

[Interim] Rule 1-012: Discrimination Complaint Rule.

Revision 1. Effective date: August 14, 2020

I. Purpose and Scope.

A. **Purpose:** The University of Utah (“University”) is committed to providing and fostering an environment that is safe and free from prohibited Discrimination and Sexual Misconduct. University Policy prohibits Discrimination, Sexual Misconduct, and prohibits Retaliation against individuals for engaging in protected activities, such as filing a Discrimination or Sexual Misconduct complaint or participating in a Discrimination or Sexual Misconduct complaint resolution process.

This Rule implements University [Policy 1-012](#) and describes the manner in which individuals may pursue Discrimination complaints, including complaints of Sexual Misconduct, and complaints of Retaliation, at the University.

B. Scope:

1. This Rule applies to all academic and administrative units of the University, and to all members of the University community, including all faculty, staff, students, patients, visitors, and participants in University Programs or Activities.
2. All allegations of Sexual Misconduct, other types of Discrimination, or Retaliation raised by or against students or employees of the University shall be resolved pursuant to this Rule and its accompanying Rules and Procedures.
3. Allegations of Discrimination that do not involve Sexual Misconduct, shall be resolved pursuant to this Rule and [Rule 1-012A](#), *Discrimination Complaint Process Rule*. Allegations of Discrimination involving Sexual Misconduct shall be resolved pursuant to this Rule and [Rule 1-012B](#), *Sexual Misconduct Complaint Process Rule*.
4. Allegations of Retaliation that do not involve Sexual Misconduct are subject to the same process, sanctions and remedies described in this Rule and shall

be resolved pursuant to this Rule and [Rule 1-012A](#), *Discrimination Complaint Process Rule*.

5. Formal Complaints that allege Sexual Misconduct as well as alleging another type of Discrimination, or Retaliation, shall be resolved pursuant to [Rule 1-012B](#), *Sexual Misconduct Complaint Process Rule*.
6. Allegations of Discrimination or Retaliation raised by patients of University of Utah healthcare providers/facilities (University Hospitals & Clinics) shall not be governed by this Rule and shall be resolved under the procedures approved for that purpose by the Senior Vice President for Health Sciences (or delegee) [*current version [here](#)*]

II. Definitions

For the limited purposes of Policy 1-012 and its associated Rules, Procedures, and Guidelines, the following definitions of prohibited Discrimination and other words and phrases are provided in this Rule.

- A. **Complainant** means the individual(s) who allegedly experienced a type of Discrimination, Sexual Misconduct, including the victim of alleged conduct that could be Sexual or Gender-Based Harassment or experienced Retaliation in violation of University Regulations. (Note that University Regulations and related documents may refer to such an individual as a Complainant even when no Formal Complaint has been filed.)
- B. **Confidential** Information means information (i) that is disclosed to a professional or pastoral counselor or to a University office identified in [Rule 1-012B](#)(III)(D) and (ii) which the recipient is not required to give notice of to the Office of Equal Opportunity & Affirmative Action (OEO/AA) or to the University administration, under state or federal law.
 1. Confidential information includes information that is protected under the Utah Campus Advocate Confidentiality Amendments (Utah Code §53B-28-101 et seq.), if giving notice of the information to the OEO/AA or University administration is not required by applicable federal laws and regulations.
 2. Information that under state or federal law (including Title IX, Title VII, or the Clery act) the recipient must give notice of to the OEO/AA or University administration may be *private* in nature, but is not confidential information for purposes of Policy 1-012 and associated Regulations: this includes information disclosed to counselors/ offices regarding occurrence

of abuse (including sexual abuse of minors or vulnerable adults), neglect, exploitation, or threats to the campus community.

3. Confidential information does not include information disclosed to a counselor/ University office if:

- a. that recipient then gives notice of the information to the University for the limited purpose of notifying of deidentified information such as the nature, date, time, and general location of an incident; or
- b. giving of notice of the otherwise confidential information to the University has been agreed to in writing.

C. **Consent** (when used in reference to the issue of whether a Complainant did or did not agree to allow a Respondent to engage in certain conduct) means affirmative, unambiguous, and voluntary agreement. See [Guideline 1-012A](#) for further clarification. For a non-exhaustive list of situations in which Consent has not been given, see Utah Code Ann. § 76-5-406.

D. **Discrimination** means treating someone differently, i.e., disadvantaging the person, on the basis of being a member of a protected class described in University Policy 1-012 when:

1. such conduct adversely affects a term or condition of an individual's employment, education, living environment, or participation in a University Program or Activity; or
2. a person's membership in a protected class is used as the basis for or a factor in decisions adversely affecting that individual's employment, education, living environment, or other participation in a University Program or Activity.

E. **Formal Complaint** means the contents of a document which either (i) is filed by a Complainant that contains the Complainant's electronic or digital signature, or otherwise indicates that the Complainant is filing the Formal Complaint, or (ii) is signed and filed by the Director, and which (iii) alleges Sexual Misconduct or another type of Discrimination, or Retaliation by a Respondent and requests that the OEO/AA investigate the allegation. When the Complaint is signed and filed by the Director, the Title IX Coordinator is not a Complainant or otherwise a Party.

F. **Final Result** means (a) the University's final and binding determination of whether the evidence, evaluated under a Preponderance of the Evidence standard, supports a finding that a violation of University Non-discrimination Policy occurred, and (b) any sanctions imposed.

G. **Harassment means** unwelcome or offensive conduct which has the purpose or effect of interfering with a person's work or academic environment or creating an intimidating, hostile, offensive or otherwise adverse working or learning environment, when such conduct is based on or because of an individual's membership in a protected class described in University [Policy 1-012](#). This definition applies for any harassing conduct other than Sexual or Gender- Based Harassment, which is defined separately, for consistency with federal law. Harassment is a form of Discrimination.

H. **Hearing Committee /or Committee** means the hearing committee convened to hear complaints of Discrimination, Sexual Misconduct, or Retaliation.

