



UTAH VALLEY UNIVERSITY

Policies and Procedures

POLICY TITLE	Sexual Misconduct (TEMPORARY EMERGENCY)	Policy Number	162
Section	Governance, Organization, and General Information	Approval Date	June 18, 2019
Subsection	Individual Rights	Effective Date	June 18, 2019
Responsible Office	Office of the Vice President of Planning, Budget, and Human Resources		

1.0 PURPOSE

1.1 Utah Valley University is committed to maintaining a respectful and safe environment for its students, faculty, staff, and visitors. This policy defines and prohibits all forms of sexual misconduct (including but not limited to sexual assault, sexual exploitation, stalking, dating or domestic violence, and sexual harassment); establishes expectations for university community members; details how to report a violation of this policy; describes university resources and interim measures to protect those involved in the process; outlines investigation, disciplinary, and due process procedures for addressing reported violations of this policy; and overviews the University’s education, awareness, prevention, and risk-reduction programs. This policy applies to all persons who are (1) employed by, attending, or affiliated with Utah Valley University in any way; (2) participating in any university program or activity, including but not limited to trustees, administrators, faculty, staff, students, independent contractors, volunteers, and guests; and/or (3) visiting a university campus or any property owned or leased by the University.

2.0 REFERENCES

- 2.1 *Americans with Disabilities Act (ADA)* (as amended)
- 2.2 *Campus Sexual Violence Elimination Act (SaVE)—Reauthorization of the Violence against Women Act of 2013 (VAWA)*
- 2.3 *Family Educational Rights and Privacy Act (FERPA)*
- 2.4 *Heath Insurance Portability and Accountability Act (HIPAA)*
- 2.5 *Jeanne Clery Disclosure of Campus Security Police and Campus Crime Statistics Act (Clery Act)*
- 2.6 *Title VII of the Civil Rights Act of 1964 (Title VII)*
- 2.7 *Title IX of the Higher Education Amendments Act of 1972 (Title IX)*



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- 2.8 Utah Code § 53B-27-101 et seq. *Campus Advocate Confidentiality Amendments*
- 2.9 Utah Code § 53B-28-302 *Code of Conduct Violation-Report of Sexual Violence*
- 2.10 Utah Code § 53B-28-304 *Criminal Retaliation Against a Victim or a Witness*
- 2.11 Utah Code § 63G-2 *Government Records Access and Management Act (GRAMA)*
- 2.12 Utah Code § 63G-7-301 *Waivers of Immunity-Exceptions*
- 2.13 Utah Code § 76-5-404.1 *Sexual Abuse of a Child*
- 2.14 Utah Code § 77-36 *Cohabitant Abuse Procedures Act*
- 2.15 Utah Code § 77-38 *Rights of Crime Victims Act*
- 2.16 Utah State Board of Regents' Policy R256 *Student Disciplinary Processes*
- 2.17 Utah State Board of Regents' Policy R842 *Restrictions on Faculty/Staff Relationships with Students*
- 2.18 UVU Policy 704 *Minors on Campus and at University-Sponsored Events*
- 2.19 UVU Policy 154 *Workplace Violence*
- 2.20 UVU Policy 161 *Freedom of Speech*
- 2.21 UVU Policy 165 *Discrimination, Harassment, and Affirmative Action*
- 2.22 UVU Policy 541 *Student Code of Conduct*
- 2.23 UVU Policy 710 *Clery Act Compliance*

3.0 DEFINITIONS

- 3.1 Bystander:** An individual who witnesses or becomes aware of an instance of sexual misconduct. A bystander may not be directly involved but has the choice to intervene where it is safe to do so by discouraging, preventing, or interrupting an incident, or by summoning help.
- 3.2 Bystander intervention:** When bystanders proactively respond and provide assistance in a situation in which sexual misconduct has occurred, is occurring, or could occur.
- 3.3 Campus Security Authority (CSA):** As required by the *Clery Act*, individuals (1) serving in positions identified by the Vice President of Finance and Administration, who have significant



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responsibility for student and campus activities, or (2) serving in a security role for a university activity temporarily or for a designated event and who have a duty to report sexual misconduct and all Clery-reportable crimes. These individuals may not always be university employees. For examples of designated CSAs and definitions of Clery-reportable crimes and geography, see UVU Policy 407 *Clery Act Compliance*.

3.4 Complainant, victim, or alleged victim: An individual who has allegedly experienced sexual misconduct in violation of university policy. The University may also be a complainant. Use of these terms does not imply that a finding of misconduct is assumed or made before an investigation has been completed.

3.5 Consent: Consent to engage in a sexual encounter must be given by all participating parties; must be clear, knowing, and voluntary; and may be given only by someone who is 18 years of age or older and is not mentally and/or physically incapacitated. Consent is active, not passive. Consent requires an affirmatively communicated willingness through words and/or actions to participate in sexual activity. Silence, in and of itself, may not be interpreted as consent.

3.6 Dating/relationship violence: Violence or threat of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, where the existence of such a relationship shall be determined based on a consideration of all relevant factors, including (a) the length of the relationship, (b) the type of relationship, and (c) the frequency of interaction between the persons involved in the relationship.

3.7 Discrimination: For purposes of this policy, adverse action towards university employees or students in the terms or conditions of employment; university admission or education; access to university programs, services, or activities; or other university benefits or services, on the basis of their inclusion or perceived inclusion (in the case of sexual orientation, gender identity, or gender expression) in the protected classes of sex, pregnancy, pregnancy-related conditions, sexual orientation, gender identity, or gender expression that has the effect of denying or limiting participation in a university program or activity.

3.8 Domestic violence: Violence or physical harm, or threat of violence or physical harm, committed by (a) a current or former spouse or intimate partner of the alleged victim, (b) a person with whom the victim shares a child in common, (c) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, (d) a person similarly situated to a spouse of the individual who experienced domestic violence under the domestic or family violence laws of the jurisdiction where the act of domestic violence occurred, or (e) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction where the act of domestic violence occurred.

3.9 Harassment: For purposes of this policy, any unwelcome verbal, physical, written, electronic, or nonverbal conduct (whether directly, indirectly, or through a third party) of a sexual nature, or related to an individual's sex, pregnancy, pregnancy-related conditions, sexual



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orientation, gender identity, or gender expression that is sufficiently severe, persistent, or pervasive to alter the conditions of employment of an employee, or to limit, interfere with, or deny educational benefits or opportunities of a student, from both a subjective and objective viewpoint based on a totality of the circumstances, including but not limited to the frequency and severity of the conduct, whether the conduct was physically threatening or humiliating, the effect of the conduct on the individual's mental or emotional state, whether the conduct was directed at more than one person, whether the conduct arose in the context of other discriminatory conduct, and whether the speech or conduct deserves the protections of academic freedom or the First Amendment.

3.10 Incapacitation: An individual who is incapacitated cannot give consent to engage in a sexual encounter. Incapacitation is defined as the physical and/or mental inability to make informed, rational judgments. Factors that could be indications of incapacitation include but are not limited to mental or physical disability; lack of sleep; alcohol; illegal, date-rape, or prescription drug use; unconsciousness; blackout; or involuntary physical restraint. Being intoxicated by drugs or alcohol does not diminish one's responsibility to obtain consent. The factors to be considered when determining whether consent was given include whether the accused knew, or whether a reasonable person should have known, that the complainant was incapacitated.

3.11 Party: Complainant or respondent.

3.12 Preponderance of evidence: The evidentiary standard used during a sexual misconduct investigation/review to determine if the allegations occurred and if a university policy violation has occurred. Preponderance of evidence means it is more likely than not, or more than 50 percent in favor, that the misconduct occurred as alleged.

3.13 Respondent: The individual against whom an alleged complaint of sexual misconduct in violation of university policy has been made. Use of these terms does not imply that a finding of misconduct is assumed or made before an investigation has been completed.

3.14 Responsible employee: Any university employee (faculty, staff, administration) or volunteer, excluding those designated as strictly confidential in section 5.4.1 of this policy, who becomes aware of a sexual misconduct issue involving any university student or employee.

3.15 Result: Any initial, interim, and/or final outcome or decision by any official or entity authorized to resolve disciplinary matters within the University. The result must include any sanctions imposed by the University.

3.16 Retaliation: An action, performed directly or through others, that is aimed to dissuade a reasonable person from engaging in a protected activity or is done in retribution for engaging in a protected activity. Action in response to a protected activity is not retaliatory unless (i) it has a materially adverse effect on the working, academic, or other University-related environment of



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an individual and (ii) it would not have occurred in the absence of (but for) the protected activity. Examples of protected activities include reporting (internally or externally) a complaint of sexual misconduct in good faith, assisting others in making such a report, or honestly participating as an investigator, witness, decision maker, or otherwise assisting, in an investigation or proceeding related to suspected sexual misconduct.

