

**Rule R1-012A: Non-Discrimination Rule**

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**I. Purpose and Scope**

A. Purpose.

This rule establishes definitions and general requirements related to reports of Discrimination. This Rule is also intended to educate the University community about Discrimination and Sexual Misconduct, and about campus resources and processes available to Complainants or individuals who have been subjected to Discrimination, including Sexual Misconduct.

B. Scope.

1. This Rule and associated University Regulations apply to all University Programs and Activities, including all operations of the University, all academic and administrative units of the University, and to all members of the University community, including all faculty, staff, students, patients, visitors, and other participants in University Programs or Activities, as well as any person attempting to participate in any University Program or Activity. This Rule applies when the alleged conduct is subject to the University’s disciplinary authority. This Rule applies when some alleged conduct occurs outside the University’s Program or Activity, outside the United States, or online, when the alleged conduct may contribute to a hostile environment within a University Program or Activity. This Rule applies to any building or

grounds owned or controlled by a student organization that is officially recognized by the University, and activities occurring in such locations.

2. All allegations of Discrimination, including Sexual Misconduct or Retaliation raised by individuals shall be resolved pursuant to this Rule and its accompanying Regulations.
3. Allegations of Discrimination raised by patients of University of Utah healthcare providers/facilities (University Hospitals & Clinics) shall not be governed by this Rule or Rule R1-012B and shall be resolved under the procedures approved for that purpose by the Senior Vice President for Health Sciences (or delegee) [current version <https://healthcare.utah.edu/policies/discrimination>].

## II. Definitions

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

- A. Advisor means the person assisting a Party during proceedings involving allegations of Discrimination. 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.
- B. Complainant means:
  1. A student, staff, or faculty member who is alleged to have been subjected to conduct that could constitute Discrimination, including Sexual Misconduct and Retaliation; or
  2. A person other than a student, staff, or faculty member who is alleged to have been subjected to conduct that could constitute Discrimination, including Sexual Misconduct and Retaliation, and who was participating or attempting to participate in a University Program or Activity at the time of the alleged Discrimination, Sexual Misconduct or Retaliation.

- C. Complaint means an oral or written request to the University that objectively can be understood as a request for the OEO/AA to investigate and make a determination about alleged Discrimination, including Sexual Misconduct and Retaliation.
- D. Confidential Employee means:
1. Any staff, faculty member, or other employee whose communications are privileged or confidential under Federal or State law. The employee's confidential status is only with respect to the information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies.
  2. Any staff, faculty member, or other employee of the University whom the University has designated as confidential under Policy 1-012 for the purpose of providing services to persons related to Discrimination, including Sexual Misconduct. The employee's confidential status is only with respect to information received while providing services related to Discrimination, including Sexual Misconduct. If the employee has other job functions that are not related to providing such services, then their Confidential Employee status does not extend to information received via those other functions.
  3. An employee of the University who is conducting an Institutional Review Board (IRB) approved human-subjects research study designed to gather information about Discrimination; but the employee's confidential status is only with respect to information received while conducting the IRB approved study.
  4. Disputes or questions about whether an employee qualifies as a Confidential Employee will be decided by the OEO/AA Director.
- E. 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.

- F. Director /or OEO/AA Director means the Director of the Office of Equal Opportunity, Affirmative Action, and Title IX (OEO/AA). The Director is also the University's designated Title IX Coordinator. The University's designated Title IX Coordinator is responsible for coordinating the University's efforts to comply with its responsibilities under Title IX. Although the University may designate Deputy Title IX Coordinators, the Title IX Coordinator retains ultimate oversight over those responsibilities to ensure the University's consistent compliance with its responsibilities under Title IX. For the purposes of Policy 1-012 and associated University Regulations, the Title IX Coordinator means the University's designated and authorized Title IX Coordinator or may also refer to any individual who the Title IX Coordinator designates and authorizes as a Deputy Title IX Coordinator and any reference to the OEO/AA Director is also a reference to the Title IX Coordinator unless stated otherwise.
- G. Discrimination means treating someone differently, *i.e.*, disadvantaging the person, on the basis of being a member of a protected class described in 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.
- H. Final Result means 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 Policy 1-012 occurred, and any sanctions imposed.
- I. Harassment means unwelcome conduct based on an individual's protected class that, based on the totality of the circumstances, is subjectively and