1. **Hearing Committee Report /or Committee Report** means the written report of the Hearing Committee.

2. **Hearing Committee Chair/ or Committee Chair** means the chairperson of the Hearing Committee.

3. **Hearing Coordinator** means the person, designated by the Director, who assists in forming a Hearing Committee for a specific case, scheduling its meetings and hearings, and acting as its Secretary. In certain circumstances Party is a faculty member, the Hearing Committee, or some members of the Committee will be drawn from **the Senate Consolidated Hearing Committee ("SCHC")**, per [Policy 6- 011](#).

I. **Informal Resolution** means a voluntary facilitated resolution process that does not involve a full investigation and/or hearing and is only available after a Formal Complaint has been filed. Informal Resolution may include mediation, restorative justice, and other similar forms of facilitated resolution models.

J. **Intimate Partner Violence** means actual or threatened physical violence, intimidation, or other forms of emotional, physical or sexual abuse that would cause a reasonable person to fear harm to self or others. For Policy 1-012 and associated Regulations, "intimate relationship" means marriage, domestic partnership, engagement, casual or serious romantic involvement, and dating, whether in a current or former relationship. Intimate Partner Violence can occur between persons of any sex, sexual orientation, gender, gender identity, or gender expression, and it can occur in any type of intimate relationship including monogamous, non- committed, and relationships involving more than two partners. Intimate Partner Violence can be a single act or a pattern of behavior. Intimate Partner Violence is sometimes referred to as, and includes behaviors that

would be considered, dating violence, domestic violence, or relationship abuse. Examples of Intimate Partner Violence include, but are not limited to, situations in which any of the following behaviors are directed toward a partner in a current or former intimate relationship: hitting, kicking, strangling, or other violence; property damage; or threat of violence to one's self, one's partner, or the family members, friends, pets, or personal property of the partner. Intimate Partner Violence is a form of Sexual Misconduct (and so is a type of Sex or Gender-Based Discrimination).

K. **Mandatory Reporter** means a person who upon receiving information about discriminatory incidents, conduct, or conditions, is obligated to notify the University and provide certain details of such information, as required under [Policy 1-012](#) and its associated Regulations and in some instances required by state or federal law. Such obligations apply despite any requests for confidentiality made by the individuals disclosing the information or involved in the alleged incidents. Mandatory Reporters consist of any University employee:

1. who has the authority to institute corrective measures, consisting of:
 - a. the University President and all employees administratively reporting directly to the President;
 - b. all employee supervisors, when reports concern their direct or indirect subordinate employees (or supervised volunteers) as potential Parties (Complainants or Respondents);
 - c. the Vice President of Student Affairs, all employees administratively reporting directly to the Vice President of Student Affairs (other than professional mental health counselors), and all college deans, when reports concern students as potential Parties (Complainants or Respondents);
2. who has been given the duty of giving the University notice of incidents of Sexual Misconduct or other type of Discrimination, Sexual Misconduct, or Retaliation to the University (e.g. administrator, resident advisor, program director); or
3. whom a student could reasonably believe has the authority to institute corrective measures (Section K(1)) or the duty to report incidents (Section K(2)) (e.g., administrator, public safety representative, faculty or staff member).

4. who has a duty of notifying under Utah Code section 62A- 4a-403, which provides that anyone who reasonably suspects any incident of sexual harassment or abuse involving a minor shall immediately notify campus police or the local police department. (Note: Employees who become aware of allegations of such an incident involving a minor shall notify the Title IX Coordinator and their supervisor that they have notified police of the allegation.)

L. **Nonconsensual Sexual Contact** means any physical contact of a sexual nature with another person without that person's Consent. The touching of a person's intimate parts (such as genitalia, groin, breast, buttocks, mouth, or clothing covering same); touching a person with one's own intimate parts; or forcing a person to touch another's intimate parts would be a physical contact of a sexual nature, and therefore a violation of [Policy 1-012](#) and associated Regulations, if it occurs without Consent. Nonconsensual Sexual Contact is a form of Sexual Misconduct (and so is a type of Sex or Gender-Based Discrimination).

M. **Nonconsensual Sexual Penetration** means the sexual penetration of any bodily opening of another person with any object or body part without that person's Consent. Such nonconsensual penetration might be committed by force, or through threat, intimidation, or exploitation of another's mental or physical condition (such as lack of consciousness, incapacitation due to drugs or alcohol, age, or disability) of which the Respondent was actually aware or which a reasonable person in the Respondent's position should have been aware. Nonconsensual Sexual Penetration is a form of Sexual Misconduct (and so is a type of Sex or Gender- Based Discrimination).

N. **OEO/AA** means the University of Utah Office of Equal Opportunity and Affirmative Action.

1. **OEO/AA Consultant** means a person who conducts the investigation on behalf of the OEO/AA. Ordinarily this will be a University employee who is assigned to the OEO/AA. However, in certain circumstances, the OEO/AA will arrange for all or part of the investigation to be performed by an Outside Entity.

2. **OEO/AA Director/ or Director** means the Director of the Office of Equal Opportunity & Affirmative Action (OEO/AA), who is the person designated and authorized to serve as the University's Title IX Coordinator.

3. **OEO/AA Draft** means the draft report of the OEO/AA's investigation.

4. **Outside Entity** means an organization or individual external to the University that is appointed to conduct all or part of an investigation, instead of the OEO/AA, acting on behalf of the University.

5. **OEO/AA Report** means the report of the OEO/AA issued at the conclusion of the investigation of a Complaint.

O. **Party or Parties** means the Complainant or/and the Respondent.

P. **Preponderance of the Evidence** is a legal evidentiary standard of proof used to determine if the events alleged in a Formal Complaint did occur and if they constituted a policy violation. Preponderance of the Evidence means “more likely than not,” or more than 50 percent in favor, that, for example, the acts constituting Sexual Misconduct or other Discrimination, or Retaliation occurred as alleged.

