



SUBJECT: NON-DISCRIMINATION / ANTI-HARASSMENT

5.27.1. INTRODUCTION:

Southern Utah University is committed to being a haven for the exchange of ideas between people with diverse backgrounds, opinions and ideologies. In order to encourage this exchange, the University will endeavor to provide an environment free from discrimination and harassment. SUU complies with all state and federal laws regarding unlawful discrimination and harassment, which include, but are not limited to: Titles VI and VII of the Civil Rights Act of 1964; Title IX of the Educational Amendments of 1972; Sections 503 and 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act; Vietnam Era Veterans' Readjustment Assistance Act of 1974; Executive Order 11246 (as amended); the State of Utah Anti-Discrimination Act; and others as applicable.

5.27.2. PURPOSE:

- A. To educate and provide a clearer understanding of legal and policy pronouncements prohibiting discrimination and harassment in the workplace or academic environment. This policy is not intended to address student-to-student peer discrimination or harassment. Such conduct is governed by Policy 11.2 and 13.20.
- B. To prevent, at the earliest possible opportunity, conduct that is inconsistent with these pronouncements.
- C. To provide guidance in processing complaints alleging policy violations, investigating those allegations, and implementing disciplinary or corrective action as appropriate to the circumstances.

5.27.3. POLICY:

- A. Discrimination. Intentionally dealing with a person, either preferentially or detrimentally, because of his or her race, religion, national origin, color, sex (gender), age, disability, marital, veteran, sexual orientation, or other legally protected status, unless otherwise provided by statute¹, constitutes unlawful discrimination and is prohibited under this policy as well as state and federal law.
- B. Harassment. Intentional behavior directed at a person primarily because of his or her race, religion, national origin, color, sex (gender), age, disability,

¹ Veterans' hiring preference is defined in UCA 71-10-1, et. seq.



SUBJECT: NON-DISCRIMINATION / ANTI-HARASSMENT

marital, veteran, sexual orientation, or other legally protected status constitutes harassment and is prohibited under this policy, and may constitute illegal discrimination under state and federal law.

- C. Prohibited behavior or conduct includes the following:
1. That which is demeaning, ridiculing, derisive, or coercive, on a severe or pervasive basis, resulting in a hostile or intimidating working or learning environment;
 2. That resulting in a tangible employment action being taken against an employee, a tangible work benefit being granted or denied an employee, or tangible effect in grading or academic advancement of a student.
 - a. Severe behavior refers to that which is repugnant, that which is extremely offensive to a reasonable person, or that which occurs with indifference to the ordinary sensibilities of a reasonable person.
 - b. Pervasive behavior refers to that which occurs repeatedly or in some pattern over a period of time, having the effect of interfering with a person's work or academic performance, or creating a hostile environment. Pervasive behavior may be found in repeated verbal or other suggestive conduct that an ordinary person would view as vulgar, obscene, or intimating an interest in a relationship that would be unwelcome, unprofessional or create a conflict of interest in the employment or academic environment.
 - c. The more severe the behavior, the less pervasive it need be to meet this test, and the less severe the behavior, the more pervasive it need be to meet this test. In the case of extreme and outrageous behavior, a single event may be deemed severe enough to meet this test.
 - d. A hostile environment includes, but is not limited to, one in which a reasonable person can establish that he or she is the target of conduct by a supervisor, co-worker, faculty member, staff member, volunteer, campus contractor, or student that is sufficiently severe or pervasive to alter the conditions of his or her employment or education. A hostile environment generally



SUBJECT: NON-DISCRIMINATION / ANTI-HARASSMENT

assumes that the behavior is pervasive and directed at a victim who must work or attend there, or is otherwise entitled or expected to be there for work or academic purposes.

- D. Behavior or conduct constituting sexual harassment is also prohibited under this policy as well as state and federal law. Inappropriate conduct may be found between persons of different gender, the same gender, and in instances of gender stereotyping.
1. Sexual harassment is defined as conduct of a sexual nature, physical or verbal, by an individual in an official University position when:
 - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic standing; or,
 - b. Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting that individual.
 2. Sexual harassment may also be found in conduct of a sexual nature that is sufficiently severe or pervasive, which has the effect of altering the conditions of an individual's employment, or creating an abusive or untenable academic or working environment.
 - a. Severe conduct may include, but is not limited to, requests for sexual relations, physical touching, and other conduct that has the intent or effect of conveying an unwelcome sexual suggestion, particularly where such have been clearly declined and disapproval expressed. However, "simple teasing," offhand comments, and isolated incidents (unless extremely serious) will not constitute an abusive or untenable environment.
 - b. Intentional physical contact with a part of the body that is intimate or gender specific is, by its nature, severe, and may also constitute the crime of sexual battery or assault under state law. This conduct is prohibited; and need not be pervasive to constitute a violation under this policy. Anyone believing him/herself to be a victim of such conduct is encouraged to file a complaint under this policy, and encouraged to contact Campus Police.



