

STUDENT AFFAIRS
STUDENT SEXUAL MISCONDUCT POLICY
CHAPTER 3
POLICY 2.02

Board of Trustees Approval: 03/08/2017
Date of Last Cabinet Review: 01/17/2017
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I. POLICY

Salt Lake Community College is committed to providing a safe and non-discriminatory learning and working environment for all members of the College community. The College does not discriminate on the basis of sex or gender in any of its education or employment programs and activities. To that end, this policy prohibits specific forms of behavior that violate Title IX of the Education Amendments of 1972 (“Title IX”) and Title VII of the Civil Rights Act of 1964 (“Title VII”). Such behavior also requires the College to fulfill certain obligations under the Violence Against Women Reauthorization Act of 2013 (“VAWA”) and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”).

Prohibited Conduct is unlawful, and undermines the character and purpose of the College, and will not be tolerated. The College will take prompt and equitable action to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. The College conducts ongoing prevention, awareness, and training programs for Employees and Students to facilitate the goals of this policy.

The College adopts this policy with a commitment to: (1) eliminating, preventing, and addressing the effects of Prohibited Conduct; (2) cultivating a climate where all individuals are well-informed and supported in reporting Prohibited Conduct; (3) providing a fair and impartial process for all parties; and (4) identifying the standards by which violations of this policy will be evaluated and disciplinary action may be imposed. Students who violate this policy may face disciplinary action up to and including expulsion.

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I. REFERENCES

No References.

II. DEFINITIONS

- A. **Employee:** Any individual employed by SLCC either full time or part time, whether administrative, faculty, staff, student worker, or official volunteer.
- B. **Student:** The term “Student” is used to refer to:
1. All persons taking SLCC courses, both full-time and part-time; and/or
 2. All persons who are not officially enrolled for a particular term but have a continuing relationship with SLCC or intend to enroll in the next term. This provision is intended to include within the definition of students, those persons enrolled in the spring and fall semesters who engage in misconduct during the summer; and/or
 3. All persons who are attending classes on a SLCC campus although they may be enrolled students in other higher education institutions; and/or
 4. Student groups and organizations may be held collectively responsible when violations of this policy by those associated with the group or organization have received consent or encouragement of the group or organization or of the group’s or organization’s leaders or officers.
- C. **Third Party:** Any individual who is neither a Student or Employee as defined under this policy (e.g., a visitor, contractor, visiting speaker or visiting athletes).
- D. **Complainant:** Student, Employee or Third Party who presents as the victim of any Prohibited Conduct under this policy, regardless of whether that person makes a report or seeks action under this policy.
- E. **Respondent:** Student, Employee or Third Party who has been accused of violating this policy.

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- F. **Preponderance of the Evidence:** a standard of evidence used when addressing violations of this policy. This standard is often referred to as “50 percent plus a feather.” (i.e. the evidence demonstrated that it is more likely than not that the conduct occurred).
- G. **Prohibited Conduct:** includes Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Sexual or Gender-Based Harassment, Complicity in the commission of any act prohibited by this policy, and Retaliation against a person for the good faith reporting of any of these forms of conduct or participation in any investigation or proceeding under this policy (Definitions contained in **Section III. D** below).

III. PROCEDURES

The specific procedures for reporting, investigating, and resolving Prohibited Conduct are based upon the nature of the Respondent’s relationship to the College (Student, Employee, or Third Party). Each set of procedures referenced below is guided by the same principles of fairness and respect for Complainants and Respondents.

A Student or Employee determined by the College to have committed an act of Prohibited Conduct is subject to disciplinary action, up to and including separation from the College. Third Parties who commit Prohibited Conduct may have their relationships with the College terminated and/or their privileges of being on College premises withdrawn.

The procedures referenced below provide for prompt and equitable response to reports of Prohibited Conduct. The procedures designate specific timeframes for major stages of the process and provide for thorough and impartial investigations that afford all parties notice and an opportunity to present witnesses and evidence and to view the information that will be used in determining whether a policy violation has occurred. The College applies the preponderance of the evidence standard when determining whether this policy has been violated.

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A. TITLE IX COORDINATOR

Under Title IX:

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

The Title IX Coordinator is charged with monitoring the College’s compliance with Title IX; ensuring appropriate education and training; coordinating the College’s investigation, response, and resolution of all reports under this procedure; and ensuring appropriate actions to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. The Title IX Coordinator is available to meet with any Student, Employee, or Third Party to discuss this policy or the accompanying procedures. The College has also designated Deputy Title IX Coordinators who may assist the Title IX Coordinator in the discharge of these responsibilities. The Title IX Coordinator and Deputy Title IX Coordinators receive appropriate training to discharge their responsibilities.