Q. **Procedure Advisor/ or Advisor** means the person assisting a Party during proceedings involving allegations of Discrimination or Retaliation. The person may but need not be an attorney, and may assist the Party in certain ways as further described in the Rules associated with [Policy 1-012](#).

R. **Protected Veteran Status** means:

1. **Disabled Veteran:** a veteran who served on active duty in the U.S. Military and is entitled to disability compensation (or who but for the receipt of military retired pay would be entitled to disability compensation) under laws administered by the Secretary of Veterans Affairs, or was discharged or released from active duty because of a service-connected disability; or
2. **Other Protected Veteran:** a veteran who served on active duty in the U.S. Military during a war, or in a campaign or expedition for which a campaign badge was authorized under the laws administered by the Department of Defense; or
3. **Recently Separated Veteran:** a veteran separated within the past three years (a three-year period beginning on the date of the veteran's discharge or release from active duty in the U.S. Military); or
4. **Armed Forces Service Medal Veteran:** a veteran who, while serving on active duty in the U.S. Military, participated in a U.S. Military operation that resulted in receiving an Armed Force service medal.

S. **Respondent** is the person(s) alleged to have engaged in conduct that constituted prohibited Discrimination, or Retaliation. This includes an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Misconduct.

T. **Retaliation** means to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege under [Policy 1-](#)

[012](#) and its associated rules, and guidelines, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

U. **Sex or Gender-Based Discrimination** means treating someone differently, i.e., disadvantaging the person, on the basis of sex, sexual orientation, gender, gender identity, or gender expression when:

1. such conduct adversely affects a term or condition of an individual's employment, education, living environment, or participation in a University Program or Activity; or
2. a person's sex, sexual orientation, gender, gender identity, or gender expression is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, healthcare, or participation in a University Program or Activity.

V. **Sexual Exploitation** means taking sexual advantage of another person and includes, without limitation: indecent exposure; causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over that person; causing the prostitution of another person; recording, photographing, or transmitting images of private sexual activity and/or the intimate parts of another person without Consent; allowing third parties to observe private sexual acts without Consent; engaging in voyeurism without Consent; or knowingly or recklessly exposing another person to a significant risk of sexually transmitted infection, including HIV. Sexual Exploitation is a form of Sexual Misconduct (and so is a type of Sex or Gender-Based Discrimination).

W. **Sexual or Gender-Based Harassment** means conduct, on the basis of sex/gender, that satisfies either of the following:

1. An employee conditioning the provision of an aid, benefit, or service on an individual's participation in otherwise unwelcome sexual conduct;
2. Unwelcome conduct which a reasonable person would determine to be:
 - a. so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Programs or Activities (Title IX); or
 - b. sufficiently severe or pervasive that it has the purpose or effect of interfering with or creating an intimidating, hostile or offensive

environment in a University Program or Activity (Title VII or University Policy); or

3. Conduct which constitutes Sexual Assault/Sex Offenses, Dating Violence, Domestic Violence or Stalking, as defined in Part II (these are forms of Sexual or Gender-Based Harassment).

a. **Sexual Assault/Sex Offenses** mean any sexual act directed against another person, without Consent of the victim, including instances where the victim is incapable of giving Consent. Sexual Assault includes the following:

i. **Rape** means the 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 of the victim. This offense includes the rape of either males or females.

ii. **Fondling** means the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will if the victim is incapable of giving Consent because of their youth or because of their temporary or permanent mental or physical incapacity.

iii. **Incest** means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law;

iv. **Statutory rape** means sexual intercourse with a person who is under the statutory age of Consent.

b. **Dating Violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting Party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. It does not include acts covered under the definition of Domestic Violence.

c. **Domestic Violence** means acts constituting a felony or misdemeanor crime of violence committed by: a person who is a current or former spouse or intimate partner of the 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 victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or, by any person if committed against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

4. The free and open discussion of issues or theories relating to sexuality or gender in an academic or professional setting, when appropriate to subject matter, will be presumed not to constitute Sexual or Gender-Based Harassment even if it offends or embarrasses an individual unless other factors are involved, such as targeting the discussion to an individual or carrying out the discussion in terms that are both patently unnecessary and gratuitously offensive.

X. **Sexual Misconduct** is a broad term used to encompass a range of behaviors. It includes Sexual or Gender-Based Harassment (and the forms of such harassment included as that is defined in Part II), and also Intimate Partner Violence, Sexual Exploitation, Sexual Violence, Stalking, Nonconsensual Sexual Contact, and Nonconsensual Sexual Penetration (as each is defined in Part II). Sexual Misconduct is a type of Sex or Gender-Based Discrimination.

Y. **Sexual Violence** means any physical sexual act perpetrated against a person's will or when a person is incapable of giving Consent (e.g., due to age, or use of drugs or alcohol, or because an intellectual or other disability prevents the person from having the capacity to give Consent).

Z. **Stalking** means engaging in a course of conduct that is (i) directed at a specific person, (ii) based on that person's sex, sexual orientation, gender, gender identity, or gender expression, and (iii) of a nature that would cause a reasonable person to (a) fear for the person's safety or the safety of others or (b) suffer substantial emotional distress. For purposes of this definition:

1. Course of conduct means two or more acts, including but not limited to, acts in which the stalker directly or indirectly, or through third parties, by any action, method, device or means, follows, monitors, observes, surveils,

threatens, or communicates to or about a person or interferes with a person's property;

2. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim;
3. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily, require medical or other professional treatment or counseling;
4. Any conduct that would constitutes stalking, as defined in Utah law at Utah Code Ann. §76-5-106.5 or in federal law at 34 U.S.C. 12291(a)(8), constitutes Stalking for purposes of Policy 1-012 and associated Regulations; and
5. Stalking is a form of Sexual Misconduct, and so is a type of Sex or Gender-Based Discrimination.

