

Interim 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 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” or “Procedure Advisor” means the person assisting a Party during proceedings involving allegations of Discrimination who may assist the Party in certain ways as further described in the rules and regulations associated with Policy 1-012.
- B. “Complainant” means the individual who allegedly experienced a type of Discrimination, including Sexual Misconduct or Retaliation in violation of university regulations. (Note that university regulations and related documents may refer to such an individual as a Complainant even when no Formal Complaint has been filed).
- C. “Complaint” or “Formal Complaint” means the contents of a document that is filed by a Complainant alleging Discrimination, including Sexual Misconduct or Retaliation, by a Respondent and requests that the OEO investigate the allegation.
- D. “Confidential Employee” means employees designated as confidential as described in this policy.

- 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 G1-012A for further clarification. For a non-exhaustive list of situations in which Consent has not been given, see Utah Code Section 76-5-406.
- F. “Director” or “OEO Director” means the Director of the Office of Equal Opportunity and Title IX. 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 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). Whether a hostile environment has been created is a fact-specific inquiry.
1. 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.
 2. Harassment is a type of Discrimination. This definition applies for any harassing conduct other than Sex-Based Harassment, which is defined separately.
- 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 Director who assists in forming a Hearing Committee for a specific case, scheduling its meetings and hearings, and acting as its secretary.

- K. “Informal Resolution” means a voluntary facilitated resolution process that does not involve a full investigation and/or hearing and is only available after a Formal Complaint has been filed.
- L. “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.
- M. “OEO” means the University Office of Equal Opportunity and Title IX (OEO or OEO/TIX).
1. “OEO Consultant” or “OEO Investigator” means a person who conducts the investigation on behalf of the OEO. Ordinarily this will be a university employee who is assigned to the OEO. However, in certain circumstances, the OEO will arrange for all or part of the investigation to be performed by an Outside Entity.
 2. “OEO Draft Report” means the draft report of the OEO’s investigation.
 3. “Outside Entity” means an organization or individual external to the university that, instead of the OEO, appointed to act on behalf of the university to conduct all or part of an investigation or Complaint process.
 4. “OEO Final Report” means the report of the OEO issued at the conclusion of the investigation of a Complaint.
- N. “Party” or “Parties” means the Complainant or the Respondent.
- O. “Preponderance of the Evidence” means the 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.

P. "Protected Veteran Status" means:

1. a 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;
2. an 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;
3. a recently separated veteran: a veteran separated within the past three years (a three-year period beginning on the date of the veteran's discharge or release from active duty in the U.S. Military); or
4. an 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 forces service medal.

Q. "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.

R. "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 1-012 or its associated regulations. Retaliation does not include OEO requiring a university employee to participate as a witness or provide information in an investigation, proceeding, or hearing. For the purposes of Policy 1-012 and its associated regulations, Retaliation is a type of Discrimination.

- S. "Sex-Based Discrimination" means treating a person differently (i.e. disadvantaging the person) on the basis of sex, sexual orientation, gender, gender identity, gender expression, pregnancy, or pregnancy-related conditions, in a way that adversely affects a term or condition of, or is used as a basis or a factor in a decision affecting, the person's employment, education, living environment, or participation in a University Program or Activity.
1. Sex-Based Discrimination is a type of Discrimination.
- T. "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 or faculty member conditioning the provision of an aid, benefit, or service on an individual's participation in otherwise unwelcome sexual conduct;
 2. Hostile Environment Harassment. Unwelcome conduct which a reasonable person would determine to be sufficiently severe or pervasive that it has the purpose or effect of interfering with or creating an intimidating, hostile or offensive environment in a University Program or Activity; or
 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 directed at a specific person that would cause a Reasonable Person to fear for the person's safety or the safety of others or 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 constitute stalking, as defined in Utah Code Section 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 its 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.
- U. "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 its 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.
 6. “Nonconsensual Sexual Penetration”, which means any act occurring between two (or more) people of sexual penetration of any bodily opening, with any object or body part, without the other person’s Consent.
 7. Sexual Misconduct is a type of Sex-Based Discrimination.
- V. “Supportive Measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent in a matter involving allegations of Discrimination, including Sexual Misconduct or Retaliation, before or after the filing of a Formal Complaint or when no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access of a Party to the university’s education Programs and Activities without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties, or to deter Sexual Misconduct. Supportive Measures are also considered protective measures as defined by the Clery Act.
- W. “Support Person” means the person who a Party has chosen to accompany them in meetings or hearings related to allegations of Discrimination. The person may provide support for the Party in certain ways as further described in the regulations associated with Policy 1-012.
- X. “Title VI” means Title VI of the Civil Rights Act of 1964.
- Y. “Title VII” means Title VII of the Civil Rights Act of 1964.
- Z. “Title IX” means Title IX of the Education Amendments of 1972.

