

## **POLICY #5.27**

**SUBJECT:** Non-Discrimination / Anti-Harassment

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### **I. PURPOSE**

The purpose of this Policy is to provide Southern Utah University's standards prohibiting discrimination and retaliation for protected activity, as well as the process for reviewing and resolving discrimination complaints. This Policy is one part of the University's broader approach to equity in its program, activities, and operations. The University endeavors to be a welcoming place to all persons and prohibits contrary conduct that violates this Policy.

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### **II. REFERENCES**

- A. The *Age Discrimination in Employment Act* of 1967
  - B. The *Americans with Disabilities Act* of 1990 and amended in 2008
  - C. *Genetic Information Nondiscrimination Act* of 2008
  - D. Sections 503 and 504 of the *Rehabilitation Act* of 1973
  - E. Southern Utah University [Policy 6.28 Faculty Professional Responsibility](#)
  - F. Southern Utah University [Policy 11.2 Student Conduct Code](#)
  - G. *State of Utah Anti-Discrimination Act*
  - H. Utah Code [§ 53B-27-101 et seq. Utah Campus Individual Rights Act](#)
  - I. Title IX of the *Educational Amendments* of 1972 [See specifically 34 C.F.R. §§ 106.8(b) and (c)]
  - J. Titles VI and VII of the *Civil Rights Act* of 1964
  - K. Veterans' Preference UCA 71-10-1, et seq.
  - L. Vietnam Era *Veterans' Readjustment Assistance Act* of 1974
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### **III. DEFINITIONS**

- A. **Academic Discourse/Activity:** The expression of views, ideas, concepts, theories, principles, and/or curricular content that occur in fulfillment or pursuit of an academic goal and/or germane to an academic goal such as teaching relevant content for a course, conducting research, etc. To be within the Academic Context, the expression must be related to the educational topic, course, laboratory, experiential education activity, research, publication, or assignment, among other types of academic activities. Expression within administrative or staff work/employment, housing, non-academic extracurricular activities, among other contexts, are generally outside the academic context and not considered Academic Discourse/Activity.

- B. **Adverse Action:** An act or omission that causes a materially adverse impact on the terms, conditions, and privileges of students, faculty, and staff, violates this policy when it is based on a Protected Category or in retaliation for engaging in a protected activity. Adverse actions are not limited to denial of access to programs, services, activities, or positions and do not require the loss of money. Adverse action may take the form of any overt or covert act of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment. (Adapted from DSU Policy 164)
- C. **Advisor:** Any individual who provides the Complainant or Respondent support, guidance, or advice and may accompany the Complainant or the Respondent to any meeting, such as an investigation interview. The Complainant and the Respondent may choose their advisor, who may be, but is not required to be, an attorney. The University will not limit the choice or presence of the advisor for either the Complainant or Respondent in any meeting or grievance proceeding; however, the University may establish restrictions regarding the extent to which the advisor may participate in a meeting, interview, or hearing.
- D. **Appeal Administrator:** The direct supervisor of the Deciding Administrator. Where the President is the Deciding Administrator, there is no appeal available and no Appeal Administrator.
- E. **Clearly Erroneous:** A standard of review that means plainly in error, i.e., based on the relevant information, the decision-maker is left with the definite and firm conviction that a material mistake has been committed. In applying this standard, credibility determinations are not reviewed. If an error is harmless (i.e., it would not have changed the outcome) it also is set aside and not Clearly Erroneous.
- F. **Complainant:** The person alleged to have been subjected to Prohibited Conduct. In some cases, the Complainant is also the reporting party.
- G. **Complaint:** A communication received by the Office of Equal Opportunity and Clery Compliance (EOC) that describes an incident of alleged discrimination or harassment and explicitly requests intervention or resolution by University officials. A Complaint is different from a report because it includes the request for redress. As such, a person must have been materially impacted by a discriminatory act, omission, or practice to initiate a complaint. The University defines complaint in this way to respect the agency and autonomy of individuals impacted by acts, omissions, or practices they experience as harmful.
- H. **Confidential/Confidentiality:** Restricting information to persons with a need to know. Confidentiality is not the same as anonymity, where an individual is not named or personally identified. The University treats Complaints and the Review Process as Confidential. The University will instruct employees and students about the requirement not to disclose confidential information.
- I. **Conflict of Interest:** Any circumstance in which an individual's financial, professional, or other personal considerations may directly or indirectly affect, or reasonably appear to affect, an individual's professional judgment in exercising any University duty or responsibility. Independent knowledge of an incident through other means generally is not a conflict of

interest. All University employees must comply with the Utah Public Officers' and Employees' Ethics Act, Utah Code § 67-16-1 *et seq.*