AA. **Supportive Measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent in a matter involving allegations of Discrimination or Retaliation, before or after the filing of a Formal Complaint or when no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access of a Party to the University's education Programs and Activities without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties, or deter Sexual Misconduct. Supportive Measures may include counseling, extensions of deadlines or other course- related adjustments, modification 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 services and monitoring of certain areas of the campus and other similar measures. Supportive Measures are also considered Protective Measures as defined by the Clery Act.

AB. **Support Person** means the person who a Party has chosen to accompany them in meetings or hearings during proceedings involving allegations of Discrimination or Retaliation. The person may provide support for their Party in certain ways as further described in the Rules associated with [Policy 1-012](#).

AC. **Title VII** means the Title VII of the Civil Rights Act of 1964.

AD. **Title IX** means the Title IX of the Education Amendments of 1972.

AE. **Title IX Coordinator** means the University's designated and authorized Title IX Coordinator (who ordinarily is the OEO/AA Director), or may also refer to any individual who the Title IX Coordinator designates and authorizes as a Deputy Title IX Coordinator.

AF. **University Program or Activity** includes locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which conduct constituting Sexual Misconduct or another type of Discrimination, or Retaliation, occurs. It includes any building (or grounds) owned or controlled by a student organization that is officially recognized by the University, and activities occurring in such locations. This includes Sponsored and Affiliated student organizations as defined in University [Rule 6-401A](#).

III. Rule

A. **Privacy.** The University must keep *private* the identity of certain individuals involved with alleged Sexual Misconduct or other type of Discrimination, or Retaliation except as may be permitted by the Family Educational Rights and Privacy Act (FERPA), or as required by Utah Government Records and Management Act (GRAMA), the federal Health Information Portability and Accountability Act (HIPAA), or as consistent with state or federal law, or to carry out the purposes of [Policy 1-012](#) and associated Regulations.

1. The individuals whose privacy must be so protected include: any individual who has made a report or filed a Formal Complaint, any Party (Complainant or Respondent), any individual who has been reported to be a potential Party (Complainant or Respondent), and any witness, in a matter involving Sexual Misconduct or other type of Discrimination, or Retaliation.
2. The privacy of all Parties involved in a complaint process shall be strictly respected insofar as it does not interfere with the University's legal obligation to investigate allegations of misconduct, to take appropriate action, or as otherwise provided by law.
3. Information about any Supportive Measures provided to the Complainant or Respondent must also be maintained as private to the extent that maintaining privacy does not impair the ability to provide Supportive Measures.

B. **Reporting.** Any person may report incidents of Sexual Misconduct or other type of Discrimination, or Retaliation, whether or not the person reporting is the person alleged to be the victim of conduct that could constitute Sexual Misconduct or other type of Discrimination or Retaliation, and such reporting may be made to the OEO/AA, including the Director, at any time, including non- business hours, using any of these contact methods (in person visit, mail, telephone, email, or online), or by any other means that results in the OEO/AA, including the Director receiving the person's oral or written report:

201 S. Presidents Circle, Room 135

Salt Lake City, UT 84112

801-581-8365

oeo@utah.edu

online report: oeo.utah.edu;

C. **Duty to Notify.** Any Mandatory Reporter (as defined in Part II) who is contacted by an individual with a Sexual Misconduct or other type of Discrimination issue should advise that individual of the availability of the OEO/AA and of the University complaint process. Once informed of a possible incident of prohibited Sexual Misconduct or other type of Discrimination or Retaliation, a Mandatory Reporter must immediately notify the OEO/AA.

1. **Academic Exercises/Assignments.** The University recognizes that students may disclose incidents of Sexual Misconduct or other types of Discrimination or Retaliation in the context of class discussions, academic assignments and/or exercises. Faculty members, academic staff, or other course instructors must report these disclosures to the OEO/AA. A course instructor may, as part of their syllabus, provide students with notice of the instructor's duty to report incidents disclosed.
2. **Confidential Resources.** Employees working in offices identified as Confidential Resources in Rule 1-012B(III)(D)(4) are not considered as "Mandatory Reporters" as defined by this Rule 1-012 and have no duty under this Rule to notify the OEO/AA of allegations of Sexual Misconduct or other types of Discrimination or Retaliation.

D. **General Provisions.**

1. **Equitable Treatment.** The University will treat equitably the Complainant, the Respondent and any witnesses. In a case involving Sexual or Gender-Based Harassment, for example, this means that remedies will be provided to a Complainant when a determination of responsibility for Sexual or Gender- Based Harassment has been made against the Respondent and by following the complaint resolution process before the imposition of any discipline as described in Rule 1-012B.
2. **Standard of Proof.** The University will use the Preponderance of the Evidence standard (as defined in Part II) as the standard of proof to determine responsibility for Sexual Misconduct or other types of Discrimination or Retaliation. For cases involving allegations of Sexual or

Gender-Based Harassment (as defined here), in compliance with Title IX, the University will use the Preponderance standard for determining responsibility for such violations, for any Respondents, including students, staff, and faculty members, notwithstanding any provision to the contrary in any other University Policy, including without limitation Policy 6-011(III)(D) (3)(b)(iii) or equivalent (describing proceedings of the Senate Consolidated Hearing Committee for cases involving faculty).