3.17 Sexual assault: To be categorized as a sexual assault, an incident requires one of the following:

3.17.1 *Sexual penetration without consent:* Any penetration of the sex organs or anus of another person without consent (as defined in 3.5); any penetration of the mouth of another person with a sex organ without consent; or performing oral sex on another person without consent. This includes penetration or intrusion, however slight, of the sex organs or anus of another person by an object or any part of the body.

or

3.17.2 *Sexual contact without consent:* Intentionally touching or fondling a person's intimate parts (genitals, breasts, inner thigh, or buttocks), or intentionally touching a person with one's own intimate parts without consent. This includes contact done directly or indirectly through clothing, bodily fluids, or with an object. It also includes intentionally causing or inducing a person, without consent, to similarly touch or fondle oneself or someone else.

3.18 Sexual Assault Response Team (SART): A committee of trained interdepartmental university staff working collaboratively to provide services for the university community by offering specialized sexual assault intervention services, including but not limited to ensuring the immediate safety of the alleged victim, taking interim measures as necessary, and remediating the effects of substantiated sexual misconduct.

3.19 Sexual exploitation: Specific forms of sexual behavior that involve nonconsensual use of another individual's nudity or sexuality, excluding behavior that constitutes one of the other sexual misconduct offenses. Examples of sexual exploitation include but are not limited to

- 1) Voyeurism (such as watching or taking pictures, videos, or audio recordings of another person engaging in a sexual act without the consent of all parties);
- 2) Invasion of sexual privacy, such as allowing a third party to watch, or disseminating, streaming, or posting pictures or video of another in a state of undress or of a sexual nature without that person's consent;
- 3) Administering alcohol or drugs to another person for the purpose of making that person vulnerable to nonconsensual sexual activity;
- 4) Exposing one's genitals to another person without consent;



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- 5) Prostituting another individual;
- 6) Engaging in sexual trafficking; or
- 7) Knowingly exposing another individual to a sexually transmitted infection or virus without the other individual's knowledge.

3.20 Sexual harassment: A form of harassment consisting of unwelcome sexual advances, requests for sexual favors, or other verbal actions including lewd or sexually suggestive comments, jokes, questions, innuendoes, and remarks about clothing, body, or previous or future sexual activity; physical actions including unwelcome touching, patting, hugging, or brushing against a person's body; written, graphic, or electronic statements or depictions; or nonverbal conduct of a sexual nature (whether the conduct is direct, indirect, or by third persons) when:

- 1) Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, education, academic standing, or participation in any university program and/or activity, or is used as the basis for university decisions affecting the individual (often referred to as "quid pro quo" harassment); or
- 2) Such conduct is sufficiently severe or pervasive that it unreasonably interferes with an individual's employment or educational performance or creates an intimidating, hostile, or abusive environment for that individual's employment, education, or participation in a university activity (often referred to as "hostile environment" harassment).

3.21 Sexual misconduct: Sexual misconduct includes acts of, or attempts of, dating and relationship violence; domestic violence; discrimination based on sex, pregnancy, pregnancy-related conditions, sexual orientation, gender identity, or gender expression; hostile environment based on sex, pregnancy, pregnancy-related conditions, sexual orientation, gender identity, or gender expression (including intimidation and hazing/bullying); sexual harassment; sexual assault; sexual exploitation (including engaging in sexual trafficking); and stalking as defined by state and federal law.

3.22 Stalking: Intentionally or knowingly engaging in a course of conduct (two or more acts) directed at a specific person that the actor knows or should know would cause a reasonable person to fear for their safety or the safety of others, to suffer other emotional distress, or that interferes with the other person's property, including harassing, threatening, following, monitoring, observing, surveilling, intimidating, delivering items, or communicating with another, directly, indirectly, or through a third party, by telephone, mail, electronic communication, social media, photography, or any other action, device, or method. Stalking may be but is not limited to sex- or gender-based stalking.

3.23 University community members: All persons employed by or affiliated with Utah Valley University in any way and persons participating in any university program or activity, including



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but not limited to trustees, advisory board members, administrators, faculty, staff, students, independent contractors, volunteers, and guests or visitors to any university campus or any property owned or leased by the University.

4.0 POLICY

4.1 Scope of Policy

4.1.1 This policy applies to all persons employed by or affiliated with Utah Valley University in any way and persons participating in any university program or activity, including but not limited to trustees, administrators, faculty, staff, students, independent contractors, volunteers, and guests or visitors to a university campus or any property owned or leased by the University (sometimes referred to as “third parties”). To the extent that any other university policies address sexual misconduct, this policy and its procedures govern and control.

4.1.2 Conduct subject to this policy includes the following:

- 1) Conduct on UVU premises.
- 2) Conduct in the context of a UVU employment or education program or activity, including but not limited to UVU-sponsored travel, athletics, activities, research, and internship programs.
- 3) Conduct that occurs off-campus or via electronic media can be the subject of a complaint or report and shall be evaluated to determine whether the misconduct has continuing effects on the campus and therefore violates this policy. Allegations of off-campus sexual misconduct involving members of the university community shall be reported to the Title IX Coordinator.

4.2 Policy Statement

4.2.1 The University prohibits all forms of sexual misconduct that violate Title IX of the *Education Amendments of 1972*, Title VII of the *Civil Rights Act of 1964*, or related applicable laws. The University shall respond promptly and effectively to reports of sexual misconduct and shall take appropriate action to stop, prevent recurrence of, and remediate the effects of sexual misconduct on the complainant and/or the university community. The University may discipline any person who violates this policy, up to and including termination of employment and/or expulsion from the University. If a student has been disciplined for serious violations of institutional policies regarding sexual misconduct, sex discrimination, or harassment, the University may enter a notation on the student’s transcript consistent with the *Family Educational Rights and Privacy Act*.

4.2.2 The University works to prevent sexual misconduct through education, training, and policies, and to remediate the effects of sexual misconduct by protecting the rights of the parties involved and providing support services to members of the university community. All members



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of the university community, including visitors and bystanders, have the responsibility, to the extent possible, to prevent sexual misconduct, to report sexual misconduct, and to assist those who have experienced sexual misconduct.

4.2.3 University community members are responsible for knowing the information and procedures in this policy. Reports of sexual misconduct made after the fact are governed by the policy in place at the time of the alleged sexual misconduct. However, procedures applicable are those in place at the time of the resolution.

4.2.4 Nothing in the policy shall be construed in a manner that impinges on the rights or privileges of individuals protected by the US Constitution, including their protected free speech rights, as set forth in UVU Policy 161 *Freedom of Speech*.

4.2.5 Nothing in this policy shall be interpreted to alter the status of employees who are otherwise at will.

4.2.6 When applying this policy to students, the University shall comply with Utah State Board of Regents' Policy R256 *Student Disciplinary Processes*, which sets forth minimum standards of due process for student disciplinary processes related to nonacademic matters that may result in either expulsion or a minimum 10-day suspension.

4.3 Prohibited Conduct

4.3.1 Violations of this policy include but are not limited to acts or attempts of dating and relationship violence; domestic violence; discrimination based on sex, pregnancy, pregnancy-related conditions, sexual orientation, gender identity, or gender expression; hostile environment based on sex, pregnancy, pregnancy-related conditions, sexual orientation, gender identity, or gender expression (including intimidation and hazing/bullying); sexual harassment; sexual assault (including nonconsensual sexual contact or nonconsensual sexual intercourse); sexual exploitation (including engaging in sexual trafficking); and stalking.

4.3.2 The University prohibits retaliation as defined in this policy. The University shall take steps to prevent retaliation and shall take strong responsive action to threats or acts of retaliation, up to and including termination of employment and/or expulsion from the University. Any retaliatory threat or act of violence against victims or witnesses of sexual violence, moreover, is a third-degree felony under Utah Code § 53B-28-304 and may be subject to criminal prosecution.

4.3.3 Individuals who, in bad faith, deliberately make false or malicious accusations of violation of this policy shall be subject to disciplinary action, up to and including termination of employment and/or expulsion from the University. However, a no-violation finding by the investigator does not in itself constitute proof of a false or malicious accusation.



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4.4 Determination of Consent

4.4.1 All members of the university community must understand how to determine consent to sexual activity. All participants in the sexual activity are responsible for ensuring that they have the consent of all involved to engage in sexual activity. Any individual who engages in sexual activity without receiving clear, knowing, and voluntary consent, or in which one of the parties withdraws consent at any point but is forced to participate, has violated this policy.

4.4.2 Consent to any one form of sexual activity does not automatically imply consent to any other forms of sexual activity. Past consent to sexual activity does not imply ongoing future consent. The current or past existence of a dating or marital relationship does not imply consent. Whether an individual has taken advantage of a position of authority over an alleged victim may be a factor in determining consent or coercion.

4.4.3 There is no requirement that a party resist the sexual advance or request, but resistance is a clear demonstration of non-consent.

4.4.4 Sexual activity with someone deemed unable to grant clear, knowing, and voluntary consent constitutes a violation of this policy. This includes, but is not limited to, individuals who are

1) Mentally and/or physically incapacitated for any reason (such as by mental or physical disability; lack of sleep; alcohol; illegal, date-rape or prescription drug use; unconsciousness; blackout; or involuntary physical restraint);

2) Under the age of 18; or

3) Forced to give consent in any way, including but not limited to by coercion, intimidation, duress, deception, threats, implied threats, and/or physical force.

