



SUBJECT: SEXUAL MISCONDUCT

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.

I.A. References:

Americans with Disabilities Act (ADA) (as amended)



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



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

The University views amorous or sexual relationships between those in a position of authority and their subordinates, such as in a teaching, evaluating, supervising,



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or advising role as part of a school program or in an employment situation, and including all minors, regardless of whether they could be considered subordinate under other circumstances, as a power relationship that undermines and/or eliminates the ability of the subordinate (including all minors) to provide consent to an amorous or sexual relationship, and those relationships thereby violate this policy. Moreover, those in a position of authority may not use their position of authority to reward, penalize, or retaliate against, either directly or indirectly, any person or subordinate with whom there is or was an amorous or sexual relationship or who has rejected such a relationship. Any person who is aware of anyone being involved in a relationship that may be in violation of this policy shall report the relationship to the Title IX Coordinator.

- D. **Dating/relationship violence:** Violence or threat of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, where the existence of such a relationship shall be determined based on a consideration of all relevant factors, including: a) The length of the relationship, b) The type of relationship, and c) The frequency of interaction between the persons involved in the relationship.
- E. **Deputy Title IX Coordinator:** An individual appointed by the Title IX Coordinator to serve as deputy. Deputies typically serve on a Title IX committee led by the Title IX Coordinator. Deputies typically include the Dean of Students, Director of Human Resource, Senior Women's Administrator for Athletics and a Faculty member nominated by the Provost.
- F. **Discrimination:** For purposes of this policy, negative or adverse conduct 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 protected classes of sex, pregnancy, pregnancy-related conditions, sexual orientation, or gender identity, that has the effect of denying or limiting participation in a university program or activity.
- G. **Domestic violence:** Violence or physical harm, or threat of violence or physical harm, committed by:
- A current or former spouse or intimate partner of the alleged victim,
 - A person with whom the victim shares a child in common,
 - A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
 - 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



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- 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 jurisdiction where the act of domestic violence occurred.
- H. **Hostile environment:** For purposes of this policy, any unwelcome verbal, physical, written, electronic, or non-verbal conduct (whether directly, indirectly, or through a third party) of a sexual nature, or related to an individual's sex, pregnancy, pregnancy-related conditions, sexual orientation, or gender identity, that is sufficiently severe, persistent, or pervasive to alter the conditions of employment or limit, interfere with, or deny educational benefits or opportunities, from both a subjective and objective viewpoint based on a totality of the circumstances, including but not limited to the frequency and severity of the conduct, whether the conduct was physically threatening or humiliating, the effect of the conduct on the individual's mental or emotional state, whether the conduct was directed at more than one person, whether the conduct arose in the context of other discriminatory conduct, and whether the speech or conduct deserves the protections of academic freedom or the First Amendment.
- I. **Incapacitation:** An individual who is incapacitated cannot give consent to engage in a sexual encounter. Incapacitation is defined as the physical and/or mental inability to make informed, rational judgments. Factors that could be indications of incapacitation include but are not limited to mental or physical disability; lack of sleep; alcohol; drug use (illegal, date-rape, or prescription); unconsciousness; blackout; or involuntary physical restraint. Being intoxicated by drugs or alcohol does not diminish one's responsibility to obtain consent. The factors to be considered when determining whether consent was given include whether the accused, or whether a reasonable person should have known that the complainant was incapacitated.
- J. **Preponderance of evidence:** The evidentiary standard used during a sexual misconduct investigation/review to determine if a policy violation has occurred. Preponderance of evidence means it is more likely than not, or more than 50 percent in favor, that the misconduct occurred as alleged.
- K. **Respondent:** The individual against whom a complaint of alleged sexual misconduct has been made.
- L. **Responsible employee:** Any university employee (faculty, staff, administration) or volunteer who becomes aware of a sexual misconduct issue involving any university student or employee.
- M. **Retaliation:** Any materially adverse action or threat of action taken against a person for making a good faith report of sexual misconduct or participating in any



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proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. Retaliation may be present even where there is a finding of “no responsibility” on the allegations of sexual misconduct. Retaliation does not include good faith actions lawfully pursued in response to a report of sexual misconduct. Any action designed to prevent or discourage someone from reporting a concern regarding sexual misconduct may also be retaliation.