3. **Supportive Measures.** The University shall make Supportive Measures (as defined in Part II) available to the Complainant and the Respondent, including an opportunity to request modifications necessary for physical and/or emotional safety.
4. **Procedure Advisor/ or Advisor.** The Complainant and the Respondent may each be accompanied at any meetings, interviews, or hearings by a Procedure Advisor of their choice, who may be, but does not need to be, an attorney. In a case involving an employee as a Party, the employee shall not be entitled to have the Procedure Advisor participate in any pre-disciplinary conferences between the employee, their manager, and/or Human Resources personnel.
5. **Support Person.** The Complainant and the Respondent may each be accompanied at any meetings, interviews, or hearings by a Support Person of their choice. This could be a family member, friend, victim-survivor advocate, other similar type of person. In a case involving an employee as a Party, the employee shall not be entitled to have the support person participate in any pre-disciplinary conferences between the employee, their manager, and/or Human Resources personnel.
6. **Notice of Meetings.** The University will provide to the Complainant and the Respondent written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the Party to prepare to participate.
7. **Presumption about Respondent's Responsibility.** The Respondent is presumed not responsible for the alleged violation until a determination regarding responsibility has been made at the end of the complaint resolution process.
8. **Production and Treatment of Evidence.** The OEO/AA is responsible for gathering evidence sufficient to reach a determination of responsibility.

- a. The University will provide the Complainant and the Respondent with an equal opportunity to present witnesses, including fact and expert witnesses, as well as inculpatory and exculpatory evidence.
 - b. All relevant evidence will be objectively evaluated, both inculpatory and exculpatory, without respect to a person's status as a Complainant, Respondent, or witness.
 - c. The University shall not require, allow, rely upon or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
9. **Right to Gather and Produce Evidence.** The University will not restrict the ability of the Complainant or the Respondent to discuss the allegations under investigation or gather and present relevant evidence in a manner consistent with other provisions of [Policy 1-012](#) and its associated Regulations, other University Policies, and state and federal law.
10. **False Statements.** The complainant, the Respondent, and any witness shall not knowingly make any materially false statement or knowingly submit any materially false information during the complaint resolution process. Knowingly proffering a material falsehood during the complaint resolution process is a violation of University [Policy 1-012](#) and its associated Rules and Guidelines, and may result in the individual being subject to discipline. However, a determination regarding the Respondent's responsibility for the underlying alleged Discrimination or Retaliation, alone, is not a sufficient basis to conclude that any individual proffered a material falsehood during the process.
11. **Employee Release Time.** The University will provide reasonable time away from regular work duties during scheduled working hours, with pay, to the Parties, or any witnesses called to testify, for time spent participating in the complaint resolution process.
12. **Deadlines and Timeframes.** The University will endeavor to conclude the complaint resolution process within 150 calendar days of the filing of the Formal Complaint; this includes completion of the OEO/AA investigation within 60 calendar days and then 90 calendar days for any related hearing and appeal.

- a. If an extension is necessary due to efforts to resolve the matter through Informal Resolution (as described below), the complexity of the investigation, the severity or extent of the alleged conduct, school breaks, or other good cause, the University will notify the Complainant and Respondent in writing of the status of the process.
- b. Deadlines and timeframes provided under this Rule or associated Regulations may be extended for good cause with written notice to the Parties of the revised schedule and the reason for the extension.
 - i. Good cause may include, but is not limited to, consideration such as the absence of a Party, a Party's advisor, or witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
 - ii. If good cause does not exist, the requesting Party's request will be denied in writing.

13. **Conflicts of Interest/ Bias.** The University is committed to providing a process for addressing Sexual Misconduct and other types of Discrimination, or Retaliation in a manner that is fair and impartial to the Parties and does not compromise the integrity of the University. A conflict of interest exists when an individual's personal, professional, or financial relationships, including relationships with family or friends, are such that a reasonable person would view the relationship as likely to result in bias, for or against the Complainant or Respondent generally, individually, to an extent sufficient to prevent the individual from rendering impartial service.

- a. Any person designated as a Title IX Coordinator, and any investigator, or decision-maker, including any individual facilitating an Informal Resolution process or serving on a Hearing Committee, shall be free of conflict of interest or other form of bias for or against the Complainant or Respondent generally or individually.
- b. If the OEO/AA Director determines that a conflict exists for OEO/AA staff to conduct an investigation, the OEO/AA, in consultation with the Office of General Counsel, may appoint an Outside Entity to serve as the investigator and conduct the investigation.

All information and reports from an investigation conducted by the Outside Entity as the investigator will be subject to the same

confidentiality and privacy requirements as for an investigation conducted by the OEO/AA. Any report issued by the Outside Entity as investigator will be maintained by the OEO/AA.

c. The decision-maker cannot be the same person as the Investigator or the Title IX Coordinator.

14. **Acceptance of Responsibility by Respondent.** A Respondent may, at any time, elect to resolve the allegations in the Formal Complaint by accepting responsibility for a violation of University Policy, in which case the Director will refer the matter to the appropriate University administrator, who will determine the appropriate sanctions. In cases where the Respondent is a student, the appropriate administrator is a representative from the Office of the Dean of Students; in cases where the Respondent is a staff employee, a representative from the Human Resources department and/or the Respondent's manager; and, in cases where the Respondent is a faculty member or academic staff, a representative from the Office for Faculty and/or the Respondent's department Chair/Dean.

E. **Coordination with Title IX of the Education Amendments Act of 1972 (Title IX).** University [Policy 1-012](#) and its associated Regulations (including this Rule 1-012) are the University's Regulations governing how issues of Sexual Misconduct and other types of Discrimination or Retaliation are addressed by the University.

1. The requirement that Mandatory Reporters report incidents of sexual harassment to the Director under this Rule does not constitute actual knowledge for Title IX purposes unless the information is reported to the Title IX Coordinator or to an official who has authority to institute corrective measures.
2. There may be conduct governed by University Regulations that is not within the scope of Title IX. Incidents of possible Sexual or Gender-Based Harassment that may be covered by University Regulations, although they are not within the scope of Title IX, include but are not limited to:
 - a. Incidents involving a Respondent who is not within the United States;
 - b. Incidents involving conduct that is a type of prohibited Discrimination under University Policy 1-012, but does *not* meet the specific definition in this Rule of Sexual or Gender-Based Harassment (see definition in Section (II)(W)(2)(a) which definition is based on Title IX ; or

c. Incidents involving a Complainant who is not participating in or attempting to participate in a University Program or Activity (at the time the Formal Complaint is filed).