- J. **Consent:** See Southern Utah University [Policy 5.60 Sexual Misconduct](#).
- K. **Day(s):** Dates and times when the University conducts its regular business. Most often that is Monday thru Friday between the hours of 8:00 AM and 5:00 PM Mountain Daylight/Standard Time. Days and times when the University is closed for breaks between academic terms, federal and state holidays, or for emergency declarations by Government officials, are not counted in the timelines established by this policy. University officials participating in the Review Process established by this policy do not count the day official correspondence/notice is sent/transmitted. Rather, the first day of the relevant time interval is the day immediately after correspondence/notice/decision is sent. The last day of a relevant time interval will conclude at 5 PM.
- L. **Deciding Administrator:** The person with authority to implement sanctions and remedial measures. For employee Respondents, the Deciding Administrator is typically the employee's supervisor. For student Respondents, the Deciding Administrator is typically the Dean of Students. For other Respondents, the Deciding Administrator is typically the University administrator with authority over the context/space in which the conduct reportedly occurred.
- M. **Discrimination:**
  - 1. **Adverse Treatment:** Any unlawful distinction, preference, or unfair treatment of an individual or group of identifiable individuals based on their Protected Status or perceived Protected Status that is sufficiently serious to unreasonably interfere with or limit without a valid business or academic reason.
  - 2. **Disparate Impact:** Discriminatory conduct, policies, or other standards include facially neutral conduct that has the unjustifiable effect of disproportionately impacting individuals based on their Protected Status, without a legitimate business or academic purpose.
  - 3. **Failure to Accommodate:** Failing to provide reasonable accommodation to a Qualified Individual, consistent with state and federal law, to qualified individuals based on disability and/or religion.
  - 4. **Harassment:** A type of discrimination. Specific definitions for Harassment and Sexual Harassment are included below.
- N. **Education Program or Activity:** Locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the prohibited discrimination occurs.
- O. **EOC Representative:** The EOC Director, an employee reporting to the EOC Director, or other employee as designated by the President or Vice President of Administration and Finance, who is responsible for reviewing reports under this Policy and participating as a member of the Review Team. The EOC Representative is the principal member of the Review Team for purposes of interviewing witnesses, gathering facts, and preparing the report.

P. **Harassment:** The definition of this type of Discrimination depends on the setting and the parties involved, as follows:

1. **Quid Pro Quo Harassment:** A University Employee, Student, or Visitor in a position of power/authority conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.
2. **Hostile Environment Harassment by an Employee:** When a person is subject to unwelcome conduct on the basis of a Protected Category (or, for sexual Harassment, conduct of a sexual nature) where:
  - a. Enduring the offensive conduct becomes a condition of continued employment or participation in a University program or activity; OR
  - b. Due to the pervasiveness and/or severity (see below) of the conduct, a term, condition, or privilege of the Complainant's employment or other participation in University programs and activities was altered and created a hostile working or other University environment.
  - c. Whether conduct is sufficiently severe and/or pervasive to constitute Hostile Environment Harassment, the conduct is evaluated under the totality of the circumstances, including:
    - i. the frequency of the conduct;
    - ii. whether there is physical touching conduct;
    - iii. whether it was objectively offensive;
    - iv. whether it is physically threatening or humiliating, or
    - v. merely an offensive utterance.
    - vi. Repeated incidents, even where each would not, on its own, constitute Hostile Environment Harassment, may collectively constitute Hostile Environment Harassment. But petty slights, annoyances, and isolated incidents (unless severe) do not constitute Hostile Environment Harassment.
    - vii. These factors are evaluated from both subjective and objective viewpoints, considering not only the effect that conduct actually had on the person (subjective), but also the impact it would likely have had on a reasonable person in the same situation (objective). The conduct must subjectively and objectively meet the definition to constitute Hostile Environment Harassment.
3. **Hostile Environment/Discriminatory Harassment by Students or Visitors.** Conduct by a student directed towards another student that:
  - a. is unwelcome;

- b. on the basis of a Protected Category; and
  - c. is sufficiently serious to deny or limit ability to participate in, benefit from, or have access to University benefits, programs, or activities.
  - d. If the alleged discrimination or harassment arises solely from student on student speech, the University may take disciplinary action when the speech: (1) is unwelcome; (2) discriminates on the basis of a classification protected under federal or state law; and (3) is so severe, pervasive, and objectively offensive, and that so undermines and distracts from a student's educational experience, that the student is effectively denied access to the University's resources and opportunities.
4. Claims of Hostile Environment Harassment arising out of Academic Discourse. Notwithstanding the foregoing, speech or expression that occurs within Academic Discourse will be presumptively not in violation of this Policy unless the speech or expression is unrelated to any educational purpose of the academic activity or exercise and meets the appropriate definition for Hostile Environment Harassment set out above.
- Q. **In Violation:** More likely than not that a Respondent has committed one or more acts of conduct prohibited by this Policy. In other words, a preponderance of the evidence standard must be used to determine that there was prohibited conduct.
- R. **Not in Violation:** More likely than not that a Respondent did not commit one or more acts of conduct prohibited by this Policy.
- S. **Office of Equal Opportunity and Clery Compliance (EOC):** The University office charged with implementing this Policy. The office name may be amended from time to time.
- T. **Panel Chair:** See Southern Utah University [Policy 11.2 Student Conduct Code](#).
- U. **Panel Hearing:** See Southern Utah University [Policy 11.2 Student Conduct Code](#).
- V. **Party:** A Complainant or Respondent.
- W. **Policy:** This Policy, Southern Utah University [Policy 5.27 Non-Discrimination / Anti-Harassment](#).
- X. **Preponderance of the Evidence:** A standard that when weighing all relevant evidence and reasonable inferences from that evidence, the greater weight of information indicates that it is more likely than not that the Respondent violated the Policy. When weighing the evidence, not all evidence receives equal weight. That depends on credibility, trustworthiness, substantiation, reliability and probative value of the specific information.
- Y. **Pretext:** A proffered non-discriminatory reason or explanation for alleged prohibited conduct that is inauthentic or lacks plausibility based on the totality of the available evidence. Non-discriminatory reasons or explanations offered in good faith, though mistaken, are less likely to be deemed pretextual after an objective evaluation of all reasons and explanations has occurred.
- Z. **Prohibited Conduct:** Discrimination, Harassment, and Retaliation.