4.4.5 Use of alcohol or other drugs (prescription or illegal) does not waive the requirement to obtain consent from all involved to engage in sexual activity and shall not provide a defense for any behavior that violates this policy.

4.5 Sexual Conduct with Subordinate Employees or Students

4.5.1 Employees shall not engage in sexual conduct with subordinate students or employees unless there has been proper disclosure and management under section 4.5.2, so that any subordinate relationship and potential for abuse of power has been removed. Subordinate students are UVU students or applicants whose educational opportunities could be adversely impacted by employees. The purpose of this restriction is to prohibit the abuse of power by employees and the exploitation of subordinate students or employees. Examples of prohibited subordinate relationships include faculty with students who are currently enrolled in their classes or who are majoring in a program in the faculty member's department, whom they otherwise



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evaluate, or who are in clubs or other student organizations they advise; supervisors with their direct or indirect subordinate employees; or other employees in similar power relationships over students or employees.

4.5.1.1 For purposes of Section 4.5.1, sexual conduct is any sexual relationship or sharing any sexually explicit or lewd communication, image, or photograph. Sharing sexually explicit or lewd communication, image, or photograph does not include any communication, image, or photograph that faculty shares with students as part of a legitimate academic exercise, such as pedagogical requirements for specific classes such as health, science, art, behavioral science, etc.

4.5.1.2 For purposes of Section 4.5.1, educational opportunities include admission, receipt of financial aid, assessment of academic performance, placement in academic opportunities such as internships, assistantships, and graduation.

4.5.2 All employees engaging or intending to engage in sexual conduct with a subordinate student or employee shall immediately disclose the relationship to their direct supervisors and/or the Title IX Coordinator, or be subject to disciplinary action, up to and including termination. Supervisors who receive such reports or who otherwise become aware of such relationships shall promptly report such relationships to the Title IX Coordinator, who shall work with the relevant parties to remove the subordinate relationship, if possible, consulting with the Office of General Counsel to ensure compliance with Utah Code § 63G-7-301 and this policy. If the subordinate relationship cannot be removed or otherwise appropriately managed, the employee shall be subject to discipline, up to and including termination.

4.6 Safeguards for Privacy

4.6.1 The University is committed to protecting the privacy of complainants and respondents and any party involved in a sexual misconduct report or process to the extent allowed by the *Utah Government Records and Management Act (GRAMA)*, the federal *Family Educational Rights and Privacy Act (FERPA)*, the federal *Health Information Portability and Accountability Act (HIPAA)*, and other applicable laws.

4.6.2 The University shall make reasonable efforts to protect the privacy of those involved in reported incidents, including sharing information only with those who have a “need to know” due to their responsibility to eliminate the reported conduct, prevent its recurrence, and/or address its effects.

4.6.3 All university employees who are involved in responding to Title IX reports of sexual misconduct shall receive training about safeguarding private information in accordance with applicable laws.



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4.7 Requests for Confidentiality

4.7.1 In determining whether to honor a complainant's request for anonymity, the University shall consider the facts and circumstances and the safety of the university community in accordance with applicable law. However, requests for anonymity may limit the University's ability to investigate or respond in a more targeted way, such as offering reasonably available interim protective measures or modifications to the complainant.

4.7.2 In some instances, the University may determine that it cannot honor the complainant's request for anonymity where necessary to ensure the safety of the complainant or the university community, in which case the complainant will be informed that an investigation will be conducted and anonymity of the complainant not maintained. When the University agrees to honor a complainant's request to maintain anonymity and not to conduct a further investigation, the matter shall be considered resolved, with the University taking appropriate steps and protective measures or modifications.

4.7.3 The University recognizes that a complainant may initially be hesitant to move forward, but later seek an investigation. Where a report was closed because the University agreed to the complainant's request for anonymity and/or not to conduct further investigation, the matter may later be reopened at the discretion of the Title IX Coordinator or designee based on such factors as complainant request and/or concerns about safety to the university community. The passage of time and the memory/availability of witnesses may limit the University's ability to investigate at a later date.

4.7.4 The University will protect confidential communications to designated UVU advocates authorized by the Title IX Coordinator, protected under the *Utah Campus Advocate Confidentiality Amendments* (Utah Code § 53B-27-101 *et seq.*), where disclosure is not required by applicable federal law, including Title IX, Title VII, and/or the *Clery Act*.

4.8 Reporting an Incident of Sexual Misconduct

4.8.1 The University strongly encourages individuals who have experienced sexual misconduct or who are aware of alleged incidents to report sexual misconduct to the Title IX Coordinator or deputy coordinators, to UVU Police, and/or to other university administrators set forth in this policy. Police investigations and Title IX investigations may proceed simultaneously, as set forth in section 5.9.9, item 8.

4.8.2 All university responsible employees and CSAs, with the exception of licensed mental health counselors or members of the clergy who are working within the scope of their license or religious assignment, or advocates authorized by the Title IX Coordinator, are required to report all incidents of sexual misconduct to the Title IX Coordinator.



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4.8.3 Upon receipt of a report involving a student or employee complainant, the University shall take and/or make available reasonable and appropriate interim measures to protect the complainant, regardless of whether the complainant requests an investigation, initiates a code-of-conduct proceeding, or makes a criminal report.

4.8.4 UVU encourages reporting of sexual misconduct and seeks to remove any barriers to making a report. The University recognizes that an individual who has been consuming alcohol (including underage consumption) or using drugs at the time of the incident may be hesitant to make a report because of potential consequences for their own conduct. To encourage reporting, an individual who makes a good faith report of sexual misconduct that was directed at them or another person will not be subject to disciplinary action by the University for a conduct or policy violation that is related to and revealed in the sexual misconduct report or investigation. Amnesty does not preclude or prevent action by police or other legal authorities. This amnesty provision may also apply to student groups making a report of sexual misconduct.

4.8.5 A complaint is timely if it is filed within 365 calendar days of the last alleged act of sexual misconduct. A complaint that is not timely or that fails to state a claim of sexual misconduct may be dismissed by the Title IX Coordinator after an initial review. At the Title IX Coordinator's discretion and for good cause, particularly in cases alleging sexual misconduct, a complaint that is not timely may be accepted. However, the University's ability to respond may be limited, as evidence may be less available and the University may no longer have jurisdiction over complainants or respondents who are no longer affiliated with the University. If the respondent is enrolled at another USHE institution, the Title IX Coordinator will refer the complainant to the Title IX Coordinator where the respondent is enrolled.

4.9 Investigations and Disciplinary Proceedings

4.9.1 The University shall provide prompt, fair, and impartial investigations and disciplinary proceedings. During these proceedings, both the complainant and the respondent shall be provided equitable rights and opportunities, as outlined in these procedures.

4.9.2 The University is committed to ensuring that its resolution process is free from actual or perceived bias or conflicts of interest that would materially impact the outcome. University officials who are designated to conduct and/or participate in sexual misconduct investigations or proceedings shall be trained on how to conduct these investigations or proceedings in a manner free from bias or intimidation. Officials shall also be trained to recognize and acknowledge any potential conflict of interest. Any party who believes there is bias or conflict of interest may submit a written request to remove the person from the process to the Title IX Coordinator, the Dean of Students, or the Associate Vice President of Human Resources. The written request should include the specific rationale as to why the requestor believes the bias or conflict could materially impact the outcome.



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4.9.3 Employees and students shall promptly participate in good faith in formal or informal internal administrative investigations related to this policy. If either party fails to participate in good faith, the investigator(s) may make findings without the response of that party, potentially leading to an unfavorable outcome for that party.

4.10 Training

4.10.1 The University shall provide training, as required by applicable law and recommended by best practices, to the Title IX Coordinator and deputy investigators, review/appeal board members, CSAs, SART, and other employees involved in providing services relevant to sexual misconduct intervention.

4.10.2 In compliance with applicable federal law, the University shall provide initial training for new employees and incoming students and ongoing training for students and employees about the prevention and reporting of sexual misconduct and appropriate resources and services provided by the University and the community.

4.11 Title IX and VAWA Statement

4.11.1 It is the policy of UVU to comply with Title *IX of the Education Amendments of 1972* (and all other applicable laws regarding unlawful discrimination and harassment), which prohibits discrimination (including sexual harassment and sexual violence) based on sex in the University's educational programs and activities. It is also UVU's policy to comply with the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act*, as amended by the *Violence Against Women Act (VAWA)*. Title IX prohibits retaliation for asserting or otherwise participating in claims of sex discrimination. VAWA imposes additional duties on universities and colleges to investigate and respond to reports of sexual assault, stalking, and dating or domestic violence, and to publish policies and procedures related to the way these reports are handled. UVU has designated the Title IX Coordinator, with assistance of the deputy Title IX coordinators, to coordinate UVU's compliance with Title IX and *VAWA* and to respond to reports of violations. UVU has directed its Clery Committee to coordinate UVU's compliance with the *Clery Act* reporting related *VAWA* requirements. A person may also file a complaint with the Department of Education's Office for Civil Rights regarding an alleged violation of Title IX by visiting www2.ed.gov/about/offices/list/ocr/complaintintro.html or calling 1-800- 421-3481. Employees may also file a charge with the Equal Employment Opportunity Commission regarding an alleged violation of Title VII by calling 1-800-669-4000 or visiting <https://www.eeoc.gov/employees/howtofile.cfm>.



