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**SUBJECT: Title IX Policy Prohibiting Discrimination and Sexual Harassment**

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**1.0 PURPOSE**

- 1.1. In accord with Title IX, this Policy defines and prohibits discrimination based on sex, including sexual harassment, in education programs and activities; details how to report a violation of this Policy; describes Snow College (The College) resources and supportive measures to protect those involved in the process; and outlines investigation, disciplinary, and due process procedures for addressing reported violations of this Policy. This Policy applies to all persons who are
  - 1.1.1. Employed by, attending, or affiliated with the College;
  - 1.1.2. Participating in any College program or activity, including but not limited to trustees, administrators, faculty, staff, students, independent contractors, volunteers, and guests; and/or
  - 1.1.3. Visiting the College campuses or any property owned or leased by the College.
- 1.2. This Policy is intended to reflect Snow College's commitment to stopping and preventing sexual misconduct within the College community. Allegations of sexual misconduct involving students or employees should be referred to the College's Title IX coordinator for investigation and appropriate administrative action in accordance with this Policy.

**2.0 REFERENCES**

- 2.1. Americans with Disabilities Act (A.D.A.) (as amended)
- 2.2. Campus Sexual Violence Elimination Act (SaVE)—Reauthorization of the Violence against Women Act of 2013 (VAWA)
- 2.3. Family Educational Rights and Privacy Act (FERPA)
- 2.4. Health Insurance Portability and Accountability Act (HIPAA)
- 2.5. Jeanne Clery Disclosure of Campus Security Police and Campus Crime Statistics Act (Clery Act)
- 2.6. Title VII of the Civil Rights Act of 1964 (Title VII)
- 2.7. Title IX of the Higher Education Amendments Act of 1972 (Title IX)
- 2.8. Utah Code § 53B-27-101 et seq. Campus Advocate Confidentiality Amendments
- 2.9. Utah Code § 53B-28-302 Code of Conduct Violation-Report of Sexual Violence
- 2.10. Utah Code § 53B-28-304 Criminal Retaliation Against a Victim or a Witness
- 2.11. Utah Code § 63G-2 Government Records Access and Management Act (GRAMA)
- 2.12. Utah Code § 63G-7-301 Waivers of Immunity-Exceptions
- 2.13. Utah Code § 76-5-404.1 Sexual Abuse of a Child
- 2.14. Utah Code § 77-36 Cohabitant Abuse Procedures Act

- 2.15. Utah Code § 77-38 Rights of Crime Victims Act
- 2.16. Utah State Board of Regents' Policy R256 Student Disciplinary Processes
- 2.17. Utah State Board of Regents' Policy R842 Restrictions on Faculty/Staff Relationships with Students

### 3.0 DEFINITIONS

- 3.1. **Actual knowledge:** Notice of sexual harassment or allegations of sexual harassment to the College Title IX Coordinator or any official of the College who has authority to institute corrective measures on behalf of the College. Imputation of knowledge-based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the College with actual knowledge is the Respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the College.
- 3.2. **Advisor and Appointed Advisor:** A person who advises a Party throughout the process and may act as a representative at the Hearing stage, including making an opening or closing statement, asking questions, and otherwise actively participating. An Advisor may, but need not be, an attorney. The Advisor is expected to abide by the Hearing requirements, including civility. An Advisor who is disruptive may be excluded from an interview, Hearing, or other proceedings. During the formal investigation or Informal Resolution process, an Advisor may only advise the student and may not actively participate in the process. If either Party chooses to have an Advisor, the Advisor will also act as their support person. If either Party does not have an Advisor during the grievance hearing, the College will provide that Party with an Appointed Advisor, at no cost to the Party. An Appointed Advisor is subject to the same rules and expectations of an Advisor, but an Appointed Advisor will only ask questions on behalf of their Party, they will not act as a representative. During the Hearing both Parties may bring one support person, in addition to their advisor.
- 3.3. **Appeal Officer:** The employee designated in the Title IX procedures to hear appeals as outlined in Section 15 of this policy. The Appeal Officer will normally be the appropriate Vice President or higher for appeals related to employee conduct, or the Dean of Students for appeals related to student conduct, but the procedures will outline the process for selecting an alternate if the normal appeal officer has a conflict.
- 3.4. **Complainant, victim, or alleged victim:** An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