objectively offensive, and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the University's Programs or Activities (*i.e.*, creates a hostile environment). This definition applies for any harassing conduct other than Sex- Based Harassment, which is defined separately. Harassment is a type of Discrimination. Whether a hostile environment has been created is a fact-specific inquiry. The free and open discussion of issues or theories relating to protected classes in an academic or professional setting, when appropriate to subject matter, will be presumed not to constitute 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.

- J. 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 OEO/AA Director who assists in forming a Hearing Committee for a specific case, scheduling its meetings and hearings, and acting as its Secretary.
  
- K. Impermissible Evidence means the following types of evidence, and questions seeking that evidence, which are impermissible (*i.e.*, will not be accessed or considered except by the OEO/AA to determine whether one of the exceptions listed below applies; will not be disclosed; and will not be otherwise used), regardless of whether the information is relevant:
  - 1. Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a Confidential Employee, unless the person to

whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality in writing;

2. A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless the OEO/AA obtains that Party's or witness's voluntary written consent for use in these Complaint procedures; and
3. Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove:
  - a. that someone other than the Respondent committed the alleged conduct; or
  - b. is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged Sexual Misconduct. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged Sexual Misconduct or preclude determination that Sexual Misconduct occurred.
- L. Informal Resolution means a voluntary facilitated resolution process that does not involve a full investigation and/or hearing. Informal Resolution may include mediation, restorative justice, and other similar forms of facilitated resolution models.
- M. 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 or faculty member who is not a Confidential Employee.

- N. OEO/AA means the University Office of Equal Opportunity, Affirmative Action, and Title IX (OEO/AA).
1. OEO/AA Consultant or OEO/AA Investigator 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 Draft Report means the draft report of the OEO/AA's investigation.
  3. Outside Entity means an organization or individual external to the University that, instead of the OEO/AA, is appointed to act on behalf of the University to conduct all or part of an investigation or Complaint process.
  4. OEO/AA Final 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 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 Discrimination or Sexual Misconduct occurred as alleged.
- Q. 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);
  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; or
- R. Relevant means related to the allegations of Discrimination under investigation as part of the University's Complaint procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged Discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged Discrimination occurred.
- S. Respondent means the person(s) alleged to have engaged in conduct that constitutes Discrimination, including an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Misconduct or Retaliation.
- 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 Regulations, 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, including an Informal Resolution process, Complaint process, or any other action taken by the University under Policy 1-102 or its associated Regulations. Nothing in this definition precludes the University from requiring an employee or other person authorized by the University to provide aid, benefit, or service under a University Program or Activity to participate as a witness, or otherwise assist with, an

investigation, proceeding, or hearing under Policy 1-012. For the purpose of Policy 1-012 and its associated Regulations, Retaliation is a type of Discrimination.

- U. Sex-Based Discrimination means treating someone differently, i.e., disadvantaging the person, on the basis of sex, sexual orientation, gender, gender identity, gender expression, pregnancy, or pregnancy-related conditions, 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, gender expression, pregnancy, or pregnancy-related conditions is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a University Program or Activity.
  - 3. Sex-Based Discrimination is a type of Discrimination.
- V. Sex-Based Harassment means sexual harassment and other harassment on the basis of sex, sexual orientation, gender, gender identity, gender expression, pregnancy, or pregnancy-related conditions, that is:
  - 1. Quid pro quo Harassment. An employee, faculty member, agent, or other person authorized by the University to provide an aid, benefit, or service under the University's Programs or Activities explicitly or implicitly conditioning the provision of such aid, benefit, or service upon a person's participation in unwelcome sexual conduct;
  - 2. Hostile Environment Harassment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the University's Programs or Activities (*i.e.*,

creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- a. the degree to which the conduct affected the Complainant's ability to access the University's Programs or Activities;
  - b. the type, frequency, and duration of the conduct;
  - c. the Parties' ages, roles within the University's Program or Activity, previous interactions, and other factors about each Party that may be relevant to evaluating the effects of the conduct;
  - d. the location of the conduct and the context in which the conduct occurred; and
  - e. other sex-based harassment in the University's Program or Activity.
3. Specific Offenses. Conduct which constitutes:
- a. Sexual Assault/Sex Offenses, which 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.
    - 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 a 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 committed by a person who: is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the University, or a person similarly situated to a spouse of the victim; is cohabiting, or has cohabitated, with the victim as a spouse or intimate partner; shares a child in common with the victim; or, commits acts against a youth or adult victim who is protected from those acts under the domestic or family violence laws of the jurisdiction.
- d. Stalking means engaging in a course of conduct that is (i) directed at a specific person that (ii) 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:
  - i. 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.
  - ii. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

- iii. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily, require medical or other professional treatment or counseling.
  - iv. 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.
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 Sex-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.

W. Sexual Misconduct means:

1. Sex-Based Harassment;
2. Intimate Partner Violence, which 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;

3. Sexual Exploitation, which 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, including by creating, possessing, or distributing images created by artificial intelligence or other similar means; 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;
4. Sexual Violence, which means any physical sexual act perpetrated against a person's will or when a person is incapable of giving Consent;
5. Nonconsensual Sexual Contact, which means any physical contact of a sexual nature with another person without that person's Consent. The touching of a person's intimate parts (including but not limited to a person's 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 if it occurs without Consent; or
6. Nonconsensual Sexual Penetration, which means any act of sexual penetration of any bodily opening with any object or body part without another person's Consent.
7. Sexual Misconduct is a type of Sex-Based Discrimination.

- X. Supportive Measures means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:
  - 1. Restore or preserve that Party's access to the University's Programs and Activities, including measures that are designed to protect the safety of the Parties or the University's educational or professional environment; or
  - 2. Provide support during the University's Complaint process under Policy 1-012 or during the Informal Resolution process.
  - 3. Supportive Measures are also considered Protective Measures as defined by the Clery Act.
- Y. 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.
- Z. Title VI means the Title VI of the Civil Rights Act of 1964.
- AA. Title VII means the Title VII of the Civil Rights Act of 1964.
- BB. Title IX means the Title IX of the Education Amendments of 1972.
- CC. University Program or Activity or Program or Activity means all the operations of the University, including all academic and administrative units of the University, and 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. University Program or Activity also includes University operations that exist outside the United States.

### **III. Rule**

- A. Role of the OEO/AA and Reporting to the OEO/AA.

The OEO/AA is the University department charged with responding to reports and investigating Complaints of Discrimination, including Sexual Misconduct.

1. Any person may report incidents of Discrimination even if the person reporting is not the person alleged to be the victim of conduct that could constitute Discrimination. Any person may report to the OEO/AA, including to 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 result in OEO/AA staff receiving the person's oral or written report. The Director and OEO/AA staff may be contacted at: 383 University Street, Level 1, Suite OEO, Salt Lake City, UT 84112 Phone: (801) 581-8365; Fax: (801) 585-5746; email: [oeo@utah.edu](mailto:oeo@utah.edu); and via internet: [www.oeo.utah.edu](http://www.oeo.utah.edu)
2. The Director of the OEO/AA serves as the University's Title IX Coordinator.
3. Upon receipt of a report of alleged Discrimination including Sexual Misconduct, Complainants, or reporters, will promptly receive information from the OEO/AA that:
  - a. provides the Complainant or reporter with written notification of and offers of assistance for the Complainant in accessing counseling, mental health services and healthcare, victim advocacy, legal, academic support, and other resources available in the community and on-campus;
  - b. offers and discusses Supportive Measures available with or without the submission of a Complaint;
  - c. considers the Complainant's or reporter's wishes with respect to Supportive Measures;
  - d. explains the process for submitting a Complaint; and
  - e. informs the Complainant or reporter of the right to report a crime to campus or local law enforcement and provides the Complainant or reporter with assistance in making such a report, if requested.