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5.0 PROCEDURES

5.1 Scope and Applicability of These Procedures

5.1.1 All sexual misconduct complaints are subject to the procedures set forth in this policy. Unless the sexual misconduct also violates additional university policies, other university policies and procedures do not apply to sexual misconduct reports, processes, and proceedings. All other protected class discrimination, harassment, and retaliation complaints are subject to the procedures set forth in UVU Policy 165 *Discrimination, Harassment, and Affirmative Action*. All other misconduct not involving sexual misconduct or protected class discrimination, harassment, and/or retaliation shall be addressed through the procedures found in the respective student, faculty, and staff university policies.

5.2 Resources for Victims of Sexual Assault

5.2.1 If a report involves potentially criminal acts, alleged victims shall be informed in writing that they have the option to make a formal criminal complaint by reporting the incident to UVU Police, Ph. (801) 863-5555, or to local police by calling 911.

5.2.2 Regardless of whether they decide to report an incident of sexual misconduct, alleged victims of sexual assault shall be encouraged to preserve evidence in case they decide later to report the incident to law enforcement. It is critical to preserve evidence as soon as possible after the incident.

5.2.3 If the incident just occurred, evidence should be preserved as follows:

- 1) The victim should call 911 and get to a safe place as soon as possible. Seeking assistance by promptly calling 911 may be important to ensuring an individual's physical safety and/or to obtaining immediate medical care or other support. It may also be necessary to preserve evidence, which can assist the University and/or law enforcement in responding effectively.
- 2) The victim should go to a hospital emergency room where trained medical personnel can collect evidence through forensic rape exam, check for injuries, and provide emergency contraception and limited STD-preventative medication.
- 3) Even if the victim chooses not to seek immediate medical care, they should try to preserve all the physical evidence (keeping in mind it may be possible to collect evidence of the offense up to five days following the incident).
- 4) The victim should not shower, bathe, or douche.



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- 5) The victim should not brush their teeth.
- 6) The victim should save the clothing that they were wearing in a brown paper bag.
- 7) If the incident took place in the victim's home, they should not rearrange and/or clean up anything.
- 8) The victim should be encouraged to seek support by talking with someone their trusts (friend, family, support person/advisor, community, or university resource).
- 9) The victim may contact the Utah County 24-hour Crisis Line, Ph. (801) 226-4433. Trained advocates are available to provide support and to talk with the victim about available options.
- 10) The victim should decide whether to report the incident to the police and/or university officials (keeping in mind that delay may result in lost evidence).

5.2.4 The University provides confidential crisis and medical services on campus. These resources are available to alleged victims regardless of whether they report to UVU Police or request university disciplinary proceedings. Students are encouraged to contact Student Health Services, and benefits-eligible employees are encouraged to contact the Employee Assistance Program. Following are some of the university resources that are available:

UVU Police	(801) 863-5555
Title IX Coordinator	(801) 863-7999
Student Conduct Office	(801) 863-8952
University Ombudsman	(801) 863-7237
Employee Relations (HR)	(801) 863-5360

The following university office provides strictly confidential services:

Student Health/Counseling	(801) 863-8876
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5.2.5 Individuals may also choose to contact community resources such as local victim offices, counseling, clergy, chaplains, and healthcare services. For a list of such resources, visit the UVU Title IX website for a current list, or contact the university Title IX Office or Student Health Services.



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5.3 Reporting an Incident of Sexual Misconduct

5.3.1 Faculty, staff, or students who have experienced sexual misconduct should report it to the Title IX Coordinator. Faculty, staff, or students who become aware of sexual misconduct involving others within the university community shall report such issues to the Title IX Coordinator, who is charged with investigating reports of violations of this policy.

5.3.2 The Title IX Coordinator, who oversees all Title IX investigations and coordinates the University's response to sexual misconduct, may be reached at 800 West University Parkway, Browning Administration Building, Suite 203, Orem, UT 84058; phone (801) 863-7999; e-mail TitleIXCoordinator@uvu.edu. The names, office addresses, telephone numbers, and e-mail addresses of the Title IX Coordinator and deputy Title IX coordinators can be found on the University's Title IX website at <https://www.uvu.edu/equalopportunity/titleix/>

5.3.3 Individuals may also submit reports, including anonymous reports, through the university's designated reporting system(s), such as EthicsPoint (877)228-5401 or <https://secure.ethicspoint.com/domain/media/en/gui/23421/index.html>).

5.4 Confidentiality and Reporting

5.4.1 To make informed choices when consulting campus resources, alleged victims should be aware of confidentiality and mandatory reporting requirements. Although the University will consider the requests of a complainant, complainants should be aware that the following levels of confidentiality, as required by state and federal law, apply to university employees who receive reports of sexual misconduct:

1) *Strictly Confidential*: Conversations with university licensed mental health counselors or members of the clergy who are working within the scope of their license or religious assignment can remain anonymous except in rare circumstances when the alleged victim is a minor or a vulnerable adult, or when there is imminent danger to the alleged victim or others in the community. In some cases, these individuals are required to report to UVU Police for *Clery Act* purposes that an incident occurred, but the identities of the alleged victims are not shared.

2) *Mostly Private*: Except for conversations that occur with the persons listed under "strictly confidential" above, conversations with faculty or staff about sexual misconduct must be reported to the Title IX Coordinator or a designated deputy coordinator. In those cases, the Title IX Coordinator or designated deputy coordinator shall only share such information with administrators on a "need-to-know" basis. The Title IX Coordinator or designated deputy coordinator will review requests for anonymity in accordance with this policy. Reports of sexual misconduct to the following individuals are considered "mostly private," with a requirement that identities of alleged victims be reported to the Title IX Coordinator:

a) Designated campus security authorities (CSA)



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b) Responsible employees

c) Students who serve in an ongoing peer-advising role (such as Work Study) are also expected to report to the Title IX Coordinator if they learn of sexual misconduct while working. If they learn of the incident outside the workplace, they are not required to report but are encouraged to follow the recommendations presented in bystander prevention training.

3) *Confidentiality Limited by State Law*: If reported to UVU Police, some exploratory conversations are confidential. Alleged victims may meet with a detective or officer without immediately triggering a full-scale investigation or the requirement to press criminal charges. Police reports, with identifying information redacted, may be available to the public upon request only if permitted by *GRAMA* and other applicable laws.

5.4.2 The University will protect confidential communications protected under the *Utah Campus Advocate Confidentiality Amendments* (Utah Code § 53B-27-101 *et seq.*), where disclosure is not required by applicable federal law, including Title IX, Title VII, and/or the *Clery Act*.

5.5 Third-Party/Bystander Reporting Obligations

5.5.1 Any responsible employee or CSA who receives a sexual misconduct report shall inform the complainant as soon as possible about their duty to report, how the complainant's privacy will be protected, what levels of confidentiality can be offered, and the University's Clery reporting obligations. Responsible employees or CSAs shall report information they learn about alleged or possible sexual misconduct incidents to the Title IX Coordinator within 24 hours. For after-hours reporting to the Title IX Coordinator, responsible employees or CSAs should use the link or phone number found on the University's Title IX webpage.

5.5.2 Any incident involving a minor shall be immediately reported to UVU Police, or to the local police department if the incident occurred off campus. Responsible employees or CSAs who become aware of allegations involving a minor shall notify the Title IX Coordinator and their supervisor that they have reported the allegation to the police, and must follow procedures required by Policy 115 *Minors on Campus and at University-Sponsored Events*.

5.5.3 For third-party complainants, the University shall provide reasonable protective measures as appropriate and available, based on consideration of the role of the third party, the nature of any contractual or other relationship with the University, the relationship of the respondent to the University, and the facts and/or evidence received.

5.6 Support Persons/Advisors

5.6.1 As required by Utah State Board of Regents' Policy R256 *Student Disciplinary Processes*, in matters of nonacademic misconduct, including when students are respondents in protected class discrimination, harassment, or retaliation complaints, and where the University believes in good faith, based on facts known by the University at the time or when additional facts are



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discovered later, that the matter may result in expulsion or a minimum 10-day suspension, the following additional protections will apply. Students may waive any rights described in this section. This section does not apply to UVU Police Department law enforcement activities.

1) Prior to interviewing the student, the investigator or representative of the Title IX Office shall notify the student of the allegations made against him or her and of their right to have a support person/advisor throughout the process who may be, but need not be, an attorney. This notice may be verbal and may be given immediately before a student is interviewed in regards to the issue described in the notice. If a student wishes to seek counsel from a support person/advisor, the University shall reschedule the interview, giving the student reasonable time to obtain a support person/advisor.

2) In meetings or interviews with the Title IX Office or the University, student complainants and respondents each have the right to a support person/advisor of their choice, who may be an attorney. If a complainant chooses to have a support person/advisor, an employee respondent may have a support person/advisor present when interviewed and at any subsequent meetings. During such meetings or interviews, the support person/advisor may only advise the complainant or respondent and may not actively participate in the investigation or informal process.