- N. **Sexual assault:** A forcible or non-forcible sex offense, including actual or attempted sexual contact, with another person without that person's consent. Whether or not the alleged contact is sexual in nature is based upon the totality of the circumstances as a reasonable person would perceive that interaction.
- O. **Sexual exploitation:** Any acts relating to sex or of a sexual nature in which a person seeks to take an unjust advantage of another for their own benefit. Also, specific forms of sexual behavior that involve non-consensual use of another individual's nudity or sexuality. Examples of sexual exploitation include but are not limited to:
- a. Voyeurism (such as watching or taking pictures, videos, or audio recordings of another person engaging in a sexual act without the consent of all parties);
 - b. Invasion of sexual privacy, such as allowing a third party to watch, or disseminating, streaming, or posting pictures or video of another in a state of undress or of a sexual nature without that person's consent;
 - 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;



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- 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.
- R. Stalking:** Engaging in a course of conduct (two or more acts) directed at a specific person that the actor knows or should know would cause a reasonable person to fear for his or her safety or the safety of others, to suffer other emotional distress, or that interferes with the other person's property, including harassing, threatening, following, monitoring, observing, surveilling, intimidating, delivering items, or communicating with or about another, directly, indirectly, or through a third party, by telephone, mail, electronic communication, social media, photography, or any other action, device, or method.
- S. Title IX Coordinator:** An individual designated by the President of the University to serve as the Title IX Coordinator for the University.

IV. PROHIBITED CONDUCT

Violations of this policy include but are 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 (including engaging in sexual trafficking); and stalking, in the context of participation at the university, consistent with section II of this policy.



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All individuals who engage in sexual activity are responsible for ensuring that they have the consent of all involved to engage in sexual activity. Any individual who engages in sexual activity without receiving clear, knowing, and voluntary consent, or in which one of the parties withdraws consent at any point but is forced to participate, has violated this policy.

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.

The University views amorous or sexual relationships between those in a position of authority and their subordinates, such as in a teaching, evaluating, supervising, or advising role as part of a school program or in an employment situation, and including all minors, regardless of whether they could be considered a subordinate under other circumstances, as a power relationship that undermines and/or eliminates the ability of the subordinate (including all minors) to provide consent to an amorous or sexual relationship, and those relationships thereby violate this policy. Moreover, those in a position of authority may not use their position of authority to reward, penalize, or retaliate against, either directly or indirectly, any person or subordinate with whom there is or was an amorous or sexual relationship or who has rejected such a relationship. Any person who is aware of anyone being involved in a relationship that may be in violation of this policy shall report the relationship to the Title IX Coordinator.

The University prohibits retaliation as defined in this policy. The University shall take steps to prevent retaliation and shall take strong responsive action to threats or acts of retaliation, up to and including termination of employment or expulsion from the University.

V. PRIVACY AND CONFIDENTIALITY

- A. The University is committed to protecting the privacy of complainants and respondents and any party involved in a sexual misconduct report or process to the extent allowed by the Utah *Government Records and Management Act (GRAMA)*,



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the federal *Family Educational Rights and Privacy Act (FERPA)*, the federal *Health Information Portability and Accountability Act (HIPAA)*, and other applicable laws.