AA. **Protected Activity:** Opposition to conduct prohibited under this Policy, filing a complaint, testifying, assisting or participating in any manner in the Review Process. This includes but is not limited to action taken against a bystander who intervened to stop or attempt to stop discrimination, harassment, sexual harassment, sexual misconduct, domestic violence, dating violence, stalking or retaliation.

1. FMLA Protected Activity: Any opposition to conduct protected under FMLA, filing a related complaint, testifying, assisting or participating in any manner with processes related to a person exercising rights under FMLA is also Protected Activity.

Notwithstanding anything to the contrary in this Policy, the Review Process set forth in this Policy will be used to review reports of Retaliation for FMLA Protected Activity.

BB. **Protected Status:** Race, religion, national origin, color, sex (gender), age, disability, marital, pregnancy or pregnancy related conditions, childbirth, veteran, sexual orientation, sexual identity, and/or other legally protected status, unless otherwise required by law.

CC. **Qualified Individual:** An individual who, with or without reasonable accommodation, can (1) perform the essential functions of an employment position that such individual holds or desires or (2) meet the academic and technical standards required for admission and/or participation in a particular academic program or activity. Students at the University must be able to provide for their own personal care and hygiene (or with assistance from a personal aid/attendant paid for by the student) and adhere to rules of personal conduct applied to all students (see SUU Policy 11.2). To the extent students cannot meet academic and technical standards with reasonable accommodation or auxiliary aids, they may not be otherwise qualified to participate in the University's academic programs and activities.

DD. **Reasonable Accommodation:** Any change to a job, policy or practice, the work environment, or the way things are usually done that allows a Qualified Individual to apply for a job, perform essential job functions, or enjoy equal access to benefits available to other individuals in the workplace, classroom, or University generally. An accommodation may not be reasonable if it causes an undue hardship for the University, or if accommodating the individual creates a direct threat to the health and safety of others. A reasonable accommodation may be justified based on disability, religious observance or practice, and/or pregnancy. The University will work with Qualified Individuals, but an individual's preferred accommodation is not always the reasonable accommodation provided.

EE. **Remedies:** Resources, assistance, and any other tangible measure designed to return a Complainant to the same position they would have been in if Discrimination, Harassment, or Retaliation had never occurred and to stop the same from reoccurring. Remedies under this Policy may apply only in cases where a Violation is found, so the Review Team and Deciding Administrator should reserve conclusions about remedies until after a Violation finding, if any.

FF. **Report:** Communication to the EOC that describes an incident of alleged discrimination or discriminatory conduct, and is shared for the purpose of bringing attention to a concern. A report need not be shared by a Complainant or an impacted individual. A Report does not constitute a Complaint, but may be acted on by the University in those situations where there is an immediate concern for the health and safety of those identified in the Report.

GG. **Respondent:** The person reported to have engaged in Prohibited Conduct.

HH. **Retaliation:** Any overt or covert act of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment, against any person or group for engaging in Protected Activity. To be retaliation, there has to be a causal connection between the conduct/adverse action and the Protected Activity. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from engaging in Protected Activity.

1. Retaliation for FMLA Protected Activity. See above under "Protected Activity."

II. **Review Process:** The procedural steps by the EOC and others named in this Policy to review a Report of Prohibited Conduct.

JJ. **Review Team:** An EOC Representative and a University administrator (designated by the EOC, in accordance with the standards set out immediately below) who review reports under this Policy as explained further below. During the Review Process, the Team Member participates with the EOC Representative during interviews, reviews evidence gathered by the EOC Representative, and reviews and provides input on the reports drafted by the Investigator.

1. In cases where Respondent is a University employee, the University administrator serving on the Review Team is usually a representative from Human Resources (staff), Provost's Office/Academic Affairs (faculty) and/or the Respondent's direct supervisor, as determined by the Director or EOC designee based on the reported circumstances. The direct supervisor may also serve as the Deciding Administrator.
2. In cases involving a student or graduate student as Respondent, the Review Team member will be a Director in Student Affairs or Assistant Dean of Students.
3. In cases involving an employee Respondent but a student or graduate student as a Complainant, a representative of the Office of Student Affairs may be an additional member of the Review Team, if requested by the Director or EOC designee.
4. In cases where the Respondent is a vendor, guest, or other visitor, the University administrator with authority over the applicable area or department where the conduct occurred will usually serve as the other member of the Review Team, along with the EOC Representative.
5. If a Respondent meets more than one of these (such as a student and employee), the Director will determine the member of the Review Team based on the primary context(s) of the reported Prohibited Conduct.

KK. **Sanctions:** Disciplinary action imposed by the Deciding Administrator on a Respondent found to be In Violation of this policy.

LL. **Sexual Misconduct Policy:** See Southern Utah University [Policy 5.60 Sexual Misconduct](#).

MM. **Subordinate Employee:** See Southern Utah University [Policy 5.63 Restrictions on Faculty/Staff Relationships with Subordinate Employees and Students](#).

NN. **Subordinate Students:** See Southern Utah University [Policy 5.63 Restrictions on Faculty/Staff Relationships with Subordinate Employees and Students](#).