4. The University authorizes and requires the Director of the OEO/AA to monitor all University Programs and Activities for barriers to reporting information about conduct that reasonably may constitute Discrimination, and to take steps reasonably calculated to address such barriers.

B. Amnesty.

An individual who makes a good faith report of Discrimination, including Sexual Misconduct, that was directed at them or another person may not be sanctioned for a violation related to the use of drugs or alcohol that is related to the report. A participating Party or witness in any part of an OEO/AA Complaint process or Informal Resolution process may not be sanctioned for a violation related to the use of drugs or alcohol that is related to the matter addressed in the OEO/AA process.

C. Privacy.

The University must keep private the identity of certain individuals involved with alleged Discrimination, including Sexual Misconduct and 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 submitted a Complaint, any Party (Complainant or Respondent), any individual who has been reported to be a potential Party (Complainant or Respondent), and any witness.
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.
4. The University may disclose necessary information when:
  - a. The University has obtained prior written consent from a person with the legal right to consent to the disclosure;
  - b. When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to received disclosures on behalf of the person whose personally identifiable information is at issue;
  - c. To carry out a purpose under Policy 1-012, including taking action to address conduct that reasonably may constitute Discrimination in the University's Programs and Activities;
  - d. As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or other funding agreement; or
  - e. To the extent that such disclosures are not otherwise in conflict with Title IX, when required by State or local law, or when permitted under FERPA.

D. Confidentiality.

Different employees on campus have different requirements to maintain confidentiality after receiving a report of potential Discrimination, including Sexual Misconduct.

1. Confidential Employees.

- a. Professional and pastoral counselors are confidential while performing their counseling functions, except when reporting is required by state and federal law.

- b. Nonprofessional counselors and advocates working or volunteering with the Confidential Resources listed below are Confidential Employees to the extent that they are providing services to persons related to Discrimination, Sexual Misconduct, or Retaliation.
  - c. An employee of the University who is conducting an Institutional Review Board (IRB) approved human-subjects research study designed to gather information about Discrimination; but the employee's confidential status is only with respect to information received while conducting the study.
  - d. Duties. All Confidential Employees must explain to any person who informs the Confidential Employee of conduct that may reasonably constitute Discrimination, including Sexual Misconduct or Retaliation:
    - i. The employee's status as a Confidential Employee, including the circumstances in which the employee is not required to notify the Title IX Coordinator about conduct that reasonably may constitute Discrimination;
    - ii. How to contact the OEO/AA and how to make a Complaint of Discrimination; and
    - iii. That the OEO/AA may be able to offer and coordinate Supportive Measures as well as initiate an Informal Resolution process or an investigation under the University's Complaint procedures.
2. Confidential Resources. The OEO/AA Director may designate in writing University resources that would qualify as confidential under Policy 1-012 based on criteria including a consideration of any professional counseling and the scope of services offered to persons related to Discrimination, Sexual Misconduct, or Retaliation. The following resources are confidential:

**University Counseling Center**

Student Services Building

201 S 1640 E, Room 426

Salt Lake City, UT 84112

(801) 581-6826

24-hour Crisis Line: (801) 587-3000

**University Hospital Chaplains**

University of Utah Hospital

50 N. Medical Drive

Salt Lake City, UT 84132

(801) 213-2484

**Center for Campus Wellness** (counseling services only)

Student Services Building

201 S 1460 E, Room 330

Salt Lake City, UT 84112

(801) 581-7776

**Victim-Survivor Advocacy Program**

Student Services Building

201 S 1460 E, Room 330

Salt Lake City, UT 84112

(801) 581-7776

[advocate@sa.utah.edu](mailto:advocate@sa.utah.edu)