- B. The University shall make reasonable efforts to protect the privacy of those involved in reported incidents, including sharing information only with those who have a "need to know" due to their responsibility to eliminate the reported conduct, prevent its reoccurrence, and/or address its effects.
- C. In determining whether to honor a complainant's request to maintain his or her privacy, the University shall consider the facts and circumstances and the safety of the university community in accordance with applicable law. However, requests for anonymity may limit the University's ability to investigate or respond in a more targeted way, such as offering reasonably available interim protective measures or modifications to the complainant.
- D. When the University agrees to honor a complainant's request to maintain his or her privacy and/or not conduct further investigation, the matter shall be considered resolved, with the University taking appropriate steps and protective measures or modifications.
- E. The University recognizes that a complainant may initially be hesitant to move forward, but later seek an investigation. Where a report was closed because the University agreed to the complainant's request to maintain his or her privacy and/or not conduct further investigation, the matter may later be reopened at the discretion of the Title IX Coordinator or designated deputy coordinator based on such factors as complainant request and/or concerns about safety to the university community. The passage of time and the memory/availability of witnesses may limit the University's ability to investigate at a later date.

VI. REPORTS OF SEXUAL MISCONDUCT

- A. The University strongly encourages individuals who have experienced sexual misconduct or who are aware of alleged incidents to report sexual misconduct to the Title IX Coordinator or deputy coordinators, to SUU Police, and/or to other university administrators set forth in this policy. Police investigations and Title IX investigations may proceed simultaneously.
- B. All university responsible employees and CSAs, with the exception of licensed mental health counselors or members of the clergy who are working within the scope of their license or religious assignment, are required to report all incidents of sexual misconduct to the Title IX Coordinator.



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- C. Upon receipt of a report involving a student or employee complainant, the University shall take and/or make available reasonable and appropriate interim measures to protect the complainant, regardless of whether the complainant requests an investigation, initiates a code of conduct proceeding, or makes a criminal report.
- D. A complainant or witness who reports or participates in an investigation of sexual misconduct who might have engaged in a personal violation of University drug, alcohol, or other minor personal conduct policies around the time of the alleged sexual misconduct incident shall not be disciplined by the University for these 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



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and appropriate resources and services provided by the University and the community.

IX. PROCEDURES

All sexual misconduct complaints are subject to the procedures set forth in this policy. Unless the sexual misconduct also violates additional university policies, other university policies and procedures do not apply to sexual misconduct reports, processes, and proceedings. All misconduct not involving sexual misconduct shall be addressed through the procedures found in the respective student, faculty, and staff university policies. University policy 5.27, Anti-Discrimination/Anti-Harassment, remains in full force and effect, except insofar as it directly conflicts with this policy, in which case, this policy governs.

X. SEXUAL MISCONDUCT RESOURCES

- A. If a report involves potentially criminal acts, complainants have the option to make a formal criminal complaint by reporting the incident to SUU Police, Ph. (435) 586-1911, or to local police by calling 911. The University does not control the actions or decisions of non-University law enforcement or non-University resource providers, but encourages complainants to seek assistance from both University and non-University resources as complainants deem appropriate. Complainants are encouraged to seek assistance in the preservation of evidence from qualified personnel as soon as possible after an incident of sexual misconduct.
- B. Regardless of whether they decide to report an incident of sexual misconduct, complainants of sexual assault are encouraged to preserve evidence in case they decide later to report the incident to law enforcement. It is critical to preserve evidence as soon as possible after the incident. For Sexual Assault Nurse Examination, complainants may seek assistance at Cedar City Hospital: 1303 North Main Street, Cedar City (435-868-5000).
- C. Individuals may receive further assistance from Canyon Creek Women's Crisis Center (CCWCC) 24-Hour Mobile Crisis Unit. To contact CCWCC please call (435) 233-5732 or (435) 865-7443 or visit ccwcc.org.
- D. The University offers resources for Students and Employees, whether as Complainants or Respondents, to provide support and guidance throughout the initiation, investigation, and resolution of a report of sexual misconduct.