Concerns about the College’s application of Title IX, VAWA, and the Clery Act may be addressed to the Title IX Coordinator; the United States Department of Education, Clery Act Compliance Division (at clery@ed.gov); the Equal Employment Opportunity Commission (at info@eeoc.gov or (800) 669-4000), or:

U.S. Department of Education – Denver Office
Office of Civil Rights (OCR)

Cesar E. Chavez Memorial Building
1244 Speer Boulevard, Suite 310
Denver, CO 80204-3582

Telephone: 303-844-5695
Fax: 303-844-4303; TDD: 800-877-8339
Email: OCR.Denver@ed.gov

Website: ocrcas.ed.gov

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The Title IX Coordinator may be contacted by telephone, email, or in person during regular office hours:

Kenneth Stonebrook

Title IX Coordinator

[Taylorsville Redwood Campus](#) – STC 276A

801-957-5027

ken.stonebrook@slcc.edu

B. RESOURCES AND REPORTING OPTIONS

The College offers a wide range of resources for all Students to provide support and guidance in response to any incident of Prohibited Conduct. For comprehensive information on accessing College and community resources, including emergency and ongoing assistance; health, mental health, and victim-advocacy services; options for reporting Prohibited Conduct to the College and/or law enforcement; and available support with academics or employment:

- Third Parties should contact the Title IX Coordinator to discuss available College and/or community resources and reasonably available assistance.

1. SUPPORT MEASURES

The College offers a wide range of resources for Students whether as Complainants or Respondents, to provide support and guidance throughout the initiation, investigation, and resolution of a report of Prohibited Conduct. The College will offer reasonable and appropriate measures to protect a Complainant and facilitate the Complainant's continued access to College employment or education programs and activities. These measures may be both remedial (designed to address a Complainant's safety and well-being and continued access to educational opportunities) or protective (involving action against a Respondent). Support measures, which may be temporary or permanent, may include no-contact directives, academic modifications and support, work schedule modifications, and interim disciplinary suspension. Support measures are available regardless of whether a Complainant pursues a complaint or investigation under this policy. The College will maintain the privacy of any support measures provided under this policy to the extent practicable and will promptly address any violation of the support measures. The Title IX

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Coordinator has the discretion and authority to implement and/or modify any support measure based on all available information, and is available to meet with a Complainant or Respondent to address any concerns about the provision of support measures.

The College will provide reasonable support measures to Third Parties upon request and as appropriate and available, taking into account the role of the Third Party and the nature of any contractual relationship with the College.

Examples of support measures include, but are not limited to:

- Imposition of a No-Contact Directive against an Employee or Student (i.e., an order directing one or both of the parties to refrain from contacting the other, directly or through proxies);
- Arranging a meeting with Campus Safety or Police to discuss or report Prohibited Conduct;
- Arranging a meeting with Campus Safety or Police to discuss safety planning;
- Arranging access to counseling services and assistance in setting up initial appointments;
- Arranging access to medical services and assistance in setting up initial appointments;
- Assistance in seeking academic assistance, including modified class schedules (including transfer to another section), permission to withdraw from and/or retake a class or attend a class via alternative means (e.g., online or independent study), extension of assignment deadlines, and voluntary leaves of absence;
- Assistance in modifying assigned parking;
- Assistance in modifying College employment arrangements, including changes in work schedules, job assignments, work locations and/or assigned parking;
- Imposing an interim disciplinary suspension and/or pre-disciplinary leave, with or without pay, on the Respondent; and
- Any other measures that may be arranged by the College (to the extent reasonably available) to ensure the safety and well-being of a Student who has been affected by Prohibited Conduct.

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2. PRIVACY AND CONFIDENTIALITY

The College is committed to protecting the privacy of all individuals involved in the investigation and resolution of a report under this policy. With respect to any report under this policy, the College will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to assess the report and to take steps to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects.

Privacy and confidentiality have distinct meanings under this procedure.

Privacy: Privacy means that information related to a report of Prohibited Conduct will be shared with a limited circle of College Employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All Employees who are involved in the College’s response to reports of Prohibited Conduct receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law.

Confidentiality: Confidentiality exists in the context of laws that protect certain relationships, including with medical and clinical care providers (and those who provide administrative services related to the provision of medical and clinical care), mental health providers, counselors, and ordained clergy, all of whom may engage in confidential communications under Utah law. The College has designated individuals who have the ability to have privileged communications as “Confidential Employees.” When information is shared by an individual with a Confidential Employee or a community professional with the same legal protections, the Confidential Employee (and/or such community professional) cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18; (iv) any reasonable belief that any vulnerable adult has been the subject of abuse, neglect, or exploitation.

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Employee Responsibility to Report Disclosures or Information about

Prohibited Conduct: The College has designated every Employee as either a “Confidential Employee” or a “Responsible Employee.”

A **“Confidential Employee”** is (1) any Employee who is a licensed medical, clinical or mental-health professional (e.g., physicians, nurses, physicians’ assistants, psychologists, psychiatrists, professional counselors and social workers, and those performing services under their supervision), when acting in that professional role in the provision of services to a patient who is a Student (“health care providers”); and (2) any Employee providing administrative, operational and/or related support for such health care providers in their performance of such services. A Confidential Employee will not disclose information about Prohibited Conduct to the College’s Title IX Coordinator without the Student’s permission (subject to the exceptions set forth in the Confidentiality section of this policy).