OO. **Supportive Measures:** See Southern Utah University [Policy 5.60 Sexual Misconduct](#).

PP. **Student:** Individuals who have paid the enrollment deposit to attend the University or are enrolled in courses offered by the University.

QQ. **Team Member:** A person participating on the Review Team.

RR. **Undue Hardship:** A significant difficulty or expense and focuses on the resources and circumstances of the particular employer in relation to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the employer. The determination for what constitutes an undue hardship is different for disability and religious observance.

SS. **Witness:** Any person other than the Complainant or Respondent that has or may have relevant information about a matter under the Review Process.

TT. **Violation:** A finding that a person has engaged in Prohibited Conduct.

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#### IV. POLICY

##### A. Scope of Policy

1. Who does this Policy Apply To. This Policy applies to all employees, students, contractors, and visitors of the University and any other persons participating, or attempting to participate, in any University Program or Activity.
2. When and Where does Prohibited Conduct fall under this Policy ("Jurisdiction"). This Policy covers conduct that occurs on University property, in University-sponsored programs regardless of location, in the context of University employment, and conduct regardless of location when it is directly related to (e.g., part of the same sequence of events) conduct that falls under one of the other categories listed in this paragraph. Additionally, this Policy applies to employees regardless of location when the reported Prohibited Conduct is directed by a University employee-Respondent towards a Subordinate Employee or Subordinate Student or such other employee or student whom the Respondent has the ability to affect salary, benefits, and/or working conditions.
  - a. An employee is acting within the context of University employment when performing work assigned by the employer or engaging in a course of conduct subject to the employer's control. An employee's act is not within the scope of employment when it occurs within an independent course of conduct not intended by the employee to serve any purpose of the University.
  - b. Notwithstanding the foregoing, for Student Respondents, the "Jurisdiction" set out in SUU [Policy 11.2](#) (see Scope of Policy and Definitions section) applies.



- c. Even if conduct falls outside this Policy, resources and support may still be available to a Complainant.
  3. Sexual Misconduct under Southern Utah University [Policy 5.60](#) is separate. Reported conduct that meets the definition of Prohibited Conduct under the Sexual Misconduct Policy and that results in a Formal Complaint, as defined in that Policy, will be initially evaluated under that Policy. Facts established under that Policy may also be used to process a matter under this Policy if reported Prohibited Conduct warrants that review, which is decided by the Director based on both SUU [Policy 5.60](#) and this Policy.
  4. Not a Civility Code. This Policy is not a general civility policy and therefore, does not determine whether someone's conduct is good or bad. For example, if this Policy does not apply that does not mean the University supports or condones the reported conduct. Other policies and procedures may apply to misconduct or conduct prohibitions not covered by this Policy, and the EOC may provide explanations and resources related to those other policies, procedures, and practices.
  5. This Policy shall be the exclusive means for the University to review whether alleged conduct constitutes Discrimination, Harassment, and/or Retaliation. The findings and conclusions reached under this Policy will be conclusive as to the alleged Discrimination, Harassment, and/or Retaliation-related finding, and may be relied upon as necessary under the other policies or processes when processing the separate but related misconduct allegations. The President, Vice President for Student Affairs, Provost or Director may exercise discretion to pause, delay, or stay processes and/or deadlines under other potentially applicable policies until completion of the Review Process under this Policy.
- B. Prohibited Conduct. A person subject to this Policy who engages in Discrimination or Retaliation within the above-identified Scope is in Violation of this Policy.
1. The University prohibits Discrimination (in its various forms, including but not limited to Harassment) on the basis of Protected Status.
  2. The University prohibits Retaliation for engaging in Protected Activity.
  3. Conduct that constitutes a protected exercise of an individual's rights under the First Amendment to the United States Constitution (and related principles of academic freedom) is not a violation of this Policy.
- C. Reporting. Reporting and participation by members of the University community helps the University respond appropriately and review matters. Prompt reporting allows the University to do this when information is freshest in witnesses' memories and other evidence is most likely available. Persons required to report must promptly (as soon as practicable) report Prohibited Conduct to the EOC. Persons encouraged to report are strongly encouraged to report promptly but a specific deadline does not apply.
1. Who must report and when. SUU employees who are managers and/or supervisors must promptly report any alleged Discrimination, Harassment, or Retaliation that they

observe, learn about, or reasonably suspect has occurred. Supervisors must report only if the conduct occurs in the area over which they supervise, such as professors supervising a classroom. Administrators must report alleged Discrimination, Harassment, and Retaliation regardless of the context of the conduct, so long as the conduct is within the Jurisdiction set out in this Policy. The reporting obligation applies even if the allegations are about the conduct, decisions, or the like of the employee who is required to report.