5.6.2 During any review hearings under section 5.11 of this policy, complainants and respondents (whether students or employees of the University) may each have a support person/advisor of their choice, who may be an attorney, advocate for them.

5.6.3 Support persons/advisors must be willing to agree to maintain the confidentiality of investigation and review hearing processes.

5.6.4 The University may proceed with the investigation and review hearing processes in a timely fashion without the complainant or respondent if that party fails to respond or declines to participate. The University may set reasonable deadlines and move forward with processes regardless of whether a party and/or a party's support person/advisor is able to accommodate those deadlines.

5.7 Preliminary Review of Reports of Sexual Misconduct

5.7.1 After receiving a report of sexual misconduct, the Title IX Coordinator or designated deputy coordinator shall conduct a preliminary review that may include the following:

- 1) Assess the nature and circumstances of the report
- 2) Address the immediate physical safety and emotional well-being needs of the complainant.
- 3) Where appropriate, provide the complainant with information about applicable police and other options.



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- 4) Where appropriate, provide referral to SART resources and encourage complainants to use university and community services for victims of sexual misconduct.
- 5) Initiate any necessary interim measures intended to address the short-term effects of sexual misconduct, which may include referral to counseling and/or health services or referral to the employee assistance program, support for modification to housing arrangements, altering work arrangements for employees, a safety plan (such as providing campus escorts), implementing contact limitations and directives between the parties, offering support for adjustments to academic deadlines, course schedules, etc. At the recommendation of the Title IX Coordinator or designated deputy coordinator, the responsible university administrator (as defined in 5.9.13) may also impose an interim suspension of a student, employee, visitor, or organization, or invoke other safety measures temporarily pending the outcome of the investigation and subsequent proceedings.
- 6) Consider the complainant's request for anonymity and assess and determine the appropriate university response and whether there is reasonable cause to believe that this policy has been violated and that an investigation is necessary.
- 7) Assess the reported conduct for any Clery obligations, including entry in the crime log or issuance of a timely warning, and report to UVU Police when necessary.

5.7.2 If the Title IX Coordinator or designated deputy coordinator determines that there is no reasonable cause to believe that this policy was violated and/or that an investigation is not necessary, they shall issue a written notice of dismissal to the complainant. Such dismissals are final and not appealable internally within UVU.

5.7.3 At the recommendation of the Title IX Coordinator or designee, the responsible university administrator (as defined in section 5.9.13) may impose an interim suspension of a student, employee, visitor, or organization, or invoke other temporary safety measures pending the outcome of the investigation and subsequent proceedings.

5.8 Informal Resolution

5.8.1 Because each case is different, the Title IX Coordinator or designated deputy coordinator shall tailor each resolution to the specific facts of the case. The Title IX Coordinator or designated deputy coordinator shall determine whether a report of sexual misconduct is appropriate for informal resolution, mediation, or requires an investigation.

5.8.2 Informal resolution is encouraged to resolve concerns at the earliest stage possible with the cooperation of all parties involved. Participation in the informal resolution process is voluntary; the University shall not compel either party to engage in informal resolution. Informal resolution may be appropriate for responding to anonymous reports and/or third-party reports. Informal resolution may not be used in cases involving sexual violence, even if the complainant



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volunteers for informal resolution. Informal resolution may also be inappropriate when one or both of the parties are reluctant to participate in good faith.

5.8.3 Informal resolution may include an inquiry into the facts but typically does not include an investigation. Informal resolution is flexible and includes options such as mediating an agreement between the parties, separating the parties, referring the parties to counseling programs, negotiating an agreement for disciplinary action, conducting targeted preventive educational and training programs, or providing remedies for the individual harmed by the offense. Informal resolution also includes options such as discussions with the parties, making recommendations for resolution, and conducting a follow-up review after a period of time to ensure that the resolution has resolved concerns effectively.

5.8.4 The University endeavors to conclude informal resolution promptly.. All informal resolution efforts shall be documented.

5.8.5 After concluding informal resolution of a complaint, the Title IX Coordinator or designated deputy coordinator shall notify the complainant and respondent of the resolution that was agreed upon.

5.8.6 Participation in informal resolution does not prohibit either party from terminating informal resolution and/or requesting an investigation at any point during the informal resolution process. Where a report was closed after informal resolution, the matter may later be reopened at the discretion of the Title IX Coordinator or designated deputy coordinator when requested by the complainant and/or if the Title IX Coordinator or designated deputy coordinator determines there is a risk to the safety of the university community.

5.9 Formal Investigation

5.9.1 If the Title IX Coordinator or designated deputy coordinator determines an investigation is necessary, the University shall conduct a thorough, reliable, and impartial internal administrative investigation by interviewing witnesses, collecting documentary evidence, and preparing a written report of findings. The purpose of the investigation is to establish whether there is a reasonable basis, based on a preponderance of the evidence, for concluding that the alleged violation of this policy has occurred. The University reserves the right to engage an outside investigator to conduct the investigation if it is determined there is a conflict of interest or other compelling reason to do so.

5.9.2 Complainants, respondents, and witnesses shall be treated with respect throughout the investigation process, disciplinary process, and other proceedings:

1) Complainants and respondents can expect prompt and equitable resolution of allegations of prohibited sexual misconduct.



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- 2) Complainants, respondents, and witnesses can expect privacy in accordance with this policy and any legal requirements.
- 3) Complainants can expect freedom from retaliation for making a good faith report of prohibited sexual misconduct or participating in any investigation or proceeding under this policy.
- 4) Complainants, respondents, and witnesses shall refrain from retaliating against any person for making a good faith report or participating in any proceeding under this policy.
- 5) Respondents, complainants, and witnesses shall provide truthful information in connection with any report, investigation, or resolution or prohibited sexual misconduct under this policy.
- 6) Complainants and respondents shall have interim measures made available and be given the opportunity to request modifications necessary for physical and/or emotional safety.
- 7) Complainants and respondents shall be given timely and equal access to allegations and have the opportunity to respond to information that will be used against them in any disciplinary proceeding.
- 8) Complainants and respondents shall have the opportunity to offer information, present evidence, and identify witnesses during an investigation.
- 9) Complainants and respondents shall be given timely notice of meetings where their presence is necessary.
- 10) Complainants and respondents shall receive simultaneous notification, in writing, of the results of any proceedings.
- 11) Complainants and respondents shall have the opportunity to articulate concerns or issues about proceedings under this policy.
- 12) Complainants and respondents shall have reasonable time to prepare any response permitted under this policy.
- 13) Complainants, respondents, and other participants in the Title IX process may request accommodations necessary under the *Americans with Disabilities Act (ADA)* through the Title IX Coordinator or designated deputy coordinator, who will refer the request to the appropriate ADA coordinator and then implement approved accommodations.

5.9.3 When proceeding an investigation, the investigator shall ask the complainant to provide written notice of the allegations, including a concise statement describing the incident, when and where the misconduct occurred, and why the complainant believes it violates university policy, and a proposed resolution. The complainant shall be asked to provide and preserve all



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corroborating or potentially relevant evidence in any format, list potential witness names, and sign the statement. From this information, the Title IX Coordinator or designated deputy coordinator shall prepare a summary of allegations and relevant information from the complainant's statement for the respondent.

5.9.4 By requesting an investigation and submitting the complaint form, the complainant is giving the investigator consent to discuss the information provided with other persons who may have relevant factual knowledge of the circumstances of the complaint, and is authorizing the collection and examination of all records and other documentation relevant to the complaint. In cases where a complainant does not want to pursue an investigation, the Title IX Coordinator or designated deputy coordinator shall inform the complainant that the University's ability to investigate and/or remediate may be limited.

5.9.5 If during the investigation a complainant elects not to cooperate or withdraws the complaint, the coordinator may (1) note that the allegations have been withdrawn and end the investigation, or (2) note the complainant has elected not to cooperate and proceed to investigate to determine what occurred and to protect the University's interest in maintaining a safe environment free from sexual misconduct.

5.9.6 The investigator shall provide the respondent with the summary of the complainant's allegations and a copy of this policy and shall request a written response from the respondent. The respondent shall also be asked to provide and preserve all corroborating or potentially relevant evidence in any format, and list potential witness names. In preparing the summary of the complainant's allegations for the respondent, the Title IX Coordinator or designated deputy coordinator has the discretion to redact names and/or witnesses to protect the identity and ensure the safety of the complainant and/or witnesses. The respondent may prepare and submit a written statement to admit or deny the allegations, provide an explanation why any conduct was not a violation of the policy, provide all corroborating evidence, list potential witnesses, and state whether complainant's proposed resolution is appropriate.

5.9.7 Upon receipt of the written response from the respondent, or after the reply period expires without a response, the investigator may request to meet with the respondent and/or complainant to clarify any discrepancies.

5.9.8 The Title IX Coordinator shall choose the investigator(s), except in cases where the Title IX Coordinator or others involved in the investigation have a conflict of interest, in which case the University's Office of General Counsel shall select internal or external impartial investigator(s).