A **“Responsible Employee”** is any College Employee who is not a Confidential Employee. A Responsible Employee is required to report to the College’s Title IX Coordinator all relevant details (obtained directly or indirectly) about an incident of Prohibited Conduct that involves any Student as a Complainant, Respondent, and/or witness, including dates, times, locations, and names of parties and witnesses. Responsible Employees include Student-Employees, when disclosures are made to any of them in their capacities as employees. Responsible Employees are not required to report information disclosed (1) at public awareness events (e.g., “Take Back the Night,” candlelight vigils, protests, “survivor speak-outs” or other public forums in which students may disclose incidents of Prohibited Conduct; collectively, “Public Awareness Events”), or (2) during a student’s participation as a subject in an Institutional Review Board-approved human subjects research protocol (“IRB Research”). The College may provide information about Students’ Title IX rights and about available College and community resources and support at Public Awareness Events, however, and Institutional Review Boards may, in appropriate cases, require researchers to provide such information to all Student subjects of IRB Research.

Responsibility to Report Prohibited Conduct Where Either the

Complainant or the Respondent Is an Employee: Under this policy, all employees and volunteers including supervisors, management and human

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resources professionals are required to report to the College's Title IX Coordinator all relevant details about an incident of Prohibited Conduct where either the Complainant or the Respondent is an Employee. Reporting is required when such employees, volunteers, supervisors, management and human resource professionals know (by reason of a direct or indirect disclosure) or should have known of such Prohibited Conduct. For academic faculty, supervisors include department deans, associate deans and other unit administrators.

Reporting of Any Prohibited Conduct on Certain College Property:

Responsible Employees are also required to report to the Title IX Coordinator all information obtained, from any source, about alleged Prohibited Conduct that occurs anywhere on College Grounds; on any contiguous (off-Grounds) property owned or controlled by the College; on any property frequently used by Students, wherever located; and public property (including streets, sidewalks and parking facilities) that is within or immediately adjacent to, and accessible from, Grounds.

Reporting to Law Enforcement: The College is required to report information about certain allegations of Prohibited Conduct to the law enforcement agencies and the prosecuting authorities who would be responsible, respectively, for investigating and prosecuting such allegations.

Clery Act Reporting: Pursuant to the Clery Act, the College includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. The Clery Act also requires the College to issue timely warnings to the College community about certain crimes that have been reported and may continue to pose a serious or continuing threat to Students and Employees. Consistent with the Clery Act, the College withholds the names and other personally identifying information of Complainants when issuing timely warnings to the College community.

3. CONFIDENTIAL RESOURCES

Consistent with the definition of Confidential Employees and licensed community professionals, there are a number of resources within the College

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and community where Students can obtain confidential, trauma-informed counseling and support.

COLLEGE CONFIDENTIAL RESOURCES		
CAMPUS/CENTER	DEPARTMENT	CONTACT NUMBERS
Redwood	Center for Health and Counseling Student Center 035	Main: 801-957-4268
Jordan	Center for Health and Counseling Student Pavilion 202	Main: 801-957-6211
South City	Center for Health and Counseling Main Building 1-143	Main: 801-957-3323

COMMUNITY CONFIDENTIAL RESOURCES	
Salt Lake Rape Recovery Center	Location: 2035 South 1300 East Salt Lake City, UT 84105 Office hours: Monday-Thursday: 9am-5pm Office: 801-467-7282 Fax: 801-467-7280 24-Hour Crisis Line: 801-467-7273
University Neuropsychiatric Institute CrisisLine	24-Hour Crisis Line: 801-587-3000

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NATIONAL CONFIDENTIAL RESOURCES

Rape and Incest National Network (RAINN) Online Hotline	24-Hour Crisis Line: 1-800-656-4673 https://ohl.rainn.org/online/
National Sexual Assault Hotline	24-Hour Crisis Line: 1-800-656-4673

4. REPORTING

There are multiple channels for reporting Prohibited Conduct. A Complainant may choose to report to the College, to law enforcement, to both, or to neither. These reporting options are not exclusive. Complainants may simultaneously pursue criminal and disciplinary action. The College will support Complainants in understanding, assessing and pursuing these options.

a. Law Enforcement

Complainants have the right to notify law enforcement or decline to notify law enforcement. Alternatively, Complainants may seek assistance in notifying law enforcement from the Title IX Coordinator and/or Dean of Students. Both can assist in setting up an initial meeting with law enforcement and can accompany Students to that meeting. Filing a Police report does not obligate a Student to participate in any subsequent criminal proceedings. Law enforcement have unique legal authority, including the power to seek and execute search warrants, collect forensic evidence, make arrests, and assist in seeking Emergency Protective Orders. Although a Police report may be made at any time, Students should be aware that a statute of limitations may apply to certain crimes in Utah. Complainants may report Prohibited Conduct immediately to local law enforcement by contacting:

- 911 (for emergencies)

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- Campus Police Services
 - 801-957-3800, Redwood, South City, Meadowbrook and Jordan Campuses (for non-emergencies)
 - 801-840-4000, Miller and West Valley Center Campuses (for non-emergencies)
 - 801-799-3000, Library Square and Westpointe Campuses (for non-emergencies)
 - 801-575-2405, Airport Center (for non-emergencies)

The College recognizes that making the decision to report Prohibited Conduct often takes time. Nevertheless, pending the decision to report, Students are strongly encouraged to take immediate steps to preserve all evidence that might support a future report of Prohibited Conduct, a Protective Order, or an investigation by law enforcement, the College, or both. Such evidence may include:

- A forensic sexual assault examination (within 72 hours);
- Any clothing, sheets or other materials (items containing bodily fluids should be stored in cardboard boxes or paper bags);
- Electronic exchanges (e.g., text messages, emails, and Facebook, Instagram, Snapchat or other social media posts, to the extent that they can be captured or preserved);
- Photographs (including photographs stored on smartphones and other devices); and
- Voice-mail messages and other physical, documentary and/or electronic data that might be helpful or relevant in an investigation.

b. The College

The College also urges anyone who becomes aware of an incident of Prohibited Conduct to report the incident immediately to the College through the following reporting options:

- By contacting the College's Title IX Coordinator or any Deputy Title IX Coordinator by telephone, email, or in person during

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regular office hours at their respective locations, email addresses and/or phone numbers listed in Section IV, above; or

- Through the [Title IX Online Reporting Form](#) found on the College's website (which allows for anonymous reporting).

There is no time limit for reporting Prohibited Conduct to the College under this policy; however, the College's ability to respond may diminish over time, as evidence may erode, memories may fade, and Respondents may no longer be affiliated with the College. If the Respondent is no longer a Student or an Employee, the College will provide reasonably appropriate support measures, assist the Complainant in identifying external reporting options, and take reasonable steps to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects.

Making a report to the College does not require participation in any subsequent College proceedings, nor is a report required in order for a Student to receive support measures.

Students should be aware that all disclosures of Prohibited Conduct to any "Responsible Employee" will be reported, as required by College Policy, to the Title IX Coordinator. A Responsible Employee is any College Employee who is not a Confidential Employee.

Amnesty for Complainants and Witnesses: To encourage reporting, the College will not pursue disciplinary action against Complainants or witnesses for disclosure of illegal personal consumption of drugs or alcohol where such disclosures are made in connection with a good faith report or investigation of Prohibited Conduct. Complainants may simultaneously pursue criminal and College complaints.

5. INVESTIGATION

Upon receipt of a report of Prohibited Conduct committed by a Student, the Title IX Coordinator will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report. In this initial assessment, the Title IX Coordinator will:

- Assess the Complainant's safety and well-being and offer the College's immediate support and assistance;

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- Inform the Complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence;
- Inform the Complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
- Inform the Complainant about College and community resources, the right to seek appropriate and available remedial and protective support measures, and how to request those resources and support measures;
- Inform the Complainant of the right to seek Informal Resolution (where available) or Formal Resolution under these Procedures; ascertain the Complainant's expressed preference (if the Complainant has, at the time of the initial assessment, expressed a preference) for pursuing Informal Resolution, Formal Resolution, or neither; and discuss with the Complainant any concerns or barriers to participating in any College investigation and resolution under these Procedures;
- Explain the College's prohibition against Retaliation and that the College will take prompt action in response to any act of Retaliation;
- Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness, and/or any other third party with knowledge of the reported incident;
- Ascertain the ages of the Complainant and the Respondent, if known, and, if either of the parties is a minor (under 18), contact the appropriate child protective service agency; and
- Communicate with appropriate College officials to determine whether the report triggers any Clery Act obligations, including entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations.

The Title IX Coordinator will ensure that the Complainant receives a written explanation of all available resources and options and is offered the opportunity to meet to discuss those resources and options. When a decision is reached to initiate an investigation or to take any other action under these Procedures that impacts a Respondent (including the imposition of interim protective measures), the Title IX Coordinator will ensure that the Respondent is notified, receives a written explanation of all available resources and options, and is offered the opportunity to meet to discuss those resources and options.

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a. Expectations of Complainants and Respondents

Pursuant to these Procedures, Complainants and Respondents can expect:

- Prompt and equitable resolution of allegations of Prohibited Conduct; privacy in accordance with the procedure and any legal requirements;
- Reasonably available support measures, as described in these procedures;
- Freedom from Retaliation for making a good faith report of Prohibited Conduct or participating in any proceeding under these procedures;
- The responsibility to refrain from Retaliation directed against any person for making a good faith report of Prohibited Conduct or participating in any proceeding;
- The responsibility to provide truthful information in connection with any report, investigation, or resolution of Prohibited Conduct under the Policy or these Procedures;
- The opportunity to articulate concerns or issues about proceedings under the Policy and these Procedures;
- Timely notice of any meeting or proceeding at which the party's presence is contemplated by these Procedures;
- The opportunity to choose an advisor, including the right to have that advisor attend any meeting or proceeding at which the party's presence is contemplated by these Procedures;
- Written notice of an investigation, including notice of potential Policy violations and the nature of the alleged Prohibited Conduct;
- The opportunity to challenge the Investigator or any member of the investigation for bias or conflict of interest;
- The opportunity to offer information, present evidence, and identify witnesses during an investigation;
- The opportunity to be heard, orally and/or in writing, as to the determination of a Policy/Procedure violation and the imposition of any sanction(s);
- Timely and equal access to any information that will be used during Informal or Formal Resolution proceedings and related meetings;
- Reasonable time to prepare any response contemplated by these Procedures;
- Written notice of any extension of timeframes for good cause; and

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- Written notice of the outcome of any Formal Resolution proceedings, including the determination of a Policy violation, imposition of any sanction(s), and the rationale for each.

b. Informal Resolution

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

Informal resolution may include an inquiry into the facts, but typically does not include a formal 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.