SUBJECT: NON-DISCRIMINATION / ANTI-HARASSMENT

- E. If there is no apparent threat to, or reasonable apprehension for personal safety, a person experiencing conduct he/she believes to constitute discrimination, harassment, or sexual harassment is encouraged to confront the alleged violator and clearly communicate his/her disapproval of such behavior, indicating that it is unwelcome and/or inappropriate, and that it will not be tolerated in the future. This effort is encouraged as a means of stopping and preventing such behavior in the future. It is also recommended that such a confrontation be documented for use in support of any future complaint or investigation.
- F. Violators will be subject to discipline under this policy, guided but not controlled by other University policies, and may, where the conduct warrants, be referred for criminal prosecution. Discipline will be determined consistent with the severity and overall nature of the behavior and need not follow any “progressive discipline” format. Conduct found to be substantially severe and pervasive may result in termination from employment or other disciplinary or corrective action designed to prevent future repetitions. The imposition of disciplinary and/or corrective action may be considered as follows:
1. In the case of a faculty member, a violation is considered to be highly unprofessional and discipline will be guided by Policy 6.28, Section VI;
 2. In the case of a classified or professional staff employee:
 - a. In probationary status, the alleged offender will be dismissed, unless that is deemed inappropriate by his/her Vice President, who will specify the appropriate discipline;
 - b. Not in probationary status, discipline will be guided by Policy 8.3.5, Section III., B.
 3. In the case of a campus volunteer, the volunteer will not be recalled to service. Reported incidents and any documentation will be filed with campus police and subject to state and federal laws.
 4. In the case of an on-campus contractor, the job supervisor will be notified with the expectation that the contractor’s alleged offending employee(s) or sub-contractor’s alleged offending employee(s) will be disciplined and re-assigned away from the on-campus job site. A



SUBJECT: NON-DISCRIMINATION / ANTI-HARASSMENT

report may also be filed with the campus police, and the alleged offender dealt with under applicable state and/or federal laws.

5. In the case of a student violation, (e.g. proposing or intimating a sexual relationship with a faculty member, staff member or campus volunteer), the student will be referred to the Dean of Students and the conduct will be addressed under Policies 11.2 and 13.20.

6. In the case of an on-campus visitor, reported incidents and any documentation should be filed with campus police and the alleged offender dealt with under applicable state and/or federal laws.

G. A faculty member, staff member, or campus volunteer will be subject to disciplinary or corrective action for harassment and/or sexual harassment of another employee or of a student, even if that harassment occurs outside of scheduled work time, away from regular work location, or off campus.

5.27.4. BURDEN OF PROOF:

A. The accused is presumed to be innocent until it is proven by a preponderance of the information obtained that he/she has violated this policy.

B. Anyone asserting "consent," as excusing or mitigating an accusation of behavior otherwise prohibited under this policy, will bear the burden of rebutting a strong presumption to the contrary. The assertion of consent would mean that the behavior was mutually agreeable to the involved parties. The presumption must ordinarily be rebutted by a preponderance of information showing affirmative statements or conduct communicating consent. Consent will not ordinarily be inferred from a party's or co-worker's tolerance, or immediate failure to confront a person or persons engaged in prohibited conduct.

1. The basis for the presumption includes, but is not limited to, the following:

a. The behavior is prohibited by this policy.

b. The behavior has become the subject of a complaint.

c. Parties are often in an unequal position where one is in a position of power or authority and the other is a subordinate or student.