5.9.9 To provide a prompt, thorough, fair, and impartial investigation and resolution, all investigations of reports of sexual misconduct shall incorporate the following standards:



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- 1) The respondent shall be provided the name of the complainant, if known, a notice of request for investigation, a written statement of the allegations, and a copy of this policy. The respondent shall be given a full opportunity to respond to the allegations.
- 2) The investigator(s) conducting the investigation shall be familiar with this policy, have training or experience in conducting investigations, and shall be familiar with applicable university policies and procedures. For cases involving allegations of sexual violence, the individual(s) conducting the investigation must receive annual training on issues related to sexual violence. Such training includes how to conduct an investigation that protects the safety of complainants and promotes accountability.
- 3) Disclosure of material witnesses and relevant facts shall be given to both parties to permit each party a full opportunity to respond to allegations and defenses, subject to *FERPA* and privacy law requirements, and the need to guard against retaliation of parties and witnesses. Disclosure of facts to witnesses shall be limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation shall be advised that maintaining confidentiality is essential to protect the integrity of the investigation. Participants shall also be reminded not to retaliate against other parties, witnesses, or other participants in the process.
- 4) The investigator(s) or others shall not question the complainant, or seek evidence, regarding the complainant's prior sexual conduct with anyone other than the respondent(s). The investigator(s) shall also apply the principles of consent set forth in this policy, including the principle that evidence or prior consensual dating or a sexual relationship between the parties, in itself, does not imply consent or preclude a finding of sexual misconduct.
- 5) The investigator shall apply a preponderance of evidence standard to determine whether the sexual misconduct occurred as alleged and whether there has been a violation of this policy.
- 6) Student parties may choose to have a support person present, provided the support person does not disrupt the meeting and does not speak on behalf of the parties. Generally, the support person is limited to quietly conferring with the party through written correspondence or whisper, unless otherwise required by applicable law. As set forth in section 5.6, (1) student respondents may have a support person present during any meetings or interviews, regardless of whether complainants choose to do so, and (2) all complainants and respondents (whether students or employees of the University) may each have a support person/advisor of their choice advocate for them during any review hearings under section 5.11 of this policy.
- 7) At any time before or during the investigation, the investigator may recommend that interim protections or remedies for the parties or witnesses be provided by appropriate university administrators. Failure by a party to comply with the terms of interim protections may be considered a separate violation of this policy. For an interim measure, the Title IX Coordinator may recommend to the responsible university administrator (who should consult with Human Resources and the Office of General Counsel) that a respondent employee be placed on a paid or



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unpaid leave. Leave may be unpaid where the employee has failed to participate in the investigation promptly or in good faith, or when substantial evidence received before or during the investigation indicates that a serious violation of policy has occurred.

8) Though the University strives to resolve all cases in a prompt and timely manner, the timeline varies based on the circumstances of each case. Additionally, the timeline for a case may be affected by breaks in the academic calendar, availability of the parties and witnesses (including due to leave of absence), scope of the investigation, need for interim actions, and unforeseen or exigent circumstances. The parties and administrators with a need to know will be periodically updated on the status of the case. In cases where there is a simultaneous law enforcement investigation, the University may need to delay its investigation temporarily while law enforcement gathers evidence. However, the University investigation will generally proceed with its investigation and resolution of a complaint during any law enforcement investigation.

9) Parties and witnesses are expected to cooperate with and participate in the University's investigation in good faith. If either party fails to participate in good faith, the investigator(s) may make findings without the response of that party, potentially leading to an unfavorable outcome for that party.

10) The complainant and respondent shall be informed if there were findings made that the policy was or was not violated and of actions taken to resolve the complaint, if any, that are directly related to the complainant, such as an order that the accused not contact the complainant. In accordance with university policies protecting individuals' privacy and applicable law, the complainant may be generally notified that the matter has been referred for disciplinary action, but shall not be informed of the details of the recommended disciplinary action without the consent of the respondent. The investigator shall also advise the complainant and respondent of additional options outside the University that may be pursued.

5.9.10 Upon conclusion of the investigation, the investigator(s) shall prepare a draft preliminary report or summary that summarizes the complainant's allegations and respondent's responses, , summarizes the evidence relied on and the material witnesses supporting or opposing the allegation(s) and relied on by the investigators, and includes preliminary findings. Before the final findings are made and the report or summary is finalized, the complainant and the respondent will each be given the opportunity to review this draft preliminary report or summary in the Title IX Office or via a secure online portal. The parties shall not receive an electronic or written copy, nor may they photograph, record, copy, or download the draft preliminary report or summary, but they will be permitted to take notes and write questions to the investigator that will be left with or can be emailed to the investigator. A complainant and respondent may submit any additional comment or information to the investigator within five business days of the date of the notice of the opportunity to review the draft preliminary report or summary (unless the investigator provides a written extension). This is the final opportunity for the parties to identify any additional information or witnesses. In the absence of good cause, information discoverable through the exercise of due diligence that is not provided to the investigator at this juncture shall



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not be considered by the investigator. Complainants, respondents, and third parties may not directly or indirectly contact witnesses who are discovered through the draft report or summary or the investigation for further questioning and should instead work with the investigator(s) regarding any discrepancies.

5.9.11 The investigator(s) shall prepare a final investigation report or summary that contains a statement of the allegations,, the positions/responses of the parties, a summary of evidence and material witnesses the investigator(s) relied on, the findings, and a determination on whether this policy has been violated. The Title IX Coordinator, or designee, and an attorney assigned by the Office of the General Counsel shall review each final investigation report or summary before it is finalized to ensure compliance with this policy.

5.9.12 The complainant and respondent shall receive an investigation final findings letter. The possible findings of the investigation are the following:

- 1) A decision of “unfounded” indicates either that there is insufficient evidence for the investigators to conclude that the event(s) occurred as alleged, or even if the event(s) occurred, it/they did not constitute sexual misconduct.
- 2) A decision of “inconclusive” means that the evidence provided by both parties did not reach a preponderance of evidence in favor of either party.
- 3) A decision of “substantiated” means that the events occurred as alleged by a preponderance of evidence in favor of the complainant.

5.9.13 The final investigation report or summary shall be submitted to the responsible university administrator designated below with authority to implement actions and/or discipline necessary to resolve the complaint (unless a conflict of interest exists, in which case the Office of General Counsel will recommend to the President a designee to serve as an alternative responsible university administrator). When the respondent is an employee, the responsible university administrator shall consult with the EO/AA Director, the Office of General Counsel, and with Human Resources. When the respondent is a student, the responsible university administrator shall consult with the EO/AA Director and the Office of General Counsel. The final investigation report or summary shall be kept in the investigation file and may be used as evidence in other related proceedings, such as subsequent complaints, disciplinary actions, and/or review hearings or appeals.



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Respondent's Affiliation with the University	Responsible University Administrator
Student	Designated Student Conduct administrator (either the Director of Student Conduct or the Associate Dean of Students, with neither serving in that role if they were the investigator on the matter or another conflict exists)
Faculty member	The dean of the faculty member's college (in consultation with the Associate Vice President of Academic Administration)
Executive employee or direct report of a vice president	Vice president of the relevant department
Administration or staff member who is not an executive employee and does not report directly to a vice president	Direct report of the vice president or another senior-level administrator designated by the vice president of the department in which the respondent is employed
Vice president or direct report of the University President	University President
Contractor, vendor, or visitor	Vice President of Finance and Administration

5.9.14 Nothing in this procedure shall be interpreted to alter the status of otherwise at-will employees.

5.10 Sanctions and Remedies

5.10.1 Upon receiving the final investigation report or summary, the responsible university administrator shall promptly determine, based on the investigative findings, the appropriate sanctions and remedies, including offering remedies to the complainant and/or university community, implementing changes in programs and activities, providing training, and the imposition of any disciplinary sanctions. In consultation with the Title IX Coordinator and the Office of General Counsel, (and with Human Resources when the respondent is an employee) the responsible university administrator shall ensure sanctions and remedies are appropriate to end the prohibited conduct, to prevent further violation of this policy, and remedy the effects of any violation. In determining the appropriate sanction(s), the responsible university administrator (and the executive university administrator and review panel, should there be a review hearing) shall be guided by the following considerations:

- 1) The severity, persistence, or pervasiveness of the misconduct;
- 2) The nature of violence in the misconduct and/or use of weapons, drugs, or alcohol (if applicable);
- 3) The impact of the misconduct on the complainant;



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- 4) The impact or implications of the misconduct on the university community;
- 5) Prior misconduct by the respondent, including the respondent's relevant prior disciplinary history;
- 6) Whether the respondent has accepted responsibility for the misconduct;
- 7) The maintenance of a safe, nondiscriminatory, and respectful working and learning environment; and
- 8) Any other mitigating, aggravating, or compelling factors.