AA. "University Program or Activity" or "Program or Activity" means locations, events, or circumstances over which the university exercises substantial control over both the Respondent and the context in which conduct constituting Sexual Misconduct or another type of Discrimination or Retaliation, occurs. University Program or Activity includes any building (or grounds) owned or controlled by a student organization that is officially recognized by the university, including sponsored and affiliated organizations as defined in Rule R6-401A and activities occurring in such locations.

III. Rule

A. Role of the OEO and Reporting to the OEO.

The OEO 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, 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 results in OEO staff receiving the person's oral or written report. The Director and OEO 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; and via internet: www.oeo.utah.edu.
2. The Director of the OEO 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 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 filing of a Formal Complaint;
- c. considers the Complainant's or reporter's wishes with respect to Supportive Measures;
- d. explains the process for filing a Formal 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.

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 Complaint 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 process. Exceptions to the amnesty provision only apply to the use of drugs or alcohol that potentially implicate patient care or safety or raise other substantial safety concerns.

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 its associated regulations.

1. The individuals whose privacy must be 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.

D. Confidentiality and Confidential Employees.

Different employees on campus have different requirements to maintain confidentiality after receiving a report of potential Discrimination, including Sexual Misconduct. Disputes or questions about whether an employee qualifies as a Confidential Employee will be decided by the OEO Director. The following are Confidential Employees.

1. Any staff, faculty member, or other employee whose communications are privileged or confidential under federal or state law is a Confidential Employee. 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. This includes professional and pastoral counselors while performing their counseling functions, except when reporting is required by state or federal law.
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 is a Confidential Employee. 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. This includes nonprofessional counselors and advocates working or volunteering with the confidential resources listed below to the extent that they are providing services related to Discrimination, Sexual Misconduct, or Retaliation.

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, including sexual Misconduct or Retaliation, are Confidential Employees, but the employee's confidential status is only with respect to information received while conducting the study.
4. Confidential resources. The OEO 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:
 - a. the University Counseling Center;
 - b. University Hospital Chaplains;
 - c. Center for Campus Wellness (counseling services only);
 - d. Victim-Survivor Advocacy Program;
 - e. The Psychology and Wellness Program Student Athlete Support Services;
 - f. Office of the Ombuds (Health Science Office); and
 - g. Office of the Ombuds (Campus Office).

E. Mandatory Reporters and the Duty to Notify.

1. A Mandatory Reporter must immediately notify the OEO if they are informed of a possible incident of Discrimination, including Sexual Misconduct or Retaliation. A Mandatory Reporter must report to the OEO 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. If the Mandatory Reporter is later informed of additional information, they are required to immediately share all additional information with the OEO.
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. 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.

1. The university shall offer and coordinate Supportive Measures as appropriate for the Complainant and Respondent to restore or preserve their access to University Programs and Activities or provide support during the university's Complaint resolution procedures.
2. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modification of work or class schedules, campus escort services, mutual restrictions on contact between the Parties, changes in work or housing locations, leaves of absence, increased security services and monitoring of certain areas of the campus, and other similar measures.
3. The university shall offer Supportive Measures if they are reasonably available, regardless of whether the Complainant chooses to submit a Complaint with the OEO.

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 of 1972 (Title IX)

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.

1. The requirement that Mandatory Reporters report incidents of Sex-Based Harassment to the OEO under this rule does not constitute actual knowledge for Title IX purposes unless the information is reported to the Title IX Coordinator or to an official who has authority to institute corrective measures.
2. Policy 1-012 and related regulations address both Sex-Based Harassment that is within the scope of Title IX and Sex-Based Harassment that is not within the scope of Title IX. Incidents of possible Sex-Based Harassment that may be covered by Policy 1-012 and its associated regulations, although they are not within the scope of Title IX, may include but are not limited to:
 - a. Sex-Based Harassment that occurs against a person outside of the United States;
 - b. Sex-Based Harassment that does not meet the specific definition Sex-Based Harassment as defined by federal Title IX regulations (as being so severe, pervasive, and objectively offensive such that it effectively denies

a person equal access to the University's education Program or Activity). Any violation of the Title IX standard would also be a violation addressed under the university policy standard (sufficiently severe or pervasive that it has the purpose or effect of interfering with or creating an intimidating, hostile or offensive environment in a University Program or Activity);

- c. Sex-Based Harassment involving alleged conduct outside the University Program or Activity, or online, when the alleged conduct may contribute to a hostile environment within a University Program or Activity; or
 - d. Sex-Based Harassment involving a Complainant who is not participating in or attempting to participate in a University Program or Activity at the time the Formal Complaint is filed.
3. If the OEO receives a Complaint involving Sex-Based Harassment that is not within the scope of Title IX, the OEO shall inform the Complainant and Respondent that the issues are not within the scope of Title IX and shall be addressed under relevant portions of Policy 1-012 and its associated regulations.

