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POLICY #5.66 SUBJECT: Whistleblower Protection Act

SUU [suu.edu/policies/05/66.html](https://www.suu.edu/policies/05/66.html) (<https://www.suu.edu/policies/05/66.html>)

I. PURPOSE

The purpose of this Policy is to establish procedures by which the University implements Utah Protection of Public Employees Act for review of certain types of retaliation complaints from University Employees.

II. REFERENCES

1. Utah Code § 67-16 *Utah Public Officers' and Employees' Ethics Act*
(<https://le.utah.gov/xcode/Title67/Chapter16/67-16.html>).
 2. Utah Code § 67-21 *Utah Protection of Public Employees Act*
(<https://le.utah.gov/xcode/Title67/Chapter21/67-21.html>).
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III. DEFINITIONS

1. **Abuse of Authority:** An arbitrary or capricious exercise of power that adversely affects the employment rights of another or results in personal gain to the person exercising the authority or to another person.
2. **Adverse Action:** To discharge, threaten, or discriminate against an Employee in a matter that affects the Employee's employment, including compensation, terms, conditions, location, rights, immunities, promotions, or privileges.
3. **Complainant:** An Employee who files a complaint alleging they have experienced Adverse Action for a Protected Activity in violation of this Policy.
4. **Communicate:** A verbal, written, broadcast, or other Communicated report.
5. **Conflict of Interest:** See SUU Policy 5.7 (<https://www.suu.edu/07.html>) for definition.
6. **Director:** Director of Human Resources or such other person who is the top administrator responsible for Human Resources.
7. **Employee:** A person employed by Southern Utah University.
8. **Failure to Promote:** To fail to promote the Employee if the Employee would have otherwise been promoted.
9. **Final Decision Maker:** The administrator who makes a final decision on whether this Policy was violated and if so, what remedies are appropriate for the Complainant. See further description in Section IV below.

10. **Good Faith:** An honest belief and purpose; absence of fraudulent or deceptive intent. Reporting in “Good Faith” is further defined in Section IV.
11. **Gross Mismanagement:** Action or failure to act by a person, with respect to a person’s responsibility, that causes significant harm or risk of harm to the mission of the University that employs, controls, or manages the person.
12. **Independent Personnel Board:** The Board that reviews complaints under this Policy.
13. **Protected Activity:** See Section IV.B.1.-2.
14. **Substantial Evidence:** Relevant evidence that a reasonable person might accept as adequate to support a conclusion. Substantial Evidence is less than a preponderance of evidence (i.e., not necessarily “more likely than not”).
15. **Unethical Conduct:** Conduct that violates a provision of Utah Code 67-16 *Utah Public Officers’ and Employees’ Ethics Act*.

IV. POLICY

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1. Scope of Policy. This Policy applies to all University Employees. This Policy does not apply to types of retaliation that are separately defined and proscribed in other SUU policies, including Policy 5.60 (<https://www.suu.edu/60.html>) and Policy 5.27 (<https://www.suu.edu/27.html>). Rather it applies to Adverse Action based on Protected Activity, as defined in this Policy. Nothing in this Policy shall be construed as requiring the University to compensate a Complainant participating in the processes under this Policy.
2. Prohibited Adverse Action for Protected Activity
 1. Employees acting on behalf of the University shall not take Adverse Action against a subordinate or other Employee because:
 1. The Employee (or someone authorized to act on the Employee's behalf) Communicates in Good Faith:
 1. the waste or misuse of public funds, property, or manpower;
 2. a violation or suspected violation of a local, Utah, or federal law, rule, or regulation;
 3. as it relates to the University or other state government employer:
 1. Gross Mismanagement;
 2. Abuse of Authority; or
 3. Unethical Conduct.
 2. the Employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review held;
 3. the Employee has objected to or refused to carry out a directive that the Employee reasonably believes violates Utah law;
 4. the Employee reasonably documents conduct within those categories identified above in IV.B.1.a.
 2. The conduct listed above in subsection IV.B.1.a.-d. are "Protected Activity." Attempted Protected Activity and expected Protected Activity also are considered Protected Activity.
 3. Retaliation against an Employee for exercising options under this Policy (i.e., filing a complaint or otherwise participating in the process) is prohibited.
 4. Activities Not Protected. An Employee who knowingly makes false accusations against the Employer will be in violation of this Policy and can be dismissed from University employment.
3. Good Faith. An Employee is presumed to have Communicated in Good Faith if the Employee gives written notice or otherwise formally Communicates the Adverse Action to one of the following:
 1. A person with authority over the person alleged to have engaged in the conduct;
 2. The Attorney General's Office;
 3. Law enforcement, if conduct is criminal in nature;
 4. The Utah State Board of Higher Education or a member thereof;
 5. The USHE Commissioner;
 6. The President of SUU; or
 7. SUU's Internal Audit Department.