5.10.2 Respondents who are found to have violated this policy may be subject to sanctions, depending on the circumstances and the severity of the violation, as follows:

- 1) Possible sanctions against faculty and non-faculty employees for violations of this policy include verbal counseling, written warning, probation, reassignment, transfer, demotion, reduction in pay, suspension, termination of employment, and a no trespassing on campus and/or in university programs, services, and activities order.
- 2) Possible sanctions against students for violations of this policy include those described in UVU Policy 541 *Student Code of Conduct*, such as fines, restitution, interim suspension, suspension, suspension withheld, warning, probation, expulsion, withholding diploma, revocation of degree, discretionary sanction, and organizational sanction.
- 3) Possible sanctions against vendors or visitors to campus who are neither students nor employees of the University include banning the vendors/visitors from all or part(s) of the University and/or ending business relationships with the vendors.

5.10.3 Unless there are circumstances that would require a delay, the Title IX Coordinator or designee shall promptly communicate the investigation findings in writing to both the complainant and the respondent. After the findings are sent to both parties, the Title IX Coordinator will promptly forward the written findings to the responsible university administrator, who shall send the outcome of the investigation, including any sanctions and remedies determined by that administrator, as well as the University's procedures for seeking a review/appeal of the outcome, in writing to both the complainant and the respondent simultaneously ("outcome notice"). However, the responsible university administrator, in consultation with the Title IX Coordinator or designated deputy coordinator, may choose not to disclose the sanctions, and shall not disclose the discipline imposed on a respondent student, except under the following circumstances:

- 1) The discipline directly affects the other party, such as when the respondent student is ordered to stay away from the other party, is transferred to another job site, worksite, class, or is suspended or dismissed from the University; or



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- 2) The complainant alleged sexual misconduct involving a crime of violence or a non-forcible sex offense; or
- 3) The respondent student gives their written permission to disclose the discipline; or

5.10.4 The University complies with all applicable reporting requirements and reserves the right to report findings of criminal misconduct to the police.

5.11 Review Hearing of Sanctions and Remedies (Reviews)

5.11.1 Student or employee (faculty, administration, or staff) complainants or respondents, or a Title IX Coordinator acting on behalf of an anonymous complainant, may seek a review of sanctions and/or remedies by requesting an administrative review hearing or appeal (“review”) within seven business days from the date the outcome notice is sent. A written request for review must be submitted to the Title IX Coordinator and may not exceed 20 pages in length. Untimely requests will not be considered absent extraordinary circumstances. Activities such as graduation, study abroad, internships/externships, business travel, or educational, sabbatical, or extracurricular activities generally do not in themselves constitute extraordinary circumstances. A review may be withdrawn by the requestor at any time without prejudice.

5.11.2 The party requesting a review must identify in the written request at least one or more of the following grounds as the reason for seeking the review:

- 1) New evidence unavailable to the party during the investigation has been discovered that could substantially impact the investigation findings and/or resolution.
- 2) Procedural errors raising substantial doubt that the procedures outlined in Policy 162 were not followed, or that the investigation was not thorough, fair, and/or impartial, which substantially impacted the outcome of the investigation. Procedural errors do not include the lengths of the investigation or sanction decision-making processes.
- 3) The sanction imposed is substantially disproportionate to the severity of the violation (i.e., too severe or not severe enough). This basis for review is not available if the investigation does not substantiate any findings.

5.11.3 If the responsible university administrator has determined that an employee (faculty, administrator, or staff) should be terminated from employment or that a student should be expelled from the University, that respondent has the right to a review if their provides a written request for review within the timeframe stated in section 5.11.1. The written request for review must still provide one or more of the grounds for review stated in section 5.11.2.



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5.11.4 Unless the review panel determines by a majority vote that the party seeking a review has demonstrated, by a preponderance of evidence, that one or more of the grounds stated in 5.11.2 has been met and that modification(s) to the decision should be recommended, the panel shall uphold the responsible university administrator's original decision.

5.11.5 Information shared during a review process must remain confidential. The University shall not be responsible for disclosures made by the parties, who shall bear individual liability for their disclosures. All meetings and hearings related to a review process are closed meetings.

5.11.6 While a review is pending, interim sanctions shall be imposed by the responsible university administrator, but irreversible sanctions shall not be imposed until the review process is complete. For example, if termination from employment has been recommended, a respondent may be suspended from employment (on a paid or unpaid basis) during the review process, but a termination of employment shall not be imposed until the review process is complete and the termination recommendation is upheld. Such leave may be unpaid where the employee has failed to participate in the investigation promptly or in good faith.

5.11.7 Upon receipt of a written request for review, the Title IX Coordinator or designee shall provide the party not requesting the review a copy of the request and invite that party to submit a written response. The Title IX Coordinator or investigator may also provide a written response to the written request for review.

5.11.8 The Title IX Coordinator or designee shall promptly convene a three-member review panel from a pool of faculty, staff, and students trained in Title IX and Title VII requirements, Policy 162, and related procedures.

5.11.8.1 The three-member review panel shall be selected from the pool of trained panel members as follows:



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Respondent's Affiliation with the University	Composition of Review Panel
Faculty member	Three faculty members
Staff member (including executive employees)	Three staff members
Student	One faculty member, one staff member, one student

5.11.8.2 Faculty members shall be selected for a term of service on the review panel pool by the Provost/Vice President of Academic Affairs' designee, and shall be approved by the President of Faculty Senate. Staff members shall be selected for a term of service by the Vice President of Planning, Budget, and Human Resources, or designee, and shall be approved by the president of the Professional Association of Campus Employees (PACE). Student members shall be selected for a term service by the Dean of Students and shall be members of the Utah Valley University Student Association (UVUSA) and approved by the UVUSA President.

5.11.8.3 The selected panel shall choose a panel chair, considering availability and Title IX training and panel experience. Review panel members must be in good standing with the University and must not have any conflicts of interest with serving on the panel. The review panel shall consult with an attorney assigned by the Office of General Counsel to advise the review panel regarding legal, procedural, policy, and other questions as needed during the review process.

5.11.9 The Title IX Coordinator or designee shall promptly notify the complainant and respondent in writing of the identity of the review panel members and shall provide the parties with a copy of the review panel procedures contained in this policy. Within five business days of receiving notification of the names of the review panel members, the complainant and respondent may each request in writing to the Title IX Coordinator that a review panel member be disqualified based on bias or conflict of interest, providing the reasons for this request in the letter. If bias or conflict of interest is confirmed by the Title IX Coordinator, after consultation with an attorney assigned by the Office of General Counsel, the Title IX Coordinator or designee shall select and notify the parties.

5.11.10 Once the review panel is confirmed, the panel members shall promptly determine whether the request for review meets one or more criteria under section 5.11.2. The Title IX Coordinator or designee shall then notify both parties in writing of this determination and, if a hearing is warranted, of the review hearing date..

5.11.11 The scope of the review hearing and the standard of review shall be limited to those stated in section 5.11.2 above. Along with the written notification of hearing date, the Title IX Coordinator or designee shall provide to the review panel, the complainant, and respondent copies of the final investigation report or summary and the written review request and opposition



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statements submitted by the parties. The Title IX Coordinator or designee may also submit a clarification statement or response. The review hearing is an opportunity for the parties to address the review panel in person about the issues being considered for review, based on the reasons and standards of review outlined in section 5.11.2, including addressing information in the final investigation report or summary, any supplemental statements or new evidence unavailable during the investigation submitted by the parties, and any written impact or mitigation statements. Each party will have the opportunity to be heard, to identify witnesses for the review panel's consideration, and to respond to any questions from the review panel.

5.11.12 The complainant and respondent may each request remote video conferencing, so that the parties do not have to be present in the same room at the same time during the hearing. Such requests must be made in writing to the Title IX Coordinator at least 10 business days before the hearing, and the Title IX Coordinator or designee shall make the appropriate arrangements.

5.11.13 The complainant and respondent may each be accompanied at the review hearing by a support person/advisor of their choice, who may be an attorney and who may participate in the hearing as provided in these procedures. The complainant and respondent must notify the Title IX Coordinator of their selected support person/advisor at least 10 business days prior to the date of the review hearing. If timely notice is not provided, the support person/advisor may attend but shall not participate in the hearing.

5.11.14 The review panel chair, complainant, and respondent may each request the appearance of witnesses at the hearing. The Title IX investigator(s) may also suggest a witness list to the panel. At least five business days before the date of the review hearing, parties may submit to the review panel chair, with copies to the Title IX Coordinator or designee, their request for witnesses, including names and contact information, and requests for documentary evidence they would like to have reviewed, along with explanations of how each request is relevant to their reasons for seeking or opposing the review (per the section 5.11.2 bases for review). An attorney from the Office of General Counsel who represents the University during the hearing may also submit a document to the panel and parties addressing the bases for review, relevant evidence, and relevant witnesses, and other issues relevant to the hearing at least five business days before the hearing. Only witnesses and other evidence that are relevant to the section 5.11.2 basis for review may be considered by the review panel. It is the responsibility of the party calling a particular witness to invite that witness to attend the hearing. Witnesses who are UVU employees whom the panel requests to appear have a duty to appear at the review hearing.

5.11.15 The following procedures apply to the review panel hearing:

- 1) In the event that either party fails to attend the hearing without prior notice to the Title IX Coordinator and good cause, the review panel may proceed with the hearing. Neither party is required to participate in the hearing for the hearing to proceed. The University reserves the right to modify review hearing procedures to protect the safety of all parties involved.