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 and shall refer the matter to the OEO.
2. During an OEO investigation, any other related university proceeding shall be put on hold, unless the referring university representative (individual or

committee) obtains approval from the OEO 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 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 Consultant shall 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. The university may not impose an administrative suspension against a student Respondent based upon an allegation of Sex-Based Harassment that is within the scope of Title IX unless the university undertakes an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of any student or other individual arising from the underlying circumstances of the allegation of Sex-Based Harassment justifies removal by such suspension. The student Respondent will have an opportunity to challenge the decision.
2. If a student Respondent receives an administrative suspension as a result of an allegation of Sex-Based Harassment that is not within the scope of Title IX, the university shall inform the Respondent in writing that the Complaint is outside the scope of Title IX.

L. Informal Resolution.

1. Informal Resolution is a voluntary process that does not involve a full investigation or hearing and is only available after a Formal Complaint has been filed and accepted. Informal Resolution may not be available where the OEO Director has determined that certain risk factors are present. Informal Resolution is not available when an employee, including a faculty member, is alleged to have engaged in Sex-Based Harassment against a student.
2. The university may offer Informal Resolution if the university provides the Parties with written notice disclosing the following:
 - a. the allegations;
 - b. that any Party has the right to withdraw from the Informal Resolution process at any time prior to agreeing to a resolution and resume an investigation based upon the Formal Complaint;
 - c. that the Director may decline the request for Informal Resolution in any particular case and may terminate an ongoing Informal Resolution process at any time;
 - d. that any mutually agreed-upon resolution reached by the Parties through Informal Resolution is subject to approval by the Director and resolves the Formal Complaint, precluding the Parties from resuming an investigation based upon the same circumstances as the allegations in the Formal Complaint. If the Parties have agreed to resolve some but not all specific allegations in the Formal Complaint, the OEO may resume an investigation into the unresolved allegations;
 - e. that 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 or evidence raised during the Informal Resolution process may be independently introduced as part of an investigation;

- f. that if a Respondent fails to comply with the terms of the Informal Resolution the Director may resume proceedings for the Formal Complaint, including completing an OEO investigation;
 - g. that 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 advise to the Party during any meetings for the Informal Resolution process, but may not speak on behalf of the Party or otherwise participate in, or in any manner disrupt meetings or proceedings; and
 - h. that 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 meetings or proceedings.
3. The OEO may only initiate the Informal Resolution process if the Parties provide voluntary, written authorization for the Informal Resolution process.
4. Informal Resolution may include mediation, restorative justice, or other similar forms of facilitated resolution models.
5. The OEO may facilitate Informal Resolution or may identify and suggest the use of third parties to facilitate Informal Resolution.
6. Informal Resolution agreements may involve a variety of interventions and remedies, such as actions designed to maximize the Complainant's access to educational, extracurricular, and/or university employment activities; increased monitoring, supervision, and/or security at locations or activities where the Sexual Misconduct or other type of Discrimination, or Retaliation occurred or is likely to reoccur; targeted or broad-based educational programming or training for relevant individuals or groups; academic modifications and/or university housing modifications for student Complainants; workplace modifications for employee Complainants; one or more of the restorative remedies or other sanctions described in this Rule

and Rule R1-012B; and/or any other remedial, protective or Supportive Measures that can be tailored to achieve the goals of Policy 1-012.

7. The OEO shall attempt to complete any Informal Resolution process within 45 calendar days of the Director's acceptance of the Formal Complaint.
8. The university may not require, as a condition of enrollment or continuing enrollment, employment or continuing employment, or enjoyment of any other right, a Party's waiver of their right to an investigation and adjudication for allegations of Sex-Based Harassment made in a Formal Complaint.

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.

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 Title IX
- 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 4. Approved by President Randall February 13, 2025 with effective date of February 13, 2025

1. Legislative History

B. Previous Versions

1. Revision 3. Effective August 1, 2024

2. Revision 2. Effective March 16, 2022

a. Legislative History Revision 2

3. Revision 1. Effective August 13, 2020

4. Revision 0. Effective February 14, 2017

a. Legislative History Revision 0

C. Renumbering

1. Not applicable.