3. In a case involving a Sexual or Gender-Based Harassment incident that is not within the scope of Title IX, the University's obligation is to inform the Complainant and Respondent that the issues are not within the scope of Title IX, and are being addressed under relevant University Regulations.

F. Relationship to Other University Proceedings. All Formal Complaints of conduct constituting Sexual Misconduct or another type of Discrimination, or Retaliation within the scope of [Policy 1-012](#) must be resolved under this Rule (or a combination of proceeding under this Rule and then an SCHC hearing per [Policy 6-011](#)).

1. If an allegation of Sexual Misconduct or another type of Discrimination, or Retaliation is raised in a proceeding under another established University complaint resolution or grievance process, the University representative involved shall immediately notify the OEO/AA and shall refer the Sexual Misconduct or other type of Discrimination, or Retaliation allegation to the OEO/AA.

2. During an OEO/AA investigation, any other related University proceeding shall be stayed, unless the referring University representative (individual or committee) obtains approval from the Director of the OEO/AA to carry on in the other process with specified tasks which are clearly separate and distinguishable from the tasks (and underlying factual matters) expected to be addressed in the OEO/AA investigation or other aspects of resolving the allegation of Sexual Misconduct or other type of Discrimination, or Retaliation.

3. In a case in which an allegation of Sexual Misconduct or other type of Discrimination, or Retaliation is raised in a proceeding that could culminate in a hearing before the Senate Consolidated Hearing Committee (SCHC) (see [Policy 6-011](#), hearing procedures involving a faculty member Party), the OEO/AA Consultant will conduct an investigation, issue a report to the SCHC, and serve in an advisory role to that committee when the SCHC process continues.

G. Administrative Suspension or Administrative Leave. The University may, when appropriate, place a Respondent on administrative suspension or administrative

leave after receiving a report of conduct constituting Sexual Misconduct or other type of Discrimination or Retaliation, subject to the following requirements:

1. Before imposing an administrative suspension against a student Respondent based upon an allegation of Sexual or Gender-Based Harassment within the scope of Title IX, the University must undertake an individual safety and risk analysis determining that an immediate threat to the physical health or safety of any student or other individual, arising from the underlying circumstances of the allegation of Sexual or Gender-Based Harassment justifies removal by such suspension; or
2. In a case in which an administrative suspension is being imposed against a student Respondent based upon an allegation of Sexual or Gender-Based Harassment that is not within the scope of Title IX, the Respondent shall be informed, in writing, that the issues are being addressed under University Regulations and are not governed by Title IX.

H. Filing a Formal Complaint, Initial Review, Acceptance or Dismissal, Appeal of Dismissal, & Consolidation.

1. Filing a Formal Complaint:

- a. A Formal Complaint (as defined in Part II) may be filed with the OEO/AA in person, by mail, or by electronic mail, and may be filed by:
 - i. any individual who believes they have been subjected to Sexual Misconduct, another type of Discrimination, or Retaliation, in violation of [Policy 1-012](#) University Non-discrimination Policy (or [Policies 5-106](#), [5-117](#), [6-400](#) Section II.E, or [6-316](#) Section 4); or
 - ii. the Director or another designated Title IX Coordinator acting on behalf of the University alleging a violation of University Policy. When the Director or another designated Title IX Coordinator signs and files a Formal Complaint on behalf of the University, the Director /or Title IX Coordinator is not a Complainant or otherwise a Party under this Rule, and must comply with the requirements of impartiality under this Rule Section III(D)(13).
- b. by filing a Formal Complaint, the Complainant is authorizing the collection and examination of all records and other documentation relevant to the allegations and discussion with other persons who may have relevant knowledge of the underlying circumstances of the

allegations in the Complaint for the purposes of participating in the investigation, hearing and appeal process.

2. **Timeliness of Complaint.** (a) A Formal Complaint of Sexual or Gender-Based Harassment within the scope of Title IX is timely if at the time of filing a Formal Complaint, the Complainant is participating in or attempting to participate in a University Program. (b) A Formal Complaint alleging any other type of Sexual Misconduct, or other type of Discrimination is timely if filed within 180 calendar days of the last alleged discriminatory act. (c) A Formal Complaint of Retaliation is timely if filed within 180 calendar days of the last alleged act of Retaliation. (d) A Formal Complaint not filed within the appropriate time period per (a)-(c) above will be dismissed as untimely filed. However, at the Director's discretion and for good cause, the Director may accept as if timely filed a Formal Complaint that is not filed within the appropriate period.

3. **Acceptance or Dismissal.** After initial review of a Formal Complaint, the Director shall either accept the Complaint and proceed on to the OEO/AA investigation and other steps in the complaint resolution process, or dismiss the Complaint. Prior to a final result, a Formal Complaint may also be dismissed at any time during the complaint resolution process under the following conditions:

a. The Director *may* dismiss a Formal Complaint for any of the following reasons:

i. The Formal Complaint was not timely filed;

ii. The Formal Complaint fails to state a claim of Discrimination, Sexual Misconduct, and/or Retaliation;

iii. The Complainant has submitted a written request to withdraw the Formal Complaint or any allegations therein;

iv. The Respondent is no longer enrolled as a student, or is no longer an employee; or

v. There are specific circumstances which prevent the OEO/AA from gathering evidence sufficient to reach a decision as to the Formal Complaint or allegations therein.