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- 2) The hearing, except for deliberations, shall be recorded by the review panel chair, who shall give the recording to the Title IX Office. A copy shall be made available to either party per request and at the requesting party's expense. The recording of interviews and other meetings preceding and following the hearing by the participants is prohibited.
- 3) The review panel shall begin the hearing by asking the Title IX investigator(s) to provide a summary of the investigation process and the findings and conclusions contained in the final investigation report or summary. The review panel may also ask the investigator(s) to state the sanction(s) determined by the responsible university administrator. The scope of questioning shall be guided by the applicable basis for review included in section 5.11.2 as cited in the review request.
- 4) If the scope of review includes review of the sanction(s), the review panel may ask the responsible university administrator to explain the reasons for the sanction(s), including any mitigating or aggravating factors.
- 5) The complainant and respondent shall each have an opportunity to make a personal statement. The statement relevant to the scope of review, which should include the bases for seeking or opposing the review, the personal impact of the alleged misconduct and/or sanction, the relief sought, and mitigating or aggravating information. In addition to the personal statements by the parties, each party's support person/advisor and the Office of General Counsel attorney representing the University shall have the opportunity to make an opening statement relevant to the scope of review.
- 6) The complainant and respondent (or their respective support persons/advisors, if any) shall each have the opportunity to call witnesses that the review panel deems relevant to the scope of review, to question witnesses (including the other party and the Title IX investigator[s]) through the review panel chair (not directly), to present evidence, and to make concluding remarks.
- 7) The review panel may question the investigator(s), any witness, or each/either party. The attorney from the Office of General Counsel representing the University may also question the same persons. Only the person to whom a question is directed may answer (e.g., a support person/advisor shall not be permitted to answer the review panel's questions on a party's behalf). The review panel's questions should be relevant to the scope of review. During questioning, the parties, support persons/advisors, and panel chair/members shall treat all persons with respect.
- 8) The review panel shall not be bound by strict rules of legal evidence or procedure and may consider any evidence it deems relevant to the standard and scope of review (see section 5.11.2). The review panel chair shall determine the appropriateness and relevancy of any information and questions submitted and may exclude evidence deemed to be outside the scope of review, irrelevant, or duplicative.



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- 9) Each party shall have up to a total of 90 minutes for personal and/or opening statements, questioning witnesses, presenting evidence, and concluding remarks.
- 10) After issuing a warning, the review panel has authority to exclude from the hearing any party, support person/advisor, or other participant whose behavior the review panel finds disruptive.
- 11) The Office of General Counsel shall provide an attorney to be present at hearings to provide guidance to the review panel on this policy, substantive law, and procedural matters. An attorney from the Office of General Counsel may also participate in hearings on behalf of the University.
- 12) The review panel chairs and other review panel members are prohibited from discussing any matter related to the hearing with the parties, witnesses, and/or others (except the assigned Office of General Counsel attorney) before or after the hearing. Violation of confidentiality may result in dismissal from the review panel and/or other corrective or disciplinary action.
- 13) Review panel deliberations and voting shall be closed sessions from which all other persons are excluded, except, at the review panel's request, an advising attorney from the Office of General Counsel. Votes shall be cast by secret ballot. A majority vote by the members of the review panel who attended the hearing shall be required for recommendations. The review panel chair shall be entitled to vote on all questions. The Title IX Office shall not participate in the review panel's deliberations. If the review panel asks the advising attorney from the Office of the General Counsel to remain for the deliberations, the advising attorney may remain present but shall have no vote.
- 14) The University reserves the right to modify the review process to protect the safety of all parties involved.

5.11.16 Within five business days of the review hearing, the review panel shall provide to the executive university administrator and the Title IX Coordinator a review panel report, which shall include the following:

- 1) In cases where the review panel determines that (a) new evidence arose after the investigation concluded that could substantially impact the investigation findings and/or resolution, or (b) the issue(s) brought forward by the contesting party raise substantial doubt that a procedural error occurred that substantially impacted the outcome of the investigation, the review panel may recommend to the executive university administrator that the investigation be returned to the original investigator(s) with recommended instructions for further investigation on the raised issue(s).
- 2) In cases where the review panel finds that the original investigator(s) had a conflict of interest, the review panel may recommend to the executive university administrator that a review be conducted by new investigator(s). The executive university administrator, in consultation with an



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assigned attorney from the Office of General Counsel, will determine whether the assignment of a new investigator is needed.

3) In cases where the review panel is asked to review whether the sanction(s) imposed is/are substantially disproportionate to the severity of the violation, the review panel will recommend whether it finds that the sanctions and/or resolutions are reasonable in light of the circumstances.

5.12 Executive Review, Final Sanction, and Final Outcome Letter

5.12.1 The executive university administrator who is responsible for reviewing the recommendations from the review panel and determining next steps, including remand to the Title IX Office for additional investigation and/or imposition of the final sanction(s) and other remedies, if any, is as follows (unless a conflict of interest exists, in which case the Office of General Counsel will recommend to the President a designee to serve as an alternative executive university administrator):

Respondent's Affiliation with the University	Executive University Administrator
Student	Dean of Students
Faculty member	Provost/Vice President of Academic Affairs
Administration or staff member who is not an executive employee and does not report directly to a vice president	Provost or vice president of the division in which the respondent is employed (or the vice president's designee)
Executive employee or direct report of a vice president	University President
Vice president or other direct report of the University President	University President

5.12.2 Upon receipt of the review panel report, the appropriate executive university administrator shall promptly review all of the information that was available to the review panel and then decide whether to remand the investigation to the Title IX Office for additional investigation, affirm the responsible university administrator's original decision, adopt the sanction and resolution recommendation(s) of the review panel, and/or to determine an alternative outcome. In determining the appropriate sanction(s) and other remedies, the executive university administrator shall be guided by the considerations in 5.10.1 and consult with other administrators as needed, including an attorney assigned by the Office of General Counsel, Human Resources, the Title IX Coordinator, and the Office of Academic Affairs, to ensure that



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any sanctions and/or remedies are appropriate to end the prohibited conduct, prevent further violation of this policy, and remedy the effects of any violation. Remedies may include offering remedies to the complainant and/or university community, implementing changes in programs and activities, providing training, and the imposition of any disciplinary sanctions, based on the investigative findings.

5.12.3 The executive university administrator will notify the Title IX Coordinator in writing of their decision and a summary of the reasons for the decision. If the matter is remanded to the Title IX Office for additional investigation, the Title IX Office shall promptly investigate and provide an investigation summary addendum that includes new evidence considered and changes to findings, if any, to the executive university administrator, who shall then determine sanctions, resolutions, and outcomes.

5.12.4 After receiving the executive university administrator's decision, the Title IX Coordinator shall promptly notify the complainant and respondent, simultaneously, in writing of the final outcome of the investigation review and the rationale for the outcome. This final outcome letter shall also state that the decision is final and not subject to further university review or grievance, and shall include options for seeking remedies outside of the University, such as with the federal Equal Employment Opportunity Commission (EEOC) and the Utah Antidiscrimination and Labor Division (UALD), which investigate complaints of unlawful discrimination and/or harassment in employment, or the US Department of Education Office for Civil Rights (OCR), which investigates complaints of unlawful discrimination, harassment, and/or sexual misconduct in employment and educational programs or activities.

5.12.5 Once the final outcome letter is issued to the parties, no further internal reviews, appeals, or grievances are available to the parties. Nothing in this policy abrogates the rights of the parties to seek outside remedies under state or federal law, such as with the agencies mentioned in section 5.12.4 above. A waiver to the finality of the decision may be sought from the executive university administrator asking the administrator to review the final decision. Such a waiver may be granted only in very limited exceptions when new evidence could be obtained only after the review process was concluded, such as through a law enforcement investigation subpoena. If granted, the review would be limited only to the impact the new evidence has on the decision and would be subject to the same procedure outlined in this policy.

5.12.6 The final outcome letter may be used by the Title IX Coordinator for data collection and compliance purposes only. The review panel, responsible university administrator, and executive university administrator shall provide all documents submitted and reviewed as part of the review process to the Title IX Coordinator for confidential storage and shall not keep any written or electronic copies of such documents.

5.12.7 All documents, records, recordings, and other information associated with the Title IX process are designated as protected in accordance with the State of Utah *Government Records and Management Act (GRAMA)*.



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POLICY HISTORY		
March 2018	Non-substantive changes: <ul style="list-style-type: none">• Policy 115 renumbered to 704• Policy 407 renumbered to 710	UVU Board of Trustees
June 22, 2017	Limited Scope changes approved.	UVU Board of Trustees
March 2018	Non-substantive changes: <ul style="list-style-type: none">• Policy 115 renumbered to 704• Policy 407 renumbered to 710	UVU Board of Trustees
November 29, 2018	Non-substantive changes: In sections 2.0 and 5.10.2, updated Policy 541 from <i>Student Rights and Responsibilities</i> to <i>Student Code of Conduct</i> .	UVU Policy Office
June 18, 2019	Temporary Emergency	UVU Board of Trustees