- 3.5. **Consent:** Sexual activity requires consent, which is defined as positive, unambiguous, and voluntary agreement to engage in specific sexual activity throughout a sexual encounter. Consent cannot be inferred from the absence of resistance or the absence of a "no"; a clear "yes," verbal or otherwise, is necessary.
  - 3.5.1. Consent to some sexual acts does not constitute consent to others, nor does past consent to a given act constitute present or future consent. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person. Consent cannot be obtained by threat, coercion, or force. An agreement under such circumstances does not constitute consent.
  - 3.5.2. Consent cannot be obtained from someone who is asleep or otherwise mentally or physically incapacitated, whether due to alcohol, drugs, or some other condition. A person is mentally or physically incapacitated when that person lacks the ability to make or act on considered decisions to engage in sexual activity. Engaging in sexual activity with a person whom you know – or reasonably should know – to be incapacitated constitutes sexual misconduct.
- 3.6. **Dating Partner:** A person who is or has been in a social relationship of a romantic or intimate nature with another person, usually the Respondent, and where the existence of such a relationship shall be determined based on a consideration of (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.
- 3.7. **Dating Violence:** As defined in 34 U.S.C. 12291(a)(10): violence committed by a person:
  - 3.7.1. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - 3.7.2. where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - 3.7.2.1. the length of the relationship,
    - 3.7.2.2. the type of relationship and
    - 3.7.2.3. the frequency of interaction between the persons involved in the relationship.
- 3.8. **Days** are calendar days unless otherwise defined. Extensions of Deadlines may be granted by the College for a good cause shown.
- 3.9. **Discrimination:** For purposes of this Policy, adverse action towards College employees or students in the terms or conditions of employment; the College admission or education; access to College programs, services, or activities; or other College benefits or services, based on their inclusion or perceived inclusion (in the case of sexual orientation, gender identity, or gender expression) in the protected classes of sex, pregnancy, pregnancy-related conditions, sexual

orientation, gender identity, or gender expression that has the effect of denying or limiting participation in a College program or activity.

- 3.10. **Domestic Violence:** As defined in 34 U.S.C. 12291(a)(8): includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- 3.10.1. Domestic violence can be physical, sexual, emotional, or psychological actions or threats that influence another person, including any behaviors that intimidate, manipulate, humiliate, isolate, frighten, coerce, or injure someone.
- 3.11. **Emergency measures:** Actions taken to temporarily and immediately address a complaint of a Title IX violation. Emergency measures may include temporary no-contact order(s), changes in academic schedule(s), housing reassignment(s), counseling, or other relevant actions. In extraordinary cases, a Respondent may be temporarily removed from campus prior to the outcome of the grievance process, provided that the College undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment that justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal. In such circumstances, the process shall follow the suspension as expeditiously as possible.
- 3.12. **Formal Complaint:** A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting the College investigate the allegation of sexual harassment. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the College with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator, or by any additional method designated by the College. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose

- by the College) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint.
- 3.13. **Hearing:** A meeting where a Complaint of a violation is heard. The Hearing will be live, in real-time, either in person or via technology, enabling the Hearing Panel and the parties to simultaneously communicate and see each other while answering questions.
  - 3.14. **Incapacitation:** The physical and/or mental inability to make informed, rational judgments. Factors that could be indications of incapacitation include but are not limited to mental or physical disability; lack of sleep; alcohol; illegal drugs, date-rape, or prescription drug use; unconsciousness; blackout; or involuntary physical restraint. An individual who is incapacitated cannot give consent to engage in a sexual encounter. Being intoxicated by drugs or alcohol does not diminish one's responsibility to obtain consent. The factors to be considered when determining whether consent was given include whether the accused knew, or whether a reasonable person should have known, that the Complainant was incapacitated.
  - 3.15. **Informal Resolution:** A voluntary process engaged in outside of the formal investigative process to resolve a complaint. Informal Resolution is encouraged to resolve concerns at the earliest stage possible with the cooperation of all parties involved but will never be required. Participation in the Informal Resolution process is voluntary and must be agreed to by both parties in writing. Informal Resolution may include an investigation but should be flexible enough to meet the needs of each case. The Informal Resolution may include an agreement between the parties, separating the parties, referring to counseling programs, negotiating an agreement for disciplinary action, conducting targeted preventive education and training programs, or providing remedies for the individual harmed by the offense. Either Party has the right to withdraw from the Informal Resolution process prior to coming to a final agreement and resume the formal investigation. If the allegation falls under Title IX and involves a staff or faculty member of the College, Informal Resolution will not be permitted. After concluding the Informal Resolution of a complaint, the Title IX Coordinator shall notify the Complainant and Respondent of the Resolution that was agreed upon.
  - 3.16. **Party:** Complainant or Respondent.
  - 3.17. **Preponderance of Evidence:** The evidentiary standard used during a sexual misconduct investigation/review to determine if the allegations occurred and if a College policy violation has occurred. A preponderance of evidence means it is more likely than not, or more than 50 percent in favor, that misconduct occurred.
  - 3.18. **Respondent:** Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