2. Who is encouraged to report. The University encourages all members of the campus community to promptly report Discrimination, Harassment, and Retaliation. Complainants are encouraged to expressly inform the harasser (or person engaging in other Prohibited Conduct) directly that the conduct is unwelcome and must stop. Complainants should also report Prohibited Conduct to the EOC at an early stage to prevent its escalation.
  3. Where to make a report at the University. Persons making a report are encouraged to report directly to the EOC for the most efficient review of the report. Employees may also report to the Office of Human Resources or their Supervisor (or their Supervisor's Supervisor). Students may also report to the Office of Student Affairs. All reports made under this Policy must be referred to the EOC for review and action, as necessary for policy.
  4. How to make a report at the University. Reports may be made to the EOC by phone at (435) 586-5419, by email at [eoc@suu.edu](mailto:eoc@suu.edu), by completing an online form available at <https://www.suu.edu/safety/report.html>, or by filing a complaint directly with the Director of the EOC at Bennion Administration Building, Room 212 B.
  5. What to report to the University. Persons making a report under this Policy should report all known details and facts related to alleged Discrimination, Harassment, and/or Retaliation. It is important to provide facts (who, what, when, where) and not only the conclusory statements. Doing so helps the efficiency of the Review Process. Likewise, if a person is unsure whether conduct is actually Prohibited Conduct under this Policy, then persons acting on behalf of the University may consult with the Office of Legal Affairs or any community member may consult with the EOC Director with any questions. While not always required, it is generally better to err on the side of making a report and seeking guidance.
- D. Participating in the Process. Participation in the processes under this Policy are required for employees and expected of all students. The purpose of this Policy is to review matters and prevent the recurrence of discrimination, harassment, and retaliation. The University can best accomplish this with full participation and disclosure of all relevant facts. If a Complainant or Respondent declines or limits their participation, the University will determine next steps in the review of the report based on available information.
- E. General Principles for Review Process
1. The EOC and other decision-makers under this Policy:

- a. treat all persons involved in a Report with equity and respect. The same is expected of all persons involved in a Review Process.
  - b. objectively review all available and relevant evidence (both inculpatory and exculpatory). When making a credibility determination, the decision-maker does so without regard to a person's role in the Review Process.
  - c. presume the respondent(s) is not responsible for the alleged conduct unless and until a determination that the Respondent violated this Policy is made at the end of the Review Process.
2. Parties must not delete, destroy, or otherwise alter any relevant information or material until the conclusion of the Review Process.
3. The applicable University decision-maker at a given stage of the Review Process may extend deadlines and timeframes in this Policy for good cause with written notice to the parties that includes the reasons for the extension. Good cause may include considerations such as the absence of a party, a party's advisor (generally only one extension available), or witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
  - a. A Respondent or witness may submit a request for a temporary delay to the Director of the EOC. Any request for temporary delay or limited extension should include a good cause statement and the reason(s) for the request. If no good cause exists, the Director of the EOC will deny the request in writing.
  - b. The University may proceed with the review and hearing processes in a timely fashion without a Respondent, Reporter, Complainant or other Witness if the person declines to participate.
  - c. The University may set reasonable deadlines and move forward with processes regardless of whether a Respondent's Advisor is able to accommodate those deadlines; generally, only one (1) request for time extension will be granted related to a Respondent's Advisor.
4. Any person designated as a decision maker or investigator shall be free of conflict of interest or bias for or against complainants or respondents generally or individually. Any challenge based on a conflict of interest must have a factual basis and not be mere speculation or disagreement. Independent knowledge of an incident through other means generally is not a conflict of interest.
5. Respondents, complainants, and witnesses shall not knowingly make materially false statements or knowingly submit materially false information. However, the determination that a violation of this policy occurred or did not occur alone are not sufficient to conclude that any individual made false statements or provided false information.
6. Complainants, respondents, and other parties in a grievance process under this Policy may request accommodations necessary under the Americans with Disabilities Act (ADA)

through the EOC Director, who will refer the request to the appropriate ADA coordinator and then implement approved accommodations.

F. Process for Reviewing Reports

1. Preliminary Review by EOC. Upon receiving a report of conduct allegedly or potentially prohibited under this Policy, the EOC will:

- a. The EOC promptly reviews the report. The EOC analyzes and evaluates the reported conduct to determine if, under the reported facts, a violation of this Policy or SUU [Policy 5.60](#) is alleged (see SUU Policy 5.60 for alleged violations of that policy). Within the discretion of the EOC, the EOC may also discuss the Report with Reporter and/or Complainant, and review any documents or records provided as part of the report or readily accessible to the EOC, and consider this information in making the determination.

During the preliminary review the EOC may offer supportive measures to the Complainant and determine the extent to which the Complainant is willing to submit a Complaint and participate in an investigation. A Complaint is not required for the University to act on reports of prohibited conduct. However, the University prefers to have a Complaint from a Complainant to initiate investigations.

The EOC does not contact the Respondent during the Preliminary Review.

- b. Consolidating Reports. The University may consolidate related reports for the purposes of review. Reports may be “related” if they arise out of the same circumstance(s), substantially similar circumstance(s), and/or include the same party/parties.
- c. Concluding the Review Process after Preliminary Review. The EOC may conclude the Review Process after the Preliminary Review if the conduct alleged (1) would not constitute Prohibited Conduct, even if proved; (2) is outside the scope of this Policy; or (3) the University lacks authority to impose discipline on the Respondent. Upon concluding the process, the EOC will notify in writing any person who was reportedly subject of the conduct *and* involved in the Review Process. The written notification should include that the Review Process is concluded and the reason for concluding it. If the persons reportedly subjected to the conduct is not yet involved in the Review Process, the EOC has discretion as to whether to notify that person or note the rationale to the file.

2. Restrictions, Safety Intervention Measures and Supportive Changes

- a. Reasonable, available, supportive changes. Regardless of whether EOC determines that further review is warranted, the EOC may facilitate providing reasonable available changes for persons reportedly subject to Prohibited Conduct that will allow the person to fully participate in work, education, or

other activity. These changes are generally provided to the person without placing restrictions on other persons, such as relocating the requesting person's residence hall room, allowing the requesting person to change class sections, etc.