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- E. The University provides confidential counseling services on campus. These resources are available to individuals involved regardless of whether they report to police or request university disciplinary proceedings. Students are encouraged to contact Counseling and Psychological Services, and benefits-eligible 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/

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. 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 *Clergy Act* purposes that an incident occurred, but the identities of the alleged victims are not shared.
 - b. *Mostly Private*: Except for conversations that occur with the persons listed under "strictly confidential" above, conversations with faculty or staff about sexual misconduct must be reported to the Title IX Coordinator or a designated deputy coordinator. In those cases, the Title IX Coordinator or designated deputy coordinator shall only share such information with administrators on a "need-to-know" basis. The Title IX Coordinator or designated deputy coordinator will review requests for anonymity in accordance with this policy. Reports of sexual misconduct to the following individuals are considered "mostly private," with a requirement that identities of complainants be reported to the Title IX Coordinator:
 1. Designated campus security authorities (CSA)
 2. Responsible employees
 3. Students who serve in an ongoing peer-advising role (such as Work Study) are also expected to report to the Title IX Coordinator if they learn of sexual misconduct while working. If they learn of the incident outside the workplace, they are not required to report but are encouraged to follow the recommendations presented in bystander prevention training.
 - c. *Confidentiality Limited by State Law*: If reported to SUU Police, some exploratory conversations are confidential. Alleged victims may meet with a detective or officer without immediately triggering a full-scale investigation or the requirement to press criminal charges. Police



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reports, with identifying information redacted, may be available to the public upon request only if permitted by *GRAMA* and other applicable laws.

XIII. THIRD PARTY BYSTANDER REPORTING OBLIGATIONS

- A. Any responsible employee or CSA who receives a sexual misconduct report shall inform the complainant as soon as possible about his or her duty to report. Responsible Employees and CSA's are encouraged to inform the complainant of relevant resources related to reports of sexual misconduct. Responsible employees or CSAs shall report information they learn about alleged or possible sexual misconduct incidents to the Title IX Coordinator as soon as possible.
- B. Any incident involving a minor shall be immediately reported to SUU Police or to the local police department if the incident occurred off campus. Responsible employees or CSAs who become aware of allegations involving a minor shall notify the Title IX Coordinator that they have reported the allegation to the police.
- C. For third-party complainants, the University shall provide reasonable protective measures as appropriate and available, based on consideration of the role of the third party, the nature of any contractual or other relationship with the University, the relationship of the respondent to the University, and the facts and/or evidence received.

XIV. PRELIMINARY REVIEW OF REPORTS OF SEXUAL MISCONDUCT

- A. After receiving a report of Sexual Misconduct, the Title IX Coordinator or designated Deputy Coordinator shall promptly conduct a preliminary review that includes the following:
 - a. Assess and determine the appropriate university response, including whether there is reasonable cause to believe that this policy has been violated and that an investigation is necessary.
 - 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



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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.

C. If the Title IX Coordinator or designated deputy coordinator determines that there is reasonable cause to believe that this policy was violated and/or that an investigation is necessary, he or she shall inform the appropriate university employee(s) who have oversight over the respondent regarding the existence of the complaint such that the Title IX Coordinator and university employee(s) can discuss and implement appropriate responsive measures.

XV. RESOLUTION PRIOR TO INVESTIGATION,

A. The Title IX Coordinator or designated deputy coordinator shall tailor each resolution to the specific facts of the case. The Title IX Coordinator or designated deputy coordinator shall determine whether reports of sexual



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misconduct are appropriate for informal resolution, administrative resolution, mediation, or investigation.