SUBJECT: NON-DISCRIMINATION / ANTI-HARASSMENT

- d. Behavior between two persons that is consensual can form the basis for a third-party complaint alleging that the behavior resulted in less favorable treatment of the non-consenting or non-participating third party.
2. Where the presumption is rebutted, and consent is shown:
 - a. The consenting parties may be subject to discipline for having consensually engaged in prohibited conduct.
 - b. Any discipline warranted by the prohibited conduct may, but need not be, mitigated by the consent.
 - c. A third-party complaint resulting from the consensual conduct will be considered to be equally asserted against all consenting individuals.
- C.
1. Because of the inherent differential in authority, Southern Utah University prohibits any faculty from engaging in a romantic and/or sexual relationship with any undergraduate or graduate student currently enrolled at the university when one participant has direct evaluative or supervisory authority over the other because such relationships create an inherent conflict of interest. (See Policy 6.28. IV.J.) When such cases arise, the individual in the evaluative or supervisory position has an obligation to disclose the relationship to his or her administrative superior and to cooperate in removing himself or herself from any such evaluative or supervisory activity in order to eliminate the existing or potential conflict of interest, or the likelihood of a complaint being filed under this policy. Exceptions to this prohibition include legally recognized or recognizable marriages.
 2. Consensual relationships between employees in a supervisor / subordinate relationship are also prohibited. Persons wishing to pursue such a relationship should seek a transfer to another campus department so as to eliminate or minimize the possibility of a complaint or conflict of interest.
 3. Consensual relationships between persons in a position of lateral or equal authority are discouraged as such may form the basis for a third-party complaint where co-workers observe conduct that would



SUBJECT: NON-DISCRIMINATION / ANTI-HARASSMENT

otherwise be prohibited under this policy, and which may be unproductive and inappropriate in the workplace.

5.27.5. Complaint Procedure.

Anyone claiming harm from prohibited conduct who seeks investigation and remediation through on-campus procedures, is encouraged to file a complaint and engage in the processes provided below. The University will make reasonable efforts to ensure that the process is free from bias, collusion, intimidation or retaliation.

- A. Complaints should be brought as soon as possible, and must be filed within four (4) months of the most recent violation. Where the interests of fairness require, this time limit may be extended with the consensus of the Human Resources Director, or designate (“Director”), the responsible Vice President (“Vice President”) and University Counsel.

A person claiming discrimination or sexual harassment who desires state or federal review, must initiate a “Request for Agency Action” with the Utah Anti-Discrimination and Labor Division (“UALD”) within 180 days; or a complaint with the Equal Employment Opportunity Commission (“EEOC”) within 300 days from the from the date of last harm (not from the date that the complaint to the University is filed or resolved).

- B. An individual who experiences prohibited conduct; or an individual who is observing or otherwise aware of such prohibited conduct is encouraged to:
1. Document the occurrence;
 2. Identify any witness or witnesses;
 3. Confront the offender and indicate disapproval of the conduct; and/or,
 4. Continue to report to work, or other standard venue, unless the circumstances reasonably indicate an apparent threat to, or reasonable apprehension for personal safety.
- C. An individual faculty member, staff member, administrator, student, campus volunteer, or third-party observer may orally assert, or file a written complaint alleging that prohibited discrimination, harassment or sexual harassment has occurred. This may be done by an alleged victim or on behalf of an alleged victim by a campus administrator, as circumstances dictate.



SUBJECT: NON-DISCRIMINATION / ANTI-HARASSMENT

D. A complaint may be filed with the Human Resources Director, with the alleged victim's immediate supervisor, or with anyone in an administrative position below the Vice President responsible for the department in which the alleged violator is employed. Once received, all complaints must be forwarded to the Director for investigation and recommendation back to the responsible Vice President for final disciplinary, corrective or other appropriate action.

E. Complaints will be handled with such confidentiality as may be reasonably available under the circumstances.

Absolute confidentiality is not and cannot be guaranteed.

F. Any supervisor who has knowledge of prohibited conduct is expected to take immediate action intended to prevent further violation, document the action, and provide a report to the Human Resource Office. This report may either support or constitute a complaint as circumstances dictate.

G. Upon receiving a complaint or report of alleged violation:

1. Where the Director, on initial review, finds that the alleged violation meets the minimum requirements of Section 5.27.3, above, an investigation will be conducted as provided in Section 5.27.6, below. Any violation found will be resolved in accordance with this policy; or,

2. Where the Director, on initial review, finds the complaint or information insufficient to pursue an investigation (e.g. conduct not pervasive; but inappropriate), the Director will schedule a meeting with the complainant, the supervisor of the alleged violator, Legal Counsel and/or others as appropriate to communicate this determination and to consider any remedial action as may be appropriate.

H. Should a complaint involve the Director, a Vice President or other person designated by this policy to make or implement a recommendation or decision, the University President will temporarily appoint a substitute for purposes of processing, investigating and resolving the complaint.