- b. Restrictions during the Review Process. If the EOC determines that further review is warranted, the Director or designee may determine that there are changes or restrictions necessary to protect the integrity of the Review Process or to prevent potential retaliation, discrimination, or harassment, or the potential recurrence of the same. In making this decision, the Director shall consult with the Respondent's supervisor (for employees), the Dean of Students (for students), or the administrator with authority over the area where the reported conduct occurred (for visitors). If any restrictions are placed on the Respondent for purposes set out in this subsection, notice of those will be provided to the person impacted.
- c. Safety Intervention/Risk Management Measures. Regardless of whether EOC determines that further review is warranted, if the reported conduct involves threatening or violent behavior, the EOC shall refer the report to the applicable Safety Intervention Team for review under that policy. Any safety intervention/risk management measures will be determined through that process. A determination about whether measures are necessary are separate and independent from a determination of whether this Policy is violated (whether reported conduct is Prohibited Conduct), but facts determined under this Policy may be considered by the University decision maker for risk management measures.

### 3. Notices of Further Review; Informal Resolution Option

- a. Notice to Complainant. If the Report proceeds in the Review Process after the Preliminary Review, the EOC notifies the Complainant that a Review Team will conduct the next steps in the Review Process.
  - i. Upon notice of the need for further review, Complainant may elect to pursue an informal resolution and if the Director offers it as a potential avenue for resolution.
  - ii. Generally, the Director will only deem informal resolution as a potential option for:
    - A. Alleged first time violations of this Policy by the Respondent;
    - B. Circumstances that do not involve a risk to physical safety of persons on campus, in University employment or University activities; and
    - C. Where the outcome/conclusion of the informal resolution process can be reasonably calculated to prevent the

reoccurrence of any reported Discrimination, Harassment, and/or Retaliation.

- b. Notice to Respondent. If an informal resolution process is elected by the Complainant and the potential application of that process is approved by the Director, the EOC notifies the Respondent in writing of (1) the allegations, (2) a summary of the information gathered, (3) informal resolution process; and (4) their rights under this Policy, including the right to decline participation in the informal resolution process. If the informal resolution process proceeds (based on agreement of Complainant and Respondent, subject to the discretion of the Director), then the procedures for the full Review Process set out below do not apply while that proceeds.
- c. The Director shall document a conclusion under the informal resolution process, and related understandings, in writing. It shall state the issues resolved through the informal resolution and, if applicable, any issues that remain unresolved. Possible outcomes include but are not limited to explicit statements about future conduct, changes in work duties/employment, changes to classes or participation in other University activities, or changes to a student's status. The Complainant and Respondent shall sign the document, indicating their acceptance, to conclude the informal resolution process.
- d. If at any time prior to the conclusion of the informal resolution process, the Complainant or Respondent no longer wants to utilize that informal resolution process, then that person must promptly notify the Director in writing, who will upon receipt notify the other party that the informal resolution process will not proceed. If the Director deems the informal resolution process insufficient based on the above listed standards or otherwise within the Director's discretion, then the Director shall notify the parties that the informal resolution will not proceed further. Instead, the steps below shall proceed under the full Review Process, and the Director should include the next step(s) within the notice to the parties.
- e. If there is more than one Respondent or Complainant in a matter, then all parties must agree to proceed with informal resolution; provided however, if one or more parties elects to stop the informal resolution process after it begins, then the Director may exercise discretion as to whether the remaining parties may continue to proceed within the informal resolution process or the steps of the Review Process set out below.
- f. Once an informal resolution process reaches a conclusion there is no opportunity for Complainant or Respondent to appeal or reopen the matter.

#### 4. Team Review Process

- a. Appointing the Review (Investigative) Team. The Director appoints the Review Team based on the status of the Respondent, as described in the Definitions section.

- i. In some circumstances, and within the Director's discretion, the University may add third-party Review Team members, combine processes, or rely on processes of an outside entity with authority over the Respondent. This primarily comes into play if the Complainant or Respondent are not students or employees at the University.
  - ii. If a Respondent is a student-employee, the Director may determine the primary context in which the conduct reportedly occurred to determine whether a Supervisor, Student Affairs administrator, or both serve on the Review Team.
- b. Steps in the Team's Review
  - i. Meeting with the Complainant. The Review Team may meet with the Complainant to review the Report and ask any clarifying questions. The Complainant may provide any information and witnesses the Complainant wants considered as part of the Review Process.
    - A. If after the opportunity to meet with the Complainant, the Review Team determines that the reported conduct (1) would not constitute Prohibited Conduct, even if proved; (2) is outside the scope of this Policy; or (3) the University lacks authority to impose discipline on the Respondent, the Review Team may conclude its review. Under these circumstances, there is not a need to meet with the Respondent or conduct other further review.
    - B. If it makes that decision, the Review Team shall provide written notice to the Complainant that includes its decision and reason(s).
  - ii. Notice to Respondent. If the Report proceeds in the Review Process after the meeting with the Complainant, the EOC or the Review Team (as determined by the EOC) notifies the Respondent in writing of (1) the allegations, (2) a summary of the information gathered, (3) next steps in the Review Process, (4) their rights under this Policy; (5) deadline by which to schedule a meeting with the Review Team; and (6) deadline by which to participate in the meeting with the Review Team.
  - iii. Meeting with the Respondent. The Review Team meets with the Respondent to review the Report and any supplemental information, ask questions, and provide the Respondent an opportunity to respond to the allegations. The Respondent may provide any information and witnesses the Respondent wants considered as part of the Review Process.
  - iv. The University and the Review Team do not actively monitor online sources. As with all potentially relevant information, the parties or

witnesses should bring online information to the attention of the Review Team if it is relevant. If a party would like to provide medical records for consideration, the party must have and provide proof of legal consent from the applicable person.