- b. The Director must dismiss, for Title IX purposes, a Formal Complaint alleging Sexual or Gender-Based Harassment (and must inform the Respondent in writing that it is being dismissed for Title IX purposes) if:
- i. the Respondent is not a person in the United States;
 - ii. the allegations are of conduct that does not meet the definition of Sexual or Gender-Based Harassment pursuant to this Rule 1-012(II)(Y)(2)(a) (as being severe, pervasive, and objectively offensive such that it effectively denies a person equal access to the University's education Program or Activity); or
 - iii. the Complainant is not participating in or attempting to participate in a University Program or Activity at the time a Formal Complaint is filed; or
 - iv. any other reason that requires dismissal and notification that the Formal Complaint is not within the scope of Title IX.
- c. In cases alleging Sexual Misconduct, if the Formal Complaint is being dismissed for Title IX purposes, if applicable, but being accepted under other provisions of [Policy 1-012](#) and associated Regulations, then the Director must notify the Complainant and the Respondent, with notice as to which provisions the complaint is being accepted.
- d. In Sexual Misconduct cases, if applicable, the Director shall promptly send written notice of the dismissal and reason(s) simultaneously to the Complainant and the Respondent., In cases alleging only another type of Discrimination, or Retaliation, the Director shall send prompt written notice of the dismissal only to the Complainant. The written notice of dismissal shall describe the procedures and permissible bases for appeal.

4. Appeal of Dismissal of Formal Complaint.

- a. Either Party may appeal the OEO/AA Director's dismissal of a Formal Complaint, by submitting the appeal in writing, within five calendar days from the date of the dismissal.

In all other cases the appeal shall be submitted to the Chief Human Resource Officer or their designee.

- b. The appealing Party must articulate the applicable bases for their appeal, which must include at least one of the following:
 - i. A procedural irregularity affected the dismissal of the Formal Complaint;
 - ii. New evidence is now available that was not reasonably available at the time the determination to dismiss was made, and could affect the outcome of the matter;
 - iii. The Title IX Coordinator, or an investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent, that affected the outcome of the matter; or
 - iv. The decision to dismiss the Formal Complaint was arbitrary and capricious.
- c. If an appeal is filed, the Chief Human Resource Officer or designee shall:
 - i. inform both Parties that an appeal has been filed and implement appeal procedures equally for both Parties;
 - ii. give both Parties five (5) calendar days to submit a written statement in support of, or challenging, the outcome;
 - iii. issue a written decision describing the result of the appeal and the rationale for the result; and
 - iv. provide the written decision simultaneously to both Parties.

If the written decision concurs with the Director or designee's decision to dismiss, the decision made on this appeal is the University's final decision.

5. **Consolidation of Formal Complaints.** A Formal Complaint may be consolidated for investigation when there are allegations:

- a. against more than one Respondent;
- b. by more than one Complainant against one or more Respondents;
- c. by one Party against the other Party; or

d. when allegations arise out of the same facts or circumstances.

I. **Investigation by OEO/AA.** If a Formal Complaint is not dismissed, the Director will accept it and the OEO/AA will begin an investigation. The remainder of the complaint resolution process will proceed either (a) pursuant to [Rule 1-012A](#) if the complaint does not involve any allegation of Sexual Misconduct, or (b) pursuant to [Rule 1-012B](#) if the complaint involves an allegation of Sexual Misconduct.

J. **Informal Resolution.** Informal Resolution is a voluntary process that does not involve a full investigation and/or hearing and is only available after a Formal Complaint has been filed. Informal Resolution may be appropriate in some cases and the University has the discretion to determine whether the nature of the alleged conduct is appropriate for Informal Resolution. Informal Resolution may not be available where the OEO/AA Director has determined that certain risk factors are present and is not available when an employee is alleged to have engaged in Sexual or Gender-Based Harassment against a student.

1. If Informal Resolution is deemed appropriate, Informal Resolution may be offered provided that the parties are given written notice disclosing the following:

- a. the allegations;
- b. that any Party has the right to withdraw from the Informal Resolution process at any time prior to agreeing to a resolution and resume an investigation based upon the Formal Complaint;
- c. the Director may decline the request for Informal Resolution in any particular case and may terminate an ongoing Informal Resolution process at any time;
- d. any mutually agreed-upon resolution reached by the Parties through Informal Resolution (i) will be subject to approval by the Director and (ii) will resolve the Formal Complaint and preclude the Parties from resuming an investigation based upon the same circumstances as the allegations in the Formal Complaint, unless the Parties have agreed to resolve only some but not all specific allegations in the Formal Complaint. In that case an investigation may be resumed into the allegations that have not been resolved;
- e. if the Informal Resolution fails for any reason, any information shared by the Parties during the Informal Resolution process will remain

confidential within the Informal Resolution process. However, any information and/or evidence raised during the Informal Resolution process may be independently introduced as part of an investigation;

- f. if a Respondent fails to comply with the terms of the Informal Resolution, then the Director may resume proceedings for the Formal Complaint, including completing an OEO/AA investigation, under [Policy 1-012](#) and its associated Regulations;
- g. during the Informal Resolution process, each Party has the right to choose and consult with a Procedure Advisor (who may but need not be an attorney). The Procedure Advisor may accompany and provide support and advise to the Party during any meetings for the Informal Resolution process, but may not speak on behalf of the Party or otherwise participate in, or in any manner disrupt such meetings and/or proceedings;
- h. Each Party has the right to a Support Person of their choice, to accompany the Party during any meetings. The Support Person may not speak on behalf of the Party or otherwise participate in, or in any manner disrupt such meetings and/or proceedings.

2. In order for the OEO/AA to initiate the Informal Resolution process, the Parties must provide their voluntary, written authorization or the Informal Resolution process;
3. Informal Resolution may include Mediation, Restorative Justice, and other similar forms of facilitated resolution models.
4. The OEO/AA may facilitate the Informal Resolution or may identify and suggest the use of third parties to facilitate an Informal Resolution.
5. Informal Resolution agreements may involve a host of interventions and remedies, such as actions designed to maximize the Complainant's access to educational, extracurricular, and/or University employment activities; increased monitoring, supervision, and/or security at locations or activities where the Sexual Misconduct or other type of Discrimination, or Retaliation occurred or is likely to reoccur; targeted or broad-based educational programming or training for relevant individuals or groups; academic modifications and/or University housing modifications for student Complainants; workplace modifications for employee Complainants; one or more of the restorative remedies or other sanctions described in this Rule;

and/or any other remedial, protective or Supportive Measures that can be tailored to achieve the goals of the University's Non- discrimination Policy.