4. Procedures for Filing and Reviewing Complaints

1. Filing a Complaint. An Employee, who believes that the University (namely, a Supervisory Employee on the University's behalf) has taken an Adverse Action against them for Protected Activity ("Complainant"), may file a written Complaint with the Director of Human Resources within 60 calendar days of the Adverse Action (or within 60 days of the adoption of this Policy, whichever is latest) prohibited by this Policy.
2. The Complainant may file the complaint using the designated electronic form or through the University's ethics reporting form (see Section V (#v)).
3. The Complaint must include all relevant information available to the Complainant that supports and/or contradicts the claim that the Complainant was subjected to Adverse Action for Protected Activity.
4. The Director may summarily dismiss late Complaints.

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5. Complaint Resolution Process

1. Upon receipt of the timely filed complaint, the Director shall convene the Independent Personnel Board, which includes the following members:
 1. A representative from Internal Audit;
 2. A representative from Human Resources (which may be the Director);
 3. Supervisor of the Respondent; and
 4. A staff member trained in conducting reviews/investigations, such as a member of the Equal Opportunity Office or an administrator who implements the Student Conduct Code.
2. The Board may not include any member who:
 1. is in the same academic or administrative department or office (same executive division is permissible) as the Complainant;
 2. is a supervisor of the Complainant; or
 3. has a Conflict of Interest in relation to the Complainant or an allegation made in the complaint.
3. If one of the above-identified Independent Personnel Board members is disqualified based on Section IV.E.2.b., then the Board will proceed with the remaining members available. If only two (2) members or fewer remain, the Director may appoint additional member(s) using the above personnel as a guide for which Employees may be invited to participate.
4. To the extent possible, the Director will collect relevant documents available from the Complainant or otherwise maintained by the University. The Director will forward the complaint, along with the documentation, to the Independent Personnel Board for review. At the same time, the Director will send the information to the Respondent who is identified as having taken the Adverse Action for Protected Activity, along with a warning against retaliation.
5. The Board will then set a time to interview the Complainant, the Respondent, and any witnesses, as and if necessary.
6. The Board shall give the Respondent an opportunity to have notice of and respond to any relevant information. The Respondent shall bear the burden of proof to establish by Substantial Evidence that the Adverse Action was justified by reasons unrelated to the Employee's participation or expected participation in Protected Activity.

7. After the interviews, review of documents and other inquiry deemed necessary by the Board--and within 30 days of Complainant filing the Complaint, unless the Complainant has agreed to an extension not to exceed an additional 30 days--the Board will then issue a written recommendation with corresponding facts and reasoning on the following:
 1. Whether the Complainant engaged in Protected Activity;
 2. Whether the Respondent took an Adverse Action against Complainant;
 3. Whether that Adverse Action, if any, was because Complainant engaged in Protected Activity ("Violation");
 4. Proposed sanctions for the Violation, if any;
 5. Proposed remedies for the Complainant if there was a Violation, including:
 1. reinstatement of the Complainant at the same level as before the Adverse Action;
 2. payment of back wages;
 3. full reinstatement of fringe benefits;
 4. full reinstatement of rank or seniority rights; or
 5. if the Adverse Action includes a Failure to Promote, a pay raise that results in the Complainant receiving the pay that the Complainant would have received if they would have been promoted.
8. The Board will send its decision to the Final Decision Maker with a copy to Complainant and Respondent. The Final Decision Maker is the Respondent's supervisor, or if the Respondent's supervisor participated as a member of the Board, then the Final Decision Maker shall be the supervisor of the Respondent's supervisor.
 1. If the designated Final Decision Maker has Conflict of Interest, the next level supervisor shall become the Final Decision Maker.
 2. The Final Decision Maker shall issue a written final decision adopting the recommendations of the Board (in whole or part), rejecting the recommendations of the Board (in whole or part), and/or making such other findings and conclusions as necessary for each of the above identified categories (Section IV.E.7.), with the exception of sanctions.
 3. The Final Decision Maker shall send the decision to or make it available for review to the Complainant, Respondent, and such other University officials that the Final Decision Maker deems necessary. The Final Decision Maker shall issue the decision within seven (7) days of receiving the Board's recommendation.
 4. The Final Decision Maker may ask clarifying questions to any person(s) involved in the process and review any relevant information, as needed, to make the final decision.
 5. Any sanctions against a Respondent shall follow University policy for disciplinary action/sanctions as applicable to the Respondent's employment status. The Final Decision Maker shall inform appropriate University officials of the decision on the other points and the Board's recommendation for sanction, as and if applicable. Often, the Final Decision Maker would also be the University official with authority to issue sanctions, but should do so separately from the decision rendered under this Policy.

6. Notices. Human Resources shall provide Employees with a copy of the Utah Protection of Public Employees Act statute upon hire, upon request by an Employee, and when an Employee files a complaint under this Policy. Human Resources also shall coordinate to post notices and use other appropriate means to keep Employees informed of their protections and obligations under the Act.

VII. POLICY ADOPTION AND AMENDMENT DATES

Date Approved: December 2, 2021

Amended: N/A

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