- v. After meeting with the Complainant and Respondent (see Section IV.D. above if one of these fails to participate), the Review Team has discretion to determine which witnesses reportedly have relevant information, which witnesses to interview (whether identified by a party or not), which documents include relevant information, and in what order to conduct their review. The Review Team may also consider information publicly available, may visit sites or locations and record observations through written, photographic, or other means. In some cases, the Review Team may consult with experts when deemed necessary and appropriate by the University.
- vi. If information surfaces during the Review Processes that may be used adversely to a party, that party should generally have the opportunity to respond to that information. This may require subsequent meetings with persons involved. Ultimately, the Review Team has discretion as to whether particular information is relevant and whether additional meetings are necessary; provided however, the Respondent must have an opportunity to review and respond to all information prior to an adverse decision.
- vii. Findings After a Full Review; Written Report. At the conclusion of the Review Process, the Review Team will draft a Review Report that summarizes the allegation(s), the respondent's responses, summarizes the relevant information and witness statements supporting or opposing the allegation(s), a preliminary finding of fact, determination whether the Policy was violated, and recommended Remedies and Sanctions. The determination is made based on a Preponderance of the Evidence. Provided however, if a Respondent who is a Student elects the process specified below in Section IV.H., the report will include recommendations as to whether the Policy was violated, and a corresponding analysis, instead of a finding of violation or no violation.
- viii. Opportunity to comment on the Report. The EOC Team member is primarily responsible for drafting the report. After finalizing the report with the other Team member, the EOC Team member sends the report to the Complainant and Respondent. The parties may provide written comments on the Review Report to the EOC within five (5) calendar Days of the date of the Review Report.
- ix. After receiving the comments, the Review Team may edit the Review Report if it determines it necessary within their discretion. The Review Team finalizes the Review Report. The Review Team then sends a final



report to the Complainant, Respondent, and the Deciding Administrator. The Review Team provides all written comments, if any, to the Deciding Administrator. Provided however, if a Respondent who is a Student elects the process specified below in Section IV.H., the Review Team will send the Report and any written comments to the Panel Chair instead of the Deciding Administrator, and follow the steps set forth in that section.

5. Review Report; Decision on Remedies and Sanctions. If the Review Team finds a Violation:
  - a. The Deciding Administrator decides the sanctions and is responsible for ensuring compliance with the sanctions. The Deciding Administrator also determines, in collaboration with applicable University administrators, what Remedies are to be granted to Complainant or others impacted.
  - b. The Deciding Administrator may impose any of the following sanctions or combination thereof, or any other responsive action aimed at preventing the recurrence of Prohibited Conduct:
    - i. Employee Sanctions include:
      - A. Verbal counseling.
      - B. Training and/or education (at the expense of the employee).
      - C. Written warning.
      - D. Probation.
      - E. Reassignment.
      - F. Transfer.
      - G. Demotion.
      - H. Reduction in pay.
      - I. Suspension (with or without pay).
      - J. Termination of employment.
      - K. An order of no trespassing on campus and/or in University programs, services, or activities.
    - ii. Student Sanctions include:
      - A. Written warning.
      - B. Probation.
      - C. Fines.

- D. Restitution.
- E. Suspension.
- F. Expulsion.
- G. Withholding a diploma.
- H. Revocation of certificate or degree.
- I. Educational and/or discretionary sanctions.

- iii. Within 10 Days from the date the Review Team's sent its final Review Report, the Complainant and Respondent may submit written comments to the Deciding Administrator.
- iv. If the Deciding Administrator determines, based on the written submissions during the comment period and the Review Team's file (the Deciding Administrator reviews the Report and has discretion of what to review from the Review Team's file), that the Review Team's Policy violation determination was Clearly Erroneous, then the Deciding Administrator shall remand the matter back to the Review Team for further review and shall provide the Review Team, complainant, and respondent with a specific written basis for the "clearly erroneous" determination. The Review Team conducts further review so as necessary to address the identified errors and then follows the process set out above starting with Findings after a Full Review. A decision to remand to the Review Team is not subject to appeal.

6. Complainant's Appeal of Finding. If the Review Team does not find a Violation:

- a. The Complainant may submit an appeal to the Deciding Administrator in writing within 10 Days from the date the Review Team's written final report was issued. The appeal must state every ground on which the appeal is based under the below-described standard.
- b. On appeal, the Deciding Administrator does not conduct a new Review Process. The Deciding Administrator may only decide, based upon the written information presented and the Review Team's file, whether the Review Team's determination was Clearly Erroneous. The Deciding Administrator will defer to the Review Team for all credibility decisions (e.g., who is telling the truth). In the event that a Deciding Administrator decides that Review Team finding is Clearly Erroneous, the Deciding Administrator shall refer the matter back to the Review Team for further review and shall provide the Review Team with a specific written basis for the Clearly Erroneous determination. The Review Team conducts further review, as necessary to address the identified errors and then follows the process set out above starting with "Findings after a Full Review."