5.27.6. INVESTIGATIVE PROCEDURE:



SUBJECT: NON-DISCRIMINATION / ANTI-HARASSMENT

- A. There will be a minimum of nine (9) trained investigators selected by the Director of Human Resources from faculty and staff. These investigators will be trained in appropriate investigation methods. They will be composed into investigation teams of three: One female, one male and a third assigned at random (“Investigation Team”). The Investigation Team will not serve in an advocate role; but rather, as neutral, impartial investigators. If during the course of their investigation a conflict of interest becomes apparent, or is asserted by any party relative to any member of the Investigation Team, it will be brought to the attention of the Director of Human Resources who can consider substitution within the Investigative Team, or other appropriate action.
- B. The complainant may make specific requests relating to the investigation process and the Investigation Team. The Investigation Team will attempt to comply with these requests, but is not bound to do so. The Investigation Team – in consultation with other appropriate individuals, as necessary – may take whatever action they see as necessary and appropriate to determine the accuracy or validity of the allegations and make such recommendations they think reasonable to resolve the complaint.
- C. Where a complaint is investigated:
 1. The Investigation Team is authorized to ask questions of the complainant, the victim (if not the complainant), the accused, and all others having information, as their names become known to the investigators in the course of their investigation. Investigators will have authority and discretion to ask such questions and obtain such documents and other information as the circumstances and details provided may require. If the Investigation Team discovers information to substantiate violations not asserted in the complaint, or other victims not otherwise known to the complainant, the investigators will notify the Director who has authority and discretion to construe the complaint to best prevent future violations and achieve the greatest fairness in the circumstances. Instances discovered to be outside the four month time frame in Section 5.27.4(1), above, must be evaluated for inclusion or exclusion, as provided under that section.
 2. The complainant, the victim (if not the complainant), the accused and others interviewed may request confidentiality or anonymity, and such request(s) will generally be honored by the Investigation Team to the practical extent possible, unless in their judgment such is not in the best interest of the investigation, the University, other parties; or, is



SUBJECT: NON-DISCRIMINATION / ANTI-HARASSMENT

fundamentally unfair to the accused unless it is otherwise prohibited or affected by applicable law.

3. Once referred for investigation, the complaint will be investigated as promptly as possible in the circumstances, and recommendations will be forwarded to the Director of Human Resources - ideally within one month.
4. Unless the Investigation Team finds the complaint to be groundless prior to interviewing the accused, the accused must be presented with a copy of the complaint (or an appropriate summary, as confidentiality and anonymity may require) and must be allowed the opportunity to respond, explain or refute its allegations, or other information provided within 14 calendar days, before the investigation can be concluded.
5. In conducting their investigation, the Investigation Team will make reasonable efforts to preserve the dignity, respect and reputation of all parties and others involved.
6. Once the accused is made aware of the complaint, he/she will not knowingly communicate with the complainant (and the alleged victim if not the complainant) regarding the alleged violation(s) and should avoid any conduct which could be construed as retaliatory. Proof of retaliation may result in additional disciplinary action as provided below.

D. Results of Investigation

1. Upon concluding its investigation, if the Investigation Team, by majority, finds:
 - a. That the allegations have been supported by a preponderance of the information; or,
 - b. That the accusations were made falsely, as described in 5.27.8, or as a matter of vindictive or retaliatory conduct, as described in 5.27.7, below; or,
 - c. That the accusations are not supported by a preponderance of the information;

Their written findings and recommendations will be submitted to the Director



SUBJECT: NON-DISCRIMINATION / ANTI-HARASSMENT

of Human Resources and the accused.

2. Upon receiving the findings and recommendations of the Investigation Team, the Director of Human Resources will forward these findings and recommendations to the appropriate Vice President.

Where:

- a. The findings indicate a policy violation by a tenured faculty member, professional-in-residence (during the term of contract), or non-probationary staff member,
 1. The Vice President having line authority over the accused will meet with him/her to review the findings and proposed disciplinary or corrective action.
 2. The accused will have the opportunity to respond and be heard in this meeting.
 3. The accused may have a representative accompany him/her at this meeting for advice and support – the representative will not speak on behalf of the accused, unless permitted by the Vice President.
 4. The Vice President will meet separately with the complainant for the same purpose, and may (in his/her discretion) meet with the victim, if other than the complainant, to summarize the findings and disciplinary or other corrective action. The complainant may also have a representative at this meeting.
 5. After hearing the accused and the complainant, the Vice President may confer with the Investigation Team, or others, if necessary, to be fully advised before finalizing and imposing disciplinary or other corrective action.
 6. The affected faculty or staff member will be notified of final disciplinary or corrective action in writing, with a copy to his/her personnel file.