**The Psychology and Wellness Program Student Athlete Support Services**

(SASS) Department of Athletics

HPER East Pavilion, Room 113

Salt Lake City, UT 84112

**Office of the Ombuds (Health Science Office)**

Health Sciences Education Building Fifth Floor, Suite 5515

26 South 2000 East

Salt Lake City, UT 84112

801-585-6283

facultyombudsman@hsc.utah.edu

**Office of the Ombuds (Campus Office)**

1738G Marriott Library

3245 Eccles Institute of Human Genetics Office

Phone: 801.585.3482

Fax: 801.581.4233

ombudsman@utah.edu

E. Mandatory Reporters and the Duty to Notify.

1. A Mandatory Reporter must immediately notify the OEO/AA if they are informed of a possible incident of Discrimination, including Sexual Misconduct, or Retaliation. A Mandatory Reporter must report to the OEO/AA all relevant details about the alleged Discrimination including the names of the Complainant and alleged Respondent, any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident. Mandatory Reporters must also report any request by a Complainant for an investigation.
2. Before a Complainant reveals any information to a Mandatory Reporter, the Mandatory Reporter should attempt to ensure that the Complainant understands the Mandatory Reporter's reporting obligations. If the Complainant wants to maintain confidentiality, the Mandatory Reporter should direct the Complainant to Confidential Resources.

3. Academic Exercises/Assignments. The University recognizes that students may disclose incidents of Discrimination, Sexual Misconduct, 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.

F. Requests for Confidentiality.

1. If a Complainant discloses an incident to a Mandatory Reporter but wishes to maintain confidentiality, or requests that no investigation into a particular incident be conducted or disciplinary action taken, the University will weigh that request against the University's obligation to provide a safe, non-discriminatory environment for all persons, including the Complainant.
2. The University has designated the Title IX Coordinator to evaluate requests to maintain confidentiality associated with allegations of Discrimination, including Sexual Misconduct. If the University determines that it cannot maintain a Complainant's confidentiality, the University will inform the Complainant prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the University's response.
3. Because the University is under a continuing obligation to address the issue of Discrimination campus-wide, reports of Discrimination (including non-identifying reports) will also prompt the University to consider broader remedial action.

G. Supportive Measures.

The University shall offer and coordinate Supportive Measures as appropriate for the Complainant and/or Respondent to restore or preserve that person's access to the University's Programs and Activities or provide support during the University's Complaint procedures or during an Informal Resolution process.

1. Supportive Measures may vary depending on what the University determines is reasonably available, and may include: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more Parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to Discrimination.
2. Supportive Measures must not unreasonably burden either Party and must be designed to protect the safety of the Parties or the University's educational and work environment, or to provide support during the OEO/AA's Complaint procedures under Policy 1-012, or during the Informal Resolution process. The University will not impose such measures for punitive or disciplinary reasons.
3. The University may, as appropriate, modify or terminate Supportive Measures at the conclusion of the Complaint procedures under Policy 1-012, or at the conclusion of the Informal Resolution process, or the University may continue them beyond that point.
4. A Complainant or Respondent may request a modification or reversal of the University's decision to provide, deny, modify, or terminate Supportive Measures applicable to them. If a Party makes such a request, the OEO/AA must designate an impartial employee with the authority to modify or reverse the decision. The designated impartial employee must be someone other than the employee who made the challenged decision. If the designated impartial employee determines that the decision to provide, deny, modify, or terminate the Supportive Measure was inconsistent with the definition of Supportive Measures in this Rule, the designated impartial employee will revise the provided Supportive Measures to be consistent with this Rule. Any Party may request an additional modification or termination of a Supportive Measure applicable to them if circumstances change materially.

5. The University shall offer Supportive Measures if they are reasonably available, regardless of whether the Complainant chooses to submit a Complaint with the OEO/AA.
6. The University may not disclose information about any Supportive Measures to persons other than the person to whom they apply, including informing one Party of Supportive Measures provided to another Party. However, the University shall share information that is necessary to provide the Supportive Measure or restore or preserve a Party's access to University Programs and Activities, including by issuing No Contact Directives. The University may also disclose necessary information consistent with the provisions outlined under the Privacy section of this Rule.