- B. Resolution prior to investigation should be concluded within 30 business days from when the Title IX Coordinator receives the complaint, unless there is good cause for extension of this time period. Where the 30-day time period is not reasonably possible, the Title IX Coordinator or designated deputy coordinator should notify the complainant in writing that resolution of the complaint will be delayed and indicate the reasons for the delay. All resolution efforts shall be documented.
- C. Informal Resolution
- a. Informal resolution is encouraged to resolve concerns at the earliest stage possible with the cooperation of all parties involved. Participation in the informal resolution process is voluntary; the University shall not compel either party to engage in informal resolution. Informal resolution may be appropriate for responding to anonymous reports and/or third-party reports. Informal resolution may not be used in cases involving sexual violence, even if the complainant volunteers for informal resolution. Informal resolution may also be inappropriate when one or both of the parties are reluctant to participate in good faith.
 - b. Informal resolution may include an inquiry into the facts, but typically does not include an investigation. Informal resolution is flexible and includes options such as mediating an agreement between the parties, separating the parties, referring the parties to counseling programs, negotiating an agreement for disciplinary action, conducting targeted 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.



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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:
 - a. Complainants and respondents can expect prompt and equitable resolution of allegations of prohibited sexual misconduct.
 - b. Complainants can expect freedom from retaliation for making a good faith report of prohibited sexual misconduct or participating in any investigation or proceeding under this policy.
 - c. Respondents have the responsibility to refrain from retaliation directed against any person for making a good faith report of prohibited sexual misconduct or participating in any proceeding under this policy.
 - d. Respondents, complainants, and witnesses have the responsibility to provide truthful information in connection with any report, investigation, or resolution of prohibited sexual misconduct under this policy.
 - e. Complainants and respondents shall have interim measures available and be given the opportunity to request modifications necessary for physical and/or emotional safety.
 - f. Complainants and respondents shall be given timely and equal access to allegations and given an opportunity to respond to information that will be used in any disciplinary proceeding against them.
 - g. Complainants and respondents shall have the opportunity to offer relevant information, present evidence, and identify witnesses during an investigation.
 - h. Complainants and respondents shall be given timely notice of meetings where their presence is necessary.



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- i. The university shall provide complainants and respondents notification at the same time, in writing, of the results of any proceedings.
 - j. Complainants and respondents shall have an equitable opportunity to articulate concerns or issues about proceedings under this policy.
 - k. Complainants and respondents shall have a reasonable time to prepare any response permitted under this policy.
 - l. Complainants and respondents shall receive written notice of any necessary extensions of timeframes under this policy.
- 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.



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- 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.
- H. The Title IX Coordinator, or their designee, shall provide the respondent with the summary of the complainant's allegations and a copy of this policy, shall request a written response from the respondent, and shall identify a reasonable timeframe for the response. As part of the investigation, the respondent also shall be asked to provide and preserve all corroborating or potentially relevant evidence in any format, list potential witness names, and affirm any response to the allegations. In preparing the summary of complainant's allegations for the respondent, the Title IX Coordinator or designated deputy coordinator has the discretion to redact names and/or witnesses to protect the identity and ensure the safety of the complainant and/or witnesses. The respondent may prepare and submit a signed written statement to admit or deny the allegations, provide an explanation why any conduct was not a violation of the policy, provide all corroborating evidence, list potential witness names, and state whether complainant's proposed resolution is appropriate
- I. 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 a designated Title IX Deputy Coordinator shall select internal or external impartial investigator(s).
- J. If the alleged misconduct is also the subject of a criminal investigation, the investigator(s) may not wait for the conclusion of the criminal investigation to begin an investigation pursuant to this policy. However, the investigator(s) may coordinate their fact-finding efforts with the police investigation, in an effort to avoid compromising the police investigation.
- K. To provide a prompt, thorough, fair, and impartial investigation and resolution, all investigations of reports of sexual misconduct shall incorporate the following standards:
 - a. The respondent shall be provided the name of the complainant (unless the complainant has requested and been granted anonymity), notice of an investigation, a written statement of the allegations, and a copy of this policy. The respondent shall be afforded a full opportunity to respond to the allegations.
 - b. The investigator(s) conducting the investigation shall be familiar with this policy, have training in conducting investigations, and shall be familiar with applicable university policies and procedures. For cases