Participation in informal resolution does not prohibit either party from terminating informal resolution and/or requesting a formal resolution 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 when requested by the Complainant and/or if the Title IX Coordinator determines there is a risk to the safety of the College community.

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c. Formal Resolution (Investigation)

Whenever a formal resolution is commenced, the Title IX Coordinator will designate one or more Investigators from the College to conduct a prompt, thorough, fair, and impartial investigation. All Investigators will receive annual training on issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of Complainants and the College community while promoting accountability.

- (1) Notice of Investigation. The Title IX Coordinator will notify the Complainant and the Respondent, in writing, of the commencement of an investigation. Such notice will (1) identify the Complainant and the Respondent; (2) specify the date, time (if known), location, and nature of the alleged Prohibited Conduct; (3) identify potential Policy violation(s); (4) identify the Investigator(s); (5) include information about the parties' respective expectations under the Policy and these Procedures; (6) explain the prohibition against Retaliation; (7) instruct the parties to preserve any potentially relevant evidence in any format; (8) inform the parties how to challenge participation by the Investigator on the basis of bias or a conflict of interest; and (9) provide a copy of the Policy and these Procedures.
- (2) Other Forms of Discriminatory and/or Harassing Conduct. If a report of Prohibited Conduct also implicates other forms of discriminatory and/or harassing conduct prohibited by the College's Code of Student Rights and Responsibilities, the Title IX Coordinator will evaluate all reported allegations to determine whether the alleged Prohibited Conduct and the alleged Code of Student Rights and Responsibilities violation(s) may be appropriately investigated together without unduly delaying the resolution of the report of Prohibited Conduct. Where the Title IX Coordinator determines that a single investigation is appropriate, the determination of responsibility for the violation of College policy will be evaluated under the applicable policy (i.e., the Policy, and/or the Code of Student Rights and Responsibilities), but

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the investigation and resolution will be conducted in accordance with these Procedures.

- (3) Presumption of Non-Responsibility and Participation by the Parties. The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where the Investigator(s) conclude that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding that the Respondent violated the Policy. Neither party is required to participate in the investigation or any form of resolution under these Procedures, and the Investigator will not draw any adverse inference from a decision by either of the parties not to participate.
- (4) Timeframe for Completion of Investigation; Extension for Good Cause. Typically, the period from commencement of an investigation through resolution (finding and sanction, if any) will not exceed sixty (60) calendar days. This timeframe may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement for temporary delay to gather evidence for a criminal investigation, to accommodate the availability of witnesses, to account for College breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the Parties, or for other legitimate reasons. The Investigator will notify the Parties in writing of any extension of this timeframe and the reason for such extension.
- (5) Overview of Investigation. During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed by the Investigator to each other or to any witness. The Investigator will notify and seek to meet separately with the Complainant, the Respondent, and third-party witnesses, and will gather other relevant and available evidence and information, including, without limitation, electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email and social media sites), photographs (including those

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stored on computers and smartphones), and medical records (subject to the consent of the applicable party).

- (6) Advisors. Throughout the investigation and resolution process, each party has the right to choose and consult with an advisor. The advisor may be any person, including an attorney, who is not otherwise a party or witness involved in the investigation. The parties may be accompanied by their respective advisors at any meeting or proceeding related to the investigation and resolution of a report under these Procedures. While the advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings.
- (7) Prior or Subsequent Conduct. Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of Prohibited Conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Policy violation, may be deemed relevant to the determination of responsibility for the Prohibited Conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Prohibited Conduct. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.
- (8) Prior Sexual History. The sexual history of a Complainant or Respondent will never be used to prove character or reputation. Moreover, evidence related to the prior sexual history of either of the parties is generally not relevant to the determination of a Policy violation and will be considered only in limited circumstances. For example, if the existence of Affirmative Consent is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have bearing on whether

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Affirmative Consent was sought and given during the incident in question. However, even in the context of a relationship, Affirmative Consent to one sexual act does not, by itself, constitute Affirmative Consent to another sexual act, and Affirmative Consent on one occasion does not, by itself, constitute Affirmative Consent on a subsequent occasion. In addition, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve another question raised by the report. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior sexual history is deemed relevant.