H. Advisors and Support Persons.

1. **Advisor.** The Complainant and the Respondent may each be accompanied at any meetings, interviews, or hearings by an 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 is not entitled to have an Advisor participate in any pre-disciplinary conferences between the employee, their manager, and/or Human Resources personnel.
  2. **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.
- I. **Coordination with Title IX of the Education Amendments Act of 1972 (Title IX).** University Policy 1-012 and its associated Regulations are the University's Regulations governing how issues of Sex-based Discrimination, Sex-based Harassment, and Retaliation are addressed by the University.



J. Relationship to Other University Proceedings.

All Complaints of conduct constituting Discrimination, including Sexual Misconduct or Retaliation, within the scope of Policy 1-012 must be resolved under this Rule and Rule R1-012B (or in limited circumstances, a combination of proceeding under this Rule, Rule R1-012B, and a Senate Consolidated Hearing Committee (SCHC) for Faculty Disputes hearing per Policy 6-011).

1. If an allegation of Discrimination is raised in a proceeding under another established University complaint resolution or related process, the University representative involved shall immediately notify the OEO/AA and shall refer the matter to the OEO/AA.
2. During an OEO/AA investigation, any other related University proceeding shall be put on hold, unless the referring University representative (individual or committee) obtains approval from the OEO/AA Director 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 Discrimination.
3. In a case in which an allegation of Discrimination 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.

K. 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 Discrimination, including Sexual Misconduct or Retaliation, subject to the following requirements:

1. Before imposing an administrative suspension against a student Respondent based upon an allegation of Sexual Misconduct, the University must undertake an individual safety and risk analysis. If the University determines that there is an imminent and serious threat to the health or safety of the Complainant, any student, employee, faculty member, or other individual, arising from the allegations, then the University may administratively suspend the student Respondent.
2. The University must notify a student Respondent that they have been administratively suspended, and provide the student Respondent the opportunity to challenge the decision immediately following their removal.

L. Informal Resolution.

1. Informal Resolution is a voluntary process that does not involve a full investigation and/or hearing. Parties may engage in an Informal Resolution process without the submission of a Complaint. 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.
2. The University will not require or pressure any Party to participate in Informal Resolution. The University shall obtain the Parties' written voluntary consent to the Informal Resolution process and will not require a Party to waive their right to an investigation and determination of a Complaint as a condition of enrollment or continuing enrollment, employment or continuing employment, or exercise of any other right.
3. 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. the requirements of the Informal Resolution process;
- c. the OEO/AA Director may decline the request for Informal Resolution in any particular case and may terminate an ongoing Informal Resolution process at any time;
- d. that at any time prior to agreeing to a resolution, any Party has the right to withdraw from the Informal Resolution process and to initiate or resume Complaint procedures under this rule and Rule R1-012B;
- e. any mutually agreed-upon resolution reached by the Parties through Informal Resolution (i) will be subject to approval by the OEO/AA Director and (ii) will preclude the Parties from initiating or resuming Complaint procedures under Policy 1-012 arising from the same allegations;
- f. the potential terms that may be requested or offered in an Informal Resolution agreement, including notice that an Informal Resolution agreement is binding only on the Parties;
- g. 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;
- h. if a Respondent fails to comply with the terms of the Informal Resolution, then the Director may resume or initiate the University's Complaint process;
- i. during the Informal Resolution process, each Party has the right to choose and consult with an Advisor (who may but need not be an attorney). The Advisor may accompany and provide support and advice to the Party during any meetings for the Informal Resolution process, but may not speak on behalf of the Party or in any manner disrupt such meetings and/or proceedings; and

- j. 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.
4. In order for the OEO/AA to initiate the Informal Resolution process, the Parties must provide their voluntary, written authorization to engage in an Informal Resolution process.
5. Informal Resolution may include mediation, restorative justice, and other similar forms of facilitated resolution models.
6. The OEO/AA may facilitate the Informal Resolution or may identify and suggest the use of third parties to facilitate an Informal Resolution. The facilitator of an Informal Resolution process may not be the same person as the investigator of a Complaint or the decisionmaker in the Complaint process. Any person designated by the OEO/AA to facilitate an Informal Resolution process must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. Any person facilitating an Informal Resolution process must receive training on the expectations and requirements of Policy 1-012.
7. Informal Resolution agreements may involve a host of interventions and remedies, such as actions designed to maximize the Complainant's access to University Programs and Activities; increased monitoring, supervision, and/or security at locations or activities where the Discrimination, Sexual Misconduct, 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; restrictions on contact between the Parties; restrictions on the Respondent's participation in one or more University Programs or Activities or attendance at specific events, including restrictions the University may have imposed as remedies or disciplinary sanctions had a decisionmaker determined that

Discrimination occurred; 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 Policy 1-012.