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- involving allegations of sexual violence, the individual(s) conducting the investigation must receive annual training on issues related to sexual violence.
- c. Disclosure of facts to parties and witnesses shall be limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation shall be advised that maintaining confidentiality is essential to protect the integrity of the investigation. Participants shall also be reminded during the process not to retaliate against other parties, witnesses, or other participants in the process.
 - d. The investigator shall apply a preponderance of evidence standard to determine whether the sexual misconduct occurred as alleged and whether there has been a violation of this policy.
 - e. The complainant and the respondent may have a support person present when he or she is interviewed and at any proceeding or meeting in the process under this policy.
 - f. At any time during the investigation, the investigator and/or the Title IX Coordinator may recommend that interim protections or remedies for the parties or witnesses be provided by appropriate university administrators. Failure by a party to comply with the terms of interim protections may be considered a separate violation of this policy.
 - g. The investigation shall be completed and the final investigation summary provided to the responsible university administrator as promptly as possible after the determination by the Title IX Coordinator or designated deputy coordinator that an investigation is warranted. The investigation and disciplinary process shall be completed within 60 calendar days unless circumstances require an extension to complete a thorough investigation, in which case the investigator shall inform both parties in writing of the expected completion date.
 - h. Parties and witnesses are expected to cooperate with and participate in the University's investigation.
 - i. The complainant and respondent shall be informed if there were findings made that the policy was or was not violated and of actions taken to resolve the complaint, if any, that are directly related to the complainant. In accordance with applicable law, the complainant may generally be notified that the matter has been referred for disciplinary action. The Title IX Coordinator shall also advise the complainant and respondent of the existence of options outside the University that may be pursued.
 - j. In extraordinary cases, a student Respondent may be suspended prior to the final outcome of the process if necessary to protect the campus community or prevent serious disruption of the academic process. In such circumstances, the process shall follow the suspension as expeditiously as possible.



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- k. Prior to being interviewed about allegations of misconduct, the student Respondent will be given notice of the allegations against them. Notice may be written or verbal and may be given immediately before a student is interviewed regarding the issue described in the notice.
 - l. In a situation that may result in expulsion or a minimum 10-day suspension, the student Respondent will also be advised of their right to have an advisor throughout the process who may, but need not be, an attorney and if a student wishes to seek counsel from an advisor, the interview will be rescheduled to allow the student Respondent reasonable time to obtain an advisor. During an inquiry, investigation, or other informal process (all events prior to a student conduct hearing), an advisor may only advise the student and may not actively participate.
 - m. The University may proceed with the investigative or disciplinary process in a timely fashion without the student respondent if he or she declines to participate. The University may set reasonable deadlines and move forward with the disciplinary process regardless of whether a student and/or a student's advisor is able to accommodate those deadlines.
- L. Upon conclusion of the investigation, the investigator(s) shall prepare a written investigation report that includes a statement of the allegations and issues, the positions of the parties, a summary of evidence and findings relative to the investigation. Additional information identified that does not pertain to the underlying allegations of the investigation may be contained in an addendum to the report. The Title IX Coordinator shall receive and review the investigator(s)' report, shall make determinations and recommendations as to whether policy has been violated, and shall prepare an investigative summary containing any determinations and recommendations. The Title IX Coordinator may also make a recommendation for actions to resolve the complaint, including preventive remedies for the complainant, and a referral to disciplinary procedures, as appropriate. Unless there is a conflict, or an outside investigator was engaged and the Title IX Coordinator has appointed a designee to act in his or her place, the Title IX Coordinator shall review all investigation summaries before they are finalized with the complainant and respondent, but may not review the contents of addendums that contain non-pertinent information if such a review would be inappropriate or unnecessary in the judgement of the Title IX Coordinator. The parties shall not receive an electronic or written copy, nor may they photograph, record or copy the investigation report and summary. This is the final opportunity for the parties to identify any additional information or witnesses. If new information is identified that warrants additional consideration, the Title IX Coordinator may refer the case back to the Investigator(s) for further review, if appropriate, or take other action necessary to address the new information.
- M. The possible findings of the investigation are the following:



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- a. Decision of "unfounded" indicates that either there is insufficient evidence for the investigators to conclude that the event(s) occurred as alleged, using the preponderance of evidence standard, or even if the event(s) occurred, it/they did not constitute sexual misconduct.
 - b. A decision of "substantiated" means that the allegation occurred as alleged by a preponderance of evidence in favor of the complainant.
- N. The final investigation report and summary shall be submitted to the responsible university administrator designated below with authority to implement actions and/or discipline necessary to resolve the complaint. The responsible university administrator should consult with the Title IX Coordinator, Human Resources, and the university's legal counsel, as applicable. The final investigation summary may be used as evidence in other related procedures, such as subsequent complaints, disciplinary actions, and/or reviews or appeals.
- a. If the respondent is a student, the matter will be referred to the Student Conduct Administrator.
 - b. If the respondent is an employee, the matter will be referred to the Director of Human Resources.
 - c. If the respondent is a third party, as defined in section II. Scope of this policy, the matter will be referred to the university's legal counsel.
- O. Nothing in this procedure shall be interpreted to alter the status of otherwise at-will employees.

XVII. SANCTIONS AND REMEDIES

A. Upon receiving the final investigation report and summary, the responsible university administrator shall promptly determine the appropriate adjudicative course of action, consistent with the applicable university policies and procedures. In consultation with the Title IX Coordinator and legal counsel, the responsible university administrator shall ensure sanctions and remedies are appropriate to end the prohibited conduct, prevent further violation of this policy, and remedy the effects of any violation. The Title IX Coordinator and legal counsel shall give direction to ensure that sanctions and remedies are appropriate, comparable and relatively consistent among responsible university administrators and their respective processes.

B. Sexual misconduct matters involving student respondents will be adjudicated under *SUU Policy #11.2 – Student Conduct Code*. This *Sexual Misconduct Policy 5.60* is intended to be utilized in conjunction with Policy 11.2, but when in direct conflict, the provisions of Policy 5.60 govern. Further, Utah State Regent policy *R256, Student Disciplinary Processes*, shall be complied with in the adjudication of matters involving student respondents.

C. Sexual misconduct matters involving employee respondents will be adjudicated under *SUU Policy #5.27.6. D – Non-Discrimination / Anti-Harassment*. This



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Sexual Misconduct Policy 5.60 is intended to be utilized in conjunction with *Policy 5.27 Non-Discrimination/Anti-Harassment*, but when in direct conflict, the provisions of *Policy 5.60* govern.

D. Sexual misconduct matters involving third parties may result in sanctions against the third parties, who are neither students nor employees, including but not limited to banning the third parties from all or part(s) of the University and/or ending business relationships with the third parties.

E. Any sanction or combination of sanctions imposed upon a respondent will be documented in the respondent's personnel and/or student file. Nothing in these procedures prevents the responsible university administrator or his or her designee under the policy from imposing disciplinary action against a respondent when the investigative information demonstrates that the respondent engaged in other conduct prohibited by the University, regardless of whether the respondent has been found responsible for violating this policy.

F. The responsible university administrator will notify the Title IX Coordinator in writing of the outcome of the adjudicative process under the applicable policies, including the decisions made and any sanctions imposed.

G. After the Title IX Coordinator receives notice of the outcome of the adjudicative proceedings, he or she shall promptly ensure that the complainant and the respondent receive equitable written notice of the outcome of the adjudication. The written notice shall indicate that the decision is final and not subject to further university review.

H. Responsible university administrators shall provide outcome communications and all documents used in and/or related to the adjudication of matters under this policy to the Title IX Coordinator for confidential storage.