SUBJECT: NON-DISCRIMINATION / ANTI-HARASSMENT

- b. The findings indicate a policy violation by an adjunct professor, a tenure-track professor, visiting faculty, probationary staff member, or campus volunteer,
 1. The Vice President may dismiss from employment or impose corrective action on that person without a review meeting or other process.
 2. The affected person will be notified of final action in writing, with a copy to his/her personnel file. A campus volunteer will be notified by best available means.
- c. The findings indicate that the accusations were made falsely or as vindictive or retaliatory conduct –
 1. By a faculty member, staff member, or campus volunteer,
 - i. The Vice President over the accused (where he/she does not have line authority over the other party) will advise the Vice President over the complainant (or victim, if other than the complainant). They will review the findings and recommendations.
 - ii. The appropriate Vice President will then meet with the parties involved and will finalize and impose appropriate disciplinary or other corrective action.
 - iii. The affected person will be notified of disciplinary or other corrective action in writing, with a copy to his/her personnel file.
 - iv. A campus volunteer will be notified by best available means.
 2. By a student, the Dean of Students will be notified, and the conduct will be addressed under Policies 11.2 and 13.20.
 3. In the process of investigating a policy violation, if an Investigation



SUBJECT: NON-DISCRIMINATION / ANTI-HARASSMENT

Team finds what they believe to be evidence of criminal conduct, their information will be forwarded to the Director of Human Resources and Campus Legal Counsel for review and referral to the County Attorney

or Attorney General's Office as appropriate. These offices have independent discretion to pursue further review, investigation and prosecution, as they find appropriate. Any policy violation will be addressed under paragraphs A. and B., above.

4. If the Investigation Team determines that the allegations were not supported, written findings to that effect will be provided to the Director of Human Resources and the complaint dismissed.
5. **The meeting with the Vice President, specified above, providing the accused violator with the opportunity to be heard on the findings and proposed disciplinary or other corrective action, constitutes and fulfills all legal and policy requirements for faculty/staff due process on the complaint.**

5.27.7. RETALIATION:

- A. No one may retaliate (“retaliation”) against any faculty member, staff member, student or campus volunteer that initiates a complaint or participates in the resolution of a complaint made under this policy.
- B. Retaliation may include, but is not limited to:
 1. Open hostility to any complainant, participant or others involved;
 2. Exclusion or ostracism of the complainant, participant or others;
 3. Creation of, or the continued existence of, a hostile work environment;
 4. Special attention to or assignment of the complainant, participant or others to demeaning duties not otherwise performed in the ordinary course of routine employment or in the ordinary course of established course study as provided by or reasonably inferred from the syllabus;
 5. Tokenism or patronizing behavior;
 6. Discriminatory treatment;



SUBJECT: NON-DISCRIMINATION / ANTI-HARASSMENT

- 7. Subtle harassment; or
 - 8. Imposing unreasonable time restrictions on employees in preparing complaints or compiling information related to prohibited conduct.
- C. Any act of retaliation toward the complainant, witnesses or others involved in the investigation shall be subject to additional corrective or disciplinary action as provided in Section 5.27.6 (D) (2) (c), above.

5.27.8. FALSE ACCUSATIONS

- A. Accusations of conduct prohibited under this policy can have long-term effects on the professional reputation and potential for career advancement of anyone so accused.
- B. Recognizing this, anyone making knowingly false or materially inaccurate accusation(s) of prohibited conduct, if so determined in the course of evaluating a complaint, will be subject to disciplinary or corrective action appropriate to the circumstances as provided in Section 5.27.6 (D) (2) (c), above. Discipline may include termination from employment or expulsion from the University.

5.27.9. RECORDS

- A. All records of complaints, investigations, findings and recommendations considered or accumulated under this policy [“records”] are classified as “PROTECTED” under the Utah Government Records Access and Management Act (“GRAMA”).
- B. Records will be maintained and stored in the Human Resources Office. Removal or disposal of records in the protected file may only be done with the approval of the University President, and only after minimum retention time (as may be provided by state law or University practice) have been met. In any case, records will be kept for a minimum of three years from the resolution of the complaint or investigative proceeding.
- C. Supervisors will not keep separate files related to complaints of prohibited conduct.
- D. Information contained in the protected file will only be released by the University President or the Director of Human Resources, when in



SUBJECT: NON-DISCRIMINATION / ANTI-HARASSMENT

compliance with the requirements of applicable law, after consultation with Campus Legal Counsel.

- E. Participants in any investigation or implementation of disciplinary or other corrective or remedial action shall treat all information as protected and confidential.
- F. Final disposition of a complaint will be communicated to the accused violator, the responsible Vice President, the complainant, and at the discretion of the Vice President, the victim(s), if other than the complainant.