX Coordinator, generally may not report incidents of sexual harassment except with written consent or in instances of imminent danger or when the victim is a minor or vulnerable adult.

VIII. CONFIDENTIALITY

The University must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the University's ability to provide the supportive measures.

The University must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the federal *Family Educational Rights and Privacy Act*, its regulations, or as required by *Utah Government Records and Management Act (GRAMA)*, the federal *Health Information Portability and Accountability Act (HIPAA)* or other law, or to carry out the purposes of Title IX,

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IX. TRAINING

The University shall train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process on the definition of sexual harassment, the scope of the University's education program or activity, how to conduct an investigation and grievance process including live hearings, appeals, informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

- A. Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.
- B. The University will train decision-makers how to determine issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, on evidentiary standards, and on live hearing procedures.
- C. The University also must ensure that investil

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2. Any appeal and the result;
3. Any informal resolution and the result; and
4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

- B. For each report to the Title IX Coordinator of sexual harassment in a University education program or activity against a person in the United States, the Title IX Office must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the Title IX Office must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's education program or activity. If the University does not provide a complainant with supportive measures, then the Title IX Office must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the University in the future from providing additional explanations or detailing additional measures taken.

XI. PRELIMINARY REVIEW OF REPORTS AND FORMAL COMPLAINTS

- A. **Scope and Applicability of These Procedures:** All reports and formal complaints of sex discrimination, sexual harassment and retaliation, as defined in this policy, are subject to the procedures set forth in this section.

B. **Preliminary Review of Reports of Sexual Harassment:**

General Response: Upon receiving a report of sexual harassment, the Title IX Coordinator shall promptly contact the complainant to (1) discuss the availability of supportive measures, (2) consider the complainant's wishes with respect to supportive measures, (3) inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and (4) explain the process for filing a formal complaint.

Emergency Removal: The University may remove a respondent from the University's education programs or activities on an emergency basis, provided

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employee, or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

1. **Non-student Employee Leave:** A non-student employee respondent may be placed on administrative leave in accordance.

The Title IX Coordinator must further assess the reported conduct for any Clery obligations, including issuance of a timely warning, and report to campus or local law enforcement when necessary.

C. Grievance Process General Principles:

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regarding responsibility alone is not sufficient to conclude that any individual proffered a material falsehood.

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4. The Title IX Coordinator may independently initiate a formal complaint and investigation if necessary to provide safe and nondiscriminatory educational programs and activities, unless doing so would be clearly unreasonable in light of the known circumstances. The Title IX Coordinator may consider a variety of factors, including a pattern of alleged misconduct by a particular respondent, in deciding whether to sign a formal complaint. When the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party under this policy and must remain free of bias or conflict of interest with respect to any party. In this situation, the complainant is treated as a party, though their right to not participate is protected.

- E. **Consolidation of Formal Complaints:** The University may consolidate

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measures may be considered retaliatory and a separate violation of this policy.

8. If either party fails to participate in the investigation, the investigator(s) may make findings without the response of that party, potentially leading to an unfavorable outcome for that party, or the Title IX Coordinator may dismiss the case according to section X(F) of this policy.
9. The University will provide to a party whose participation is expected or invited, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
10. The University will provide each parties with equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including all inculpatory or exculpatory evidence, whether relied upon or not in reaching findings, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.

The Title IX Coordinator shall choose the investigator(s), except in cases where the Title IX Coordinator or others involved in the investigation have a conflict of interest, in which case the University's Office of General Counsel shall select internal or external impartial investigator(s).

- B. Upon initiating an investigation, the University shall provide the parties with a copy of the formal complaint, a notice of investigation, and a copy of this policy. A notice of investigation shall include statements informing the parties that the Respondent is presumed not responsible for the alleged conduct and that a determination of responsibility is made at the conclusion of the grievance process; that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and who may inspect and review evidence; and inform the parties of any provision in the University's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during a grievance process.
- C. If, at any point during the investigation, the

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- D. Upon conclusion of the investigative fact-finding, the investigator(s) shall prepare a draft report that summarizes the Complainant's allegations and Respondent's responses, summarizes the relevant evidence and the material witnesses supporting or opposing the allegation(s), and includes preliminary findings.
- E. Before the report is finalized, investigators will give Complainant and Respondent and their advisors equal opportunity to review any evidence obtained as part of the investigation that is directly related to the allegations in the formal complaint, including evidence upon which the University does not intend to rely in reaching a determination of responsibility, whether inculpatory or exculpatory, in electronic or hard copy format.
- F. The parties may submit a written response or information to the investigator within ten business days of the date of the notice of the opportunity to review the draft report and evidence. This is the parties' final opportunity to submit any additional information or witnesses. In the absence of good cause, investigators shall not consider information discoverable through the exercise of due diligence that is not provided to the investigator(s) at this juncture.
1. Investigator(s) shall consider any written response, information, or evidence provided by the parties.
- G. The investigator(s) shall prepare a final investigation report that contains a statement of the allegations, the positions/responses of the parties, a summary of relevant evidence and material witnesses the investigator(s) relied on, and any findings of fact.
1. A recommended decision of "unfounded" indicates that the investigator believes either that there is insufficient evidence to conclude that the event(s) occurred as alleged, or even if the event(s) occurred, it/they did not constitute sexual harassment or retaliation.
 2. A recommended decision of "inconclusive" means that the investigator believes the evidence provided by both parties did not reach a preponderance of evidence in favor of either party.
 3. A recommended decision of "substantiated" means that the investigator believes the events occurred as alleged by a preponderance of evidence in favor of the complainant.

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- H. The Title IX Coordinator, designee, or an attorney assigned by the Office of the General Counsel shall review each final investigation report or summary before it is finalized to ensure compliance with this policy.

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- C. The Responsible University Administrator shall have 7 calendar days from the date of receipt of the Written Determination to provide the Title IX Coordinator with the Written Determination and a decision of the disciplinary sanctions the University will impose on the Respondent, and a decision of whether the University will provide remedies designed to restore and preserve equal access to the University's education program or activity to the Complainant.
- D. Within 30 days of the Live Hearing, The Title IX Coordinator will provide the Written Determination with the decision of sanctions and remedies to the parties and their advisors simultaneously.
- E. The determination regarding responsibility and sanctions becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.
- F. Nothing in this procedure shall be interpreted to alter the status of otherwise at-will employees.

XVIII. SANCTIONS AND REMEDIES

Upon receiving a determination of responsibility either in a Written Determination or as a result of an informal resolution, the responsible University administrator shall promptly determine the appropriate sanctions and remedies based on the information provided, including offering remedies to the complainant and/or University community, implementing changes in programs and activities, providing training, and imposing any disciplinary sanctions. In consultation with the Title IX Coordinator and the Office of General Counsel, (and with Human Resources when the respondent is an employee) the responsible University administrator shall ensure any proposed sanctions and remedies are appropriate to end the prohibited conduct, to prevent further violation of this policy, and remedy the effects of any violation. In determining the appropriate sanction(s), the responsible University administrator shall be guided by the following considerations:

- The severity, persistence, or pervasiveness of the misconduct;
- The nature of violence in the misconduct and/or use of weapons, drugs, or alcohol (if applicable);
- The impact of the misconduct on the complainant;
- The impact or implications of the misconduct on the University community;

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shall not disclose to the complainant the discipline imposed on a respondent student, except under the following circumstances:

1. The discipline directly affects the other party, such as when the respondent student is ordered to stay away from the other party, is transferred to another job site, worksite, class, or is suspended or dismissed from the University; or
2. The complainant alleged sexual harassment involving a crime of violence or a non-