8. The OEO/AA should complete any Informal Resolution process within thirty (30) calendar days of the Director's acceptance that an Informal Resolution may be attempted.

M. First Amendment and Due Process.

Nothing in the interpretation of Policy 1-012 and its associated Regulations 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.

N. Training.

1. The University will ensure that the following persons receive training on Policy 1-012 and its associated University Regulations promptly upon hiring or a change of position that alters an employee's duties related to Policy 1-012:
  - a. All Employees. All employees shall be trained on: the University's obligation to address Discrimination in its Programs and Activities; the scope of conduct that constitutes Discrimination, including Sexual Misconduct; and the notification and information requirements related to pregnancy or related conditions, and Mandatory Reporters.
  - b. Investigators, decisionmakers, and other persons who are responsible for implementing the University's Complaint procedures or have the authority to modify or terminate Supportive Measures. These individuals must be trained on:
    - i. The requirements applicable to all employees;

- ii. the University's obligations to respond to Discrimination;
  - iii. the University's Complaint procedures;
  - iv. how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and
  - v. the meaning of the term "Relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance in the Complaint process.
- c. Facilitators of Informal Resolution. All facilitators of an Informal Resolution process must be trained on the requirements applicable to all employees, the rules and practices associated with the University's Informal Resolution process, and how to serve impartially, including by avoiding conflicts of interest and bias.
- d. Title IX Coordinators and designees. Title IX Coordinators and any designee must be trained on the requirements applicable to all other University roles listed in this section. Title IX Coordinators and any designee must also be trained on: the designations of Title IX Coordinators and designees such as Deputy Title IX Coordinators; the requirements to prevent Discrimination and ensure equal access for student's pregnancy or pregnancy related conditions; the required actions to promptly and effectively respond when notified of conduct that reasonably may qualify as Discrimination, prevent its recurrence, and remedy its effects; and Supportive Measures.

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*Sections IV- VII are for user information and are not subject to the approval of the Academic Senate or the Board of Trustees. The Institutional Policy Committee, the Policy Owner, or the Policy Officer may update these sections at any time.*

#### **IV. Policies/ Rules, Procedures, Guidelines, Forms and other Related Resources**

##### **A. Policies/ Rules.**

##### **1. Policy 1-012: University Non-Discrimination Policy**

2. Rule R1-012B: Complaint Process Rule
  3. Rule R1-102C: Student Pregnancy or Related Conditions Rule
- B. Procedures, Guidelines, and Forms.
1. Guideline 1-012A: Consent
  2. Guideline 1-012B: Advisors and Support Persons
- C. Other Related Resources.

## **V. References**

- A. Policy 1-012: University Non-Discrimination Policy includes the list of references applicable under this rule.

## **VI. Contacts**

The designated contact officials for this regulation are

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

See Rule 1-001 for information about the roles and authority of policy owners and policy officers.

## **VII. History**

- A. Current version. Revision 3. Effective August 1, 2024
1. Initially approved by President Randall as an interim rule with an effective date of August 1, 2024. Approved by the Academic Senate Executive Committee under summer authority August 12, 2024.
  2. Legislative History
  3. Editorially revised August 8, 2024 to update contact information for the Center for Campus Wellness and Victim-Survivor Advocacy

B. Previous Versions

1. Revision 2. Effective March 16, 2022
  - a. Legislative History Revision 2
2. Revision 1. Effective August 13, 2020
3. Revision 0. Effective February 14, 2017
  - a. Legislative History Revision 0

C. Renumbering

1. Not applicable.