6. The OEO/AA will endeavor to complete any Informal Resolution process within 30 calendar days of the Director's acceptance of the Formal Complaint.
7. The University may not require, as a condition of enrollment or continuing enrollment or employment or continuing employment, or enjoyment of any other right, any Party's waiver of their right to an investigation and adjudication, for allegations of Sexual or Gender-Based Harassment made in a Formal Complaint.

K. **First Amendment and Due Process.** Nothing in the interpretation of this Rule shall restrict any rights that would otherwise be protected by the First Amendment of the U.S. Constitution nor deprive a person of any rights that would otherwise be protected under the Due Process clauses of the Fifth and Fourteenth amendments of the U.S. Constitution or restrict other rights guaranteed by the Utah or U.S. Constitution.

[Note: Parts IV-VII of this Regulation (and all other University Regulations) are Regulations Resource Information – the contents of which are not approved by the Academic Senate or Board of Trustees, and are to be updated from time to time as determined appropriate by the cognizant Policy Officer and the Institutional Policy Committee, as per [Policy 1-001](#) and [Rule 1-001](#).]

IV. Rules, Procedures, Guidelines, Forms, and other related resources

A. Rules

[Rule 1-012A](#)

[Rule 1-012B](#)

B. Procedures

C. Guidelines

[Guideline 1-012A](#)

D. Forms

[reserved]

E. Other related resource materials

[reserved]

V. References

20 U.S.C. § 1092(f)

20 U.S.C. § 1681 *et seq.*

29 U.S.C. § 794 *et seq.* 42 U.S.C. § 2000d *et seq.* 42 U.S.C. § 2000e *et seq.* 42 U.S.C. § 6101 *et seq.*

42 U.S.C. § 12112

42 U.S.C. § 12132

42 U.S.C. § 18116

34 C.F.R. § 668.46 Institutional Security Policies and Crime Statistics

Utah Code Ann. § 76-5-106.5 Stalking—Definitions—Injunction—Penalties

Utah Code Ann. § 76-5-402 to -405 Sexual Offenses

Utah Code Ann. § 76-5-406 Sexual offense against the victim without consent of victim—Circumstances

Utah Code Ann. § 76-5b Sexual Exploitation Act

Utah Code Ann. § 76-9-702.7 Voyeurism offenses—Penalties

Utah Code Ann. § 77-36-1 Definitions

Utah Code Ann. § 78B-7-402 Definitions

Board of Regents Policy No. R256: Student Disciplinary Processes

Utah Board of Higher Education (formerly Board of Regents) [Policy No. R831: Minimum Requirements for Non-Faculty Staff Employment Grievances Policy](#)

Utah Board of Higher Education (formerly Board of Regents) [Policy No. R841: Minimum Requirements for Disciplinary Sanctions and Termination of Staff Personnel](#)

[Policy 1-004](#): Violence in the Workplace and Academic Environment Policy 1-011: Campus Security

[Rule 1-012A](#): Discrimination Complaint Process Rule

[Rule 1-012B](#): Sexual Misconduct Complaint Process Rule

[Policy 1-020](#): Required Professional Boundaries in Relationships

[Policy 5-106](#): Equal Opportunity and Non-discrimination Employment

[Policy 5-117](#): Americans with Disabilities Act (ADA) Policy

[Policy 5-203](#): Staff Employee Grievances

[Policy 6-011](#): Senate Consolidated Hearing Committee

[Policy 6-316](#): Code of Faculty Rights and Responsibilities

[Policy 6-400](#): Code of Student Rights and Responsibilities

VI. Contacts:

The designated contact officials for this Rule are:

- A. Policy Owner (primary contact person for questions and advice): [Office of Equal Opportunity and Affirmative Action](#)
- B. Policy Officer: [Vice President and General Counsel](#)

These officials are designated by the University President or delegee, with assistance of the Institutional Policy Committee, to have the following roles and authority, as provided in University [Rule 1-001](#):

"A "Policy Officer" will be assigned by the President for each University Policy, and will typically be someone at the executive level of the University (i.e., the President and his/her Cabinet Officers). The assigned Policy Officer is authorized to allow exceptions to the Policy in appropriate cases. "

"The Policy Officer will identify an "Owner" for each Policy. The Policy Owner is an expert on the Policy topic who may respond to questions about, and provide interpretation of the Policy; and will typically be someone reporting to an executive level position (as defined above), but may be any other person to whom the President or a Vice President has delegated such authority for a specified area of University operations. The Owner has primary responsibility for maintaining the relevant portions of the Regulations Library. [and] bears the responsibility for determining which reference materials are helpful in understanding the meaning and requirements of particular Policies." University Rule 1-001-III-B & E

VII. History:

Renumbering: Not Applicable.

Revision History:

A. **Current version**-- This Interim Rule Revision 1 was put into effect on August 13, 2020, by University President Ruth Watkins, after consultation with the Academic Senate Executive Committee July 13, 2020, and presentation to and approval of the Executive Committee of the Board of Trustees August 17, 2020. It was subsequently presented for the Information and Recommendations of the Academic Senate, August 31, 2020. It was enacted as an Interim revision (in accord with [Policy 1-001](#)) in order to comply with recently changed federal regulations. It will remain in effect until a permanent version is adopted, which is anticipated to occur by August 14, 2022 after review by appropriate internal University groups.

Editorial revisions to current version: None

[Legislative history of Interim Revision 1](#)

B. Earlier Versions.

[Revision 0](#). Approved by the Academic Senate: January 9, 2017. Approved by the Board of Trustees: February 14, 2017, with the designated effective date of February 14, 2017.

[Legislative history of Revision 0](#).



[\[Interim\] Rule 1-012.R1](#)

Date: August 14, 2020

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- *as of 09/15/08

Past Versions

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