- c. If the Deciding Administrator determines that the Review Team's findings are not clearly erroneous, then the Deciding Administrator's ruling is final and not subject to further review within the University.
- d. The Deciding Administrator should rule on an appeal in a timely fashion, preferably within 20 Days after receipt of the appeal. Rulings should be made in writing, with copies to the Complainant, Respondent, EOC, and the Office of Legal Affairs.

#### G. Appeal of Sanctions Decision

1. If the Deciding Administrator imposes a sanction(s), then Complainant and/or Respondent may submit an appeal to the Appeal Administrator within 10 Days from the date of the Deciding Administrator's written decision.
2. A respondent's appeal must be in writing and the appeal must state every ground on which the appeal is based. The Respondent may appeal the violation finding and/or the severity of the sanctions.
3. A complainant's appeal must be in writing, must state every ground on which the appeal is based, and may appeal only the severity of the sanction(s).
4. On appeal, the Appeal Administrator does not conduct a new Review Process. The Appeal Administrator may only decide, based upon the written information and the Deciding Administrator's and Review Team's files, and any follow up clarifying questions to the Deciding Administrator and/or Review Team, whether the Review Team's violation determination and/or the Deciding Administrator's sanctions were "arbitrary and capricious." This means that there must be no reasonable basis, under circumstances presented, to uphold the sanctions imposed by the Deciding Administrator. The Appeal Administrator must defer to the Review Team for all credibility decisions (e.g., who is telling the truth). A Deciding Administrator who follows the Review Team's recommended sanction(s) will be presumed not to have acted arbitrarily or capriciously, unless conclusively demonstrated otherwise.
5. If the Appeal Administrator determines that the Review Team's Policy violation determination was arbitrary and capricious, then the Appeal Administrator shall remand the matter back to the Review Team for further review and shall provide the Review Team with a specific written basis for the "arbitrary and capricious" determination. The Appeal Administrator shall copy the Complainant and Respondent on that letter. The Review Team conducts further review as necessary to address the identified errors and then follows the process set out above starting with Findings after a Full Review. A decision to remand to the Review Team is not subject to appeal.
6. If the Appeal Administrator determines only that the Deciding Administrator's sanctions are arbitrary and capricious, then the Appeal Administrator shall refer the matter back to the Deciding Administrator for further review and shall provide the Deciding Administrator with a specific written basis for the "arbitrary and capricious" determination. The Deciding Administrator addresses the identified errors and then

follows the process set out above starting with Decision on Sanctions. A decision to remand to the Deciding Administrator is not subject to appeal.

7. The Appeal Administrator should rule on an appeal in writing in a timely fashion, preferably within 30 Days after receipt of the appeal. The Appeal Administrator should send copies of the decision letter to the Complainant, Respondent, EOC, and the Office of Legal Affairs. A decision by the Appeal Administrator that affirms the Deciding Administrator's decision is not subject to further review within the University.
- H. Student Respondent facing possible 10-Day Plus Suspension or Dismissal. Notwithstanding the foregoing, if the Respondent is a Student potentially facing a 10-Day or more suspension or expulsion based on the reported conduct, then the Respondent-Student may elect to either proceed with the Review Process set out above (including through the appeal process) or elects-in writing to the Director prior to the Review Team issuing its draft report--to undergo the following process:
1. The Review Team conducts the review and creates a report.
  2. The report sets out the facts and applies the facts to the Policy, but does not make a final determination about whether a Policy violation occurred.
  3. The Review Team sends the Report to the Panel Chair, as set out in SUU [Policy 11.2](#). The Panel Chair follows the process set out in the Code for determining whether Respondent violated this Policy and, as applicable, any sanctions. The Review Team may serve as witnesses in any resulting processes under the Code and the Panel may consider the Report as an exhibit.
  4. Any appeal options and processes after a Panel Hearing then follow the process set out in SUU [Policy 11.2](#).
- I. Discretion in Application
1. The University retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the University's interpretation or application differs from the interpretation of the parties.
  2. Despite the University's reasonable efforts to anticipate all eventualities in drafting this Policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the University retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.
  3. Without limiting the application of other policies, the provisions of this Policy are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, the University retains discretion to revise this Policy at any time, and for any reason. The University may apply policy revisions to an active case provided that doing so is not clearly unreasonable.

- J. Training. The EOC is responsible for coordinating training for the University community on topics of Discrimination, Harassment, and/or Retaliation in accordance with applicable law and as deemed necessary within the Director's discretion.
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#### V. RELEVANT FORMS/LINKS

- [Reporting form](#)
  - Report, Review, and Investigative Process Flowchart
  - Guide on Protected Statuses and Types of Discrimination
  - EO Office website
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#### VI. QUESTIONS/RESPONSIBLE OFFICE

The [Vice President for Finance](#) is the responsible office for the Policy. Questions about this Policy should be directed to the Equal Opportunity and Clery Compliance Office.

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#### VII. POLICY ADOPTION AND AMENDMENT DATES

**Date Approved:** [November 2, 1990](#)

**Amended:** [August 26, 2010](#); October 18, 2021 [as temporary authorization]; December 2, 2021 [as permanent authorization]