- (9) Relevance. The Investigator has the discretion to determine the relevance of any proffered evidence and to include or exclude certain types of evidence. In general, the Investigator will not consider statements of personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any party's general reputation for any character trait.
- (10) Coordination with Law Enforcement. The Title IX Coordinator and/or Investigator will contact any law enforcement agency that is conducting its own investigation to inform that agency that a College investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the College in its investigation. At the request of law enforcement, the Investigator may delay the College investigation temporarily while an external law enforcement agency is gathering evidence. The Investigator will promptly resume the College investigation when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation.
- (11) Final Investigation Report. Unless there are significant additional investigative steps requested by the parties or identified by the Investigator, the Investigator will prepare a Final Investigation Report, which will include a recommendation as to whether there is sufficient evidence, by a Preponderance of the Evidence, to support a finding of responsibility for a violation of the Policy (and, where applicable, the College's Code of Student Rights and Responsibilities). In reaching

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this recommended finding, the Investigator will consult with the General Counsel for the College. The Investigator will deliver the Final Investigation Report to the Title IX Coordinator. The Title IX Coordinator will notify both parties, simultaneously, that the Final Investigation Report is complete. In the Final Investigation Report, Investigators may make recommendations for sanctions. In determining the appropriate sanction(s), the Investigator will be guided by a number of considerations, including:

- The severity, persistence or pervasiveness of the Prohibited Conduct;
- The nature or violence (if applicable) of the Prohibited Conduct;
- The impact of the Prohibited Conduct on the Complainant;
- The impact or implications of the Prohibited Conduct within the College community;
- Prior misconduct by the Respondent, including the Respondent's relevant prior disciplinary history, at the College or elsewhere, and any criminal convictions;
- Whether the Respondent has accepted responsibility for the Prohibited Conduct;
- The maintenance of a safe, nondiscriminatory and respectful environment conducive to learning; and
- Any other mitigating, aggravating, or compelling factors.

d. Sanctions

Where there is a finding of responsibility, the Dean of Students may impose one or more sanctions. Sanctions may include any of the sanctions that are available for violations of the College's Code of Student Rights and Responsibilities, including:

- ***Reprimand and Warning.*** A student may be given a reprimand accompanied by a written warning that the student may receive additional sanctions if the student engages in the same misconduct again or commits any other violation of this Code. A reprimand and warning will remain a part of a student's disciplinary record at least until he/she graduates.

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- ***Reflective Activity.*** A student may be required to complete a reflective activity, such as writing a letter of apology or other written activity, which demonstrates the student's learning and increased understanding of the college's expectations regarding behavior.
- ***Administrative Withdrawal.*** A student may be administratively withdrawn from any or all courses during the semester in which the violation of college policy occurred. An administrative withdrawal will remain a part of a student's disciplinary record at least until he/she graduates.
- ***Disciplinary Probation.*** A student may be placed on disciplinary probation for a specified period of time under conditions specified in writing with a warning that any violation of the conditions or any further acts of misconduct may result in additional disciplinary sanctions, including suspension or expulsion from the college. As a condition of probation, the student may be required to participate in a specific program, such as a counseling program or an alcohol education program, or to provide a specific service, such as the repair or restoration of any property damaged or taken by the student. A record of any disciplinary probation will remain a part of a student's disciplinary record for five years after a student graduates.
- ***Restitution.*** A student may be required to pay the cost for the replacement or repair of any property damaged by the student. If the student fails to pay the cost or make the repairs, the student may be subjected to additional sanctions, including suspension or expulsion. A record of any restitution that a student is required to pay will remain a part of a student's disciplinary record until he/she graduates.
- ***Participation in a specific program.*** A student may be required to participate in a specific program, such as a counseling program, a program designed to stimulate good citizenship within the college community, an alcohol education program, anger management or any other activity which would foster civic engagement. If the student fails to participate in the program as directed, the student may be subjected to additional sanctions, including suspension or expulsion. The student must provide the college with verification of program completion and evidence of personal well-being. Verification of program completion must be from a certified agency or appropriately certified health care provider or mental health counselor. A record of participation in any

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specific program that a student is required to complete will remain a part of a student's disciplinary record until he/she graduates.

- ***Provision of a specific service.*** A student may be required to provide a specific service, such as the repair or restoration of any property damaged or taken by the student. If the student fails to provide the service as directed, the student may be subjected to additional sanctions, including suspension or expulsion. Completion of a specific service that a student is required to complete will remain a part of a student's disciplinary record until he/she graduates.
- ***Suspension.*** A student may be prohibited from participating in all aspects of college life for a specified period of time (some portion of which may be deferred at the discretion of the Dean of Students). When a student is suspended from the college, the suspension applies to all campuses of the college. The Dean of Students is required to notify the Office of the Registrar and Academic Records to indicate the suspension on all copies of the student's academic transcript. When the term of the suspension has ended, the Registrar will remove the notation from the student's transcript. A record of the term of suspension will remain a permanent part of the student's disciplinary record.
- ***Expulsion.*** A student may be dismissed from the college permanently. When a student is expelled from the college, the expulsion applies to all campuses of the college. The Dean of Students is required to notify the Office of the Registrar and Academic Records to indicate the expulsion on all copies of the student's academic transcript. Furthermore, the student may not thereafter petition for readmission to the college. A record of expulsion will remain a permanent part of the student's disciplinary record.
- ***Deferred Sanction.*** Sanctions of expulsion from and/or suspension from Salt Lake Community College may be deferred for a period of time not to exceed one year, with the provision that lesser sanction/s be completed and/or no further violations are committed within that period of time. If the student does not consent to the determination of responsibility or the sanction imposed, the student may request a hearing before a hearing commission or review board, depending on the level at which the deferred and lesser sanctions were imposed.

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The Policy prohibits a broad range of conduct, all of which is serious in nature. The propriety of any particular sanction is reviewed on an individual basis based on the unique facts and circumstances as found by the Investigator. In keeping with the College's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, this Procedure provides College administration with wide latitude in the imposition of sanctions tailored to the facts and circumstances of the Prohibited Conduct, the impact of the conduct on the Complainant and College community, and accountability by the Respondent. The imposition of sanctions is designed to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects, while supporting the College's educational mission and legal obligations.

e. Appeals

Upon the conclusion of an investigation and a finding of responsibility from a report alleging Prohibited Conduct, the Dean of Students will provide the Complainant and Respondent simultaneous written notice of the findings and any sanctions, if applicable, that may be imposed.

If either Party rejects the finding of responsibility and/or sanction(s) imposed by the Dean of Students, post-investigation, he or she may request an appeal according to the grounds, below.

The **ONLY** grounds for an appeal are as follows:

- (1) A procedural error occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.);
- (2) To consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included;
- (3) The sanctions imposed fall outside the range of sanctions designated for this offense and the cumulative conduct history of the responding party.

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All sanctions imposed by the Dean of Students will be in effect during the appeal. A request may be made to the Dean of Students to delay implementation of the sanctions until the appeal is decided, but the presumptive stance of the institution is that the sanctions will go into effect immediately. Graduation, study abroad, clinical placements, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

The decision of the Dean of Students may be appealed by petitioning the Vice President for Student Affairs. Any party who files an appeal request must do so in writing to the Dean of Students Office, within five (5) business days of receiving the written decision, for a review of the decision or the sanctions imposed. The written decision will be “certified” mailed to the local mailing address of the respective parties as indicated in college records. If there is no local address on file, mailings will be sent to the parties’ permanent address. Once received in person, mailed or otherwise, the notice of decision will be deemed presumptively delivered.

The Dean of Students Office will share the appeal request with the other party (e.g., if the Respondent files an appeal, the appeal is shared with the Complainant, who may also wish to file a response and/or bring their own appeal on separate grounds; this response or appeal will be shared with the initial appealing party). Based on the written requests/responses or on interviews as necessary, the Vice President for Student Affairs will send a letter of outcome for the appeal to all parties via “certified” mail. The Vice President for Student Affairs can take one of three possible actions:

- (1) Dismiss an appeal request as untimely or ineligible,
- (2) Grant an appeal and remand the finding and/or sanction for further investigation or reconsideration at the investigatory level, or
- (3) Modify a sanction.

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The original finding and sanction will stand if the appeal request is not timely or substantively eligible, and that decision is **FINAL**. The party requesting appeal must show clear error as the original finding and/or a compelling justification to modify a sanction, as both finding and sanction are presumed to have been decided reasonably and appropriately during the original investigation.

If remanded to re-open the investigation or conduct additional fact-finding, the results of the revised investigation will be subsequently forwarded for reconsideration to the Vice President for Student Affairs.

The procedures governing appeals process include the following:

- All parties should be timely informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision;
- Appeals are not intended to be full re-hearings of the allegation (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original investigation, and pertinent documentation regarding the grounds for appeal;
- Appeals decisions are to be deferential to the original investigation, making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so;
- An appeal is not an opportunity for the Vice President for Student Affairs to substitute their judgment for that of the original Investigators merely because they disagree with the finding and/or sanctions;
- Sanctions imposed are implemented immediately unless the Dean of Students stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The Vice President for Student Affairs will typically render a written decision on the appeal to all parties within five (5) business days from hearing/review of the appeal. The Vice President for Student Affairs's decision is **FINAL**.

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f. Academic Transcript Notations

The Title IX Coordinator and/or Dean of Students will direct the College Registrar to include a prominent notation on the academic transcript of any Student who has been (1) suspended, (2) expelled (i.e., permanently dismissed), or (3) who has withdrawn from the College while under investigation, for Prohibited Conduct pursuant to these Procedures. Such notation will reflect, as appropriate, the following language:

“This transcript reflects only the academic record of the student; this student currently is not in good standing and further information should be requested from the Dean of Students Office.”

The Title IX Coordinator will direct the College Registrar to remove any such notation where (a) a Student is subsequently found not to have committed an act of Prohibited Conduct pursuant to the Policy/Procedure, and/or (b) a Student who has been suspended for Prohibited Conduct has: (i) completed the term of such suspension and any conditions thereof, and (ii) has been determined by the College to be in good standing pursuant to all applicable College academic and nonacademic standards.

C. PROHIBITED CONDUCT UNDER THIS POLICY

Conduct under this Procedure is prohibited regardless of the sex, sexual orientation and/or gender identity/expression of the Complainant or Respondent. Prohibited Conduct includes the following specifically defined forms of behavior: Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Sexual or Gender-Based Harassment, Complicity, and Retaliation.

1. **Sexual Assault** consists of Sexual Contact and/or Sexual Intercourse that occurs without Affirmative Consent.

a. **Sexual Contact** is:

(1) Any intentional sexual touching, however slight

(2) with any object or body part (as described below)

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(3) performed by a person upon another person

(4) that is without affirmative consent and/or by force.

Sexual Contact includes (a) intentional touching of the breasts, buttocks, groin or genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts; and (b) making another touch you or themselves with or on any of these body parts.

b. Sexual Intercourse is:

(1) Any penetration, however slight

(2) with any object or body part (as described below)

(3) performed by a person on another person

(4) that is without affirmative consent and/or by force.

Sexual Intercourse includes (a) vaginal penetration by a penis, object, tongue, or finger; (b) anal penetration by a penis, object, tongue, or finger; and (c) any contact, no matter how slight, between the mouth of one person and the genitalia of another person.

c. Affirmative Consent is:

(1) Informed (knowing)

(2) Voluntary (freely given)

(3) Active (not passive), meaning that, through the demonstration of clear words or actions, a person has indicated permission to engage in mutually agreed-upon sexual activity

Affirmative Consent cannot be obtained by Force. Force includes (a) the use of physical violence, (b) threats, (c) intimidation, and/or (d) coercion.

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(a) Physical violence means that a person is exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.

(b) Threats are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm a person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.

(c) Intimidation is an implied threat that menaces or causes reasonable fear in another person. A person's size, alone, does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g., blocking access to an exit).

(d) Coercion is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to have sex. When a person makes clear a decision not to participate in a particular form of Sexual Contact or Sexual Intercourse, a decision to stop, or a decision not to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion was used, the College will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.

Affirmative Consent cannot be gained by taking advantage of the incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated. Incapacitation means that a person lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity.

A person who is incapacitated is unable, temporarily or permanently, to give Affirmative Consent because of mental or physical helplessness or as determined by a court of law, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.

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2. **Sexual Exploitation** is purposely or knowingly doing any of the following:
 - a. Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give Affirmative Consent to sexual activity;
 - b. Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., Skype or livestreaming of images);
 - c. Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person's intimate parts (including genitalia, groin, breasts or buttocks) in a place where that person would have a reasonable expectation of privacy);
 - d. Recording or photographing private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
 - e. Disseminating or posting images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
 - f. Prostituting another person; or
 - g. Exposing another person to a sexually transmitted infection (STI) or virus without the other's knowledge.

3. **Intimate Partner Violence** includes any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship.¹ Intimate Partner Violence may include any form of Prohibited Conduct under

¹ Intimate Partner Violence includes "dating violence" and "domestic violence," as defined by VAWA. Consistent with VAWA, the College will evaluate the existence of an intimate relationship based upon the Complainant's statement and taking into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

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this policy, including Sexual Assault, Stalking, and Physical Assault (as defined below).

4. **Physical Assault** is threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person. Physical Assault will be addressed under this policy if it involves Sexual or Gender-Based Harassment, Intimate Partner Violence, or is part of a course of conduct under the Stalking definition.
5. **Stalking**² occurs when a person engages in a course of conduct directed at a specific person and involves Sexual or Gender-Based Harassment under circumstances that would cause a reasonable person to fear bodily injury or to experience substantial emotional distress.

Course of conduct means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property. Substantial emotional distress means significant mental suffering or anguish.

Stalking includes "cyber-stalking," a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.

6. **Sexual Harassment** is defined as unwelcome sexual advances, requests for sexual favors, and other intimidating verbal or written communications or physical conduct of a sexual nature when:
 - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, education, academic pursuits, or participation in a College activity (often referred to as "*quid pro quo*" harassment); or

² This definition is consistent with VAWA.

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- b. Such conduct affects or has the purpose of unreasonably interfering with an individual's employment, education, living environment, or participation in a College activity by creating an intimidating, hostile, or offensive working or learning environment.

A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of Sexual Assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

7. **Retaliation** means any adverse action taken against a person for making a good faith report of Prohibited Conduct or participating in any proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. Retaliation may be present even where there is a finding of "no responsibility" on the allegations of Prohibited Conduct. Retaliation does not include good faith actions lawfully pursued in response to a report of Prohibited Conduct.
8. **Complicity** is any act taken with the purpose of aiding, facilitating, promoting or encouraging the commission of an act of Prohibited Conduct by another person.

D. VIOLATIONS OF LAW

Behavior that violates this policy may also constitute a crime under the laws of the jurisdiction in which the incident occurred. For example, the State of Utah Criminal Code criminalizes and punishes some forms of Sexual Assault (76-5-401-406), Intimate Partner Violence (77-36-1, 78B-7-402), Sexual Exploitation, Stalking (76-5-106.5[2]), and Physical Assault (76-5-103). This compilation of criminal statutes is not exhaustive, but is offered to notify the College community that, some forms of Prohibited Conduct may also constitute crimes under Utah law, which may subject a person to criminal prosecution and punishment in addition to any sanctions under this policy.

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E. PREVENTION AND AWARENESS PROGRAMS

The College is committed to the prevention of Prohibited Conduct through regular and ongoing education and awareness programs. Incoming Students receive primary prevention and awareness programming as part of their orientation, and returning Students receive ongoing training and related education.

F. OBLIGATIONS TO PROVIDE TRUTHFUL INFORMATION

All College community members are expected to provide truthful information in any report or proceeding under this policy. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions under the College's Code of Student Rights and Responsibilities and disciplinary action under the appropriate Employee disciplinary policy. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.