- 3.19. **Retaliation:** An action, performed directly or through others, that is aimed to dissuade a reasonable person from engaging in a protected activity or is done in retribution for engaging in a protected activity. Action in response to a protected activity is not retaliatory unless (i) it has a materially adverse effect on the working, academic, or other College-related environments of an individual and (ii) it would not have occurred in the absence of (but for) the protected activity. Examples of protected activities include reporting (internally or externally) a complaint of sexual harassment in good faith, assisting others in making such a report, or honestly participating as an investigator, witness, decision-maker, or otherwise assisting, in an investigation or proceeding related to suspected sexual harassment.
- 3.20. **Sexual Assault:** As defined in 20 U.S.C. 1092(f)(6)(A)(v) and the uniform crime reporting system of the Federal Bureau of Investigation: sexual assault means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; also unlawful sexual intercourse. Sexual assault includes the following:
- 3.20.1. **Rape** - Any penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- 3.20.2. **Sodomy** - Oral or anal sexual intercourse with another person without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- 3.20.3. **Sexual Assault with an Object** - To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An 'object' or 'instrument' is anything used by the offender other than the 'offender's genitalia, e.g., a finger, bottle, handgun, stick.
- 3.20.4. **Fondling** - The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

- 3.20.5. **Incest** - Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Utah law. See Utah Code section 76-7-102.
- 3.20.6. **Statutory Rape** - Non-forcible sexual intercourse with a person who is under Utah's statutory age of consent. See Utah Code section 76-5-401 et seq.
- 3.21. **Sexual Exploitation:** When a person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:
- 3.21.1. Invasion of sexual privacy;
  - 3.21.2. Prostituting another person;
  - 3.21.3. Non-consensual video or audio-taping of sexual activity;
  - 3.21.4. Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
  - 3.21.5. Engaging in voyeurism;
  - 3.21.6. Knowingly transmitting an S.T.I. or H.I.V. to another person;
  - 3.21.7. Exposing one's genitals in non-consensual circumstances;
  - 3.21.8. Inducing another to expose their genitals.
- 3.22. **Sexual Harassment:** Conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct; (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College education program or activity; or (3) "sexual assault," "dating violence," "domestic violence," or "stalking".
- 3.23. **Stalking:** As defined in 34 U.S.C. 12291(a)(30): engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.
- 3.24. **Supportive Measures:** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where a violation is reported but no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all parties, or the College's educational environment, or to deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments,

modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The College must maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

- 3.25. **Title IX Coordinator:** The College designated and authorized employee to coordinate its efforts to comply with its responsibilities under Title 34 of the Code of Federal Regulations, part 106. Includes a designee of the Title IX Coordinator, where the designated Coordinator may not be available.
- 3.26. **College Community Members:** All persons employed by or affiliated with the College and persons participating in any College program or activity, including but not limited to trustees, advisory board members, administrators, faculty, staff, students, independent contractors, volunteers, and guests or visitors to any the College campus or any property owned or leased by the College.

#### 4.0 SEX DISCRIMINATION, SEXUAL HARASSMENT, AND RETALIATION PROHIBITED

- 4.1. **Scope of Policy:** This Policy applies to all employees of the College and any persons participating, or attempting to participate, in any College Program or Activity, which includes Students of the College. To the extent that any other College policies address the topics covered in this Policy, this Policy shall be first applied when appropriate. But other College policies or other law may then be applied, such as Title VII or College discipline policies.
  - 4.1.1. In cases involving only employees that do not meet the jurisdictional requirements of Title IX, under 34 C.F.R part 6, the College may choose to handle the concern under Title VII of the Civil Rights Act of 1964 (Title VII) or pursuant to other College policies and consistent with those procedures.
  - 4.1.2. In cases involving students that do not meet the jurisdictional requirements of Title IX, the College may choose to handle the concern under other College policies, including the Student Code of Conduct and consistent with those procedures.
- 4.2. **Policy:** The College does not discriminate on the basis of sex in the education programs or activities that it operates, as required by Title IX and 34 C.F.R. part 106 and other applicable or successor laws, rules, and regulations. The



requirement not to discriminate in education programs or activities extends to admission and employment. Inquiries about the application of Title IX and its regulations to the College may be referred to the Title IX Coordinator, to the Department of Education, Office for Civil rights, or both. The College prohibits sex discrimination, sexual harassment, and retaliation, as defined herein.

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

- 4.3. **Consent:** All participants in sexual activity are responsible for ensuring that they have the consent of all involved to engage in sexual activity. Any individual who engages in sexual activity without receiving clear, knowing, and voluntary consent, or in which one of the parties withdraws consent at any point but is forced to participate, has violated this Policy. Sexual activity with someone deemed unable to grant clear, knowing, and voluntary consent constitutes a violation of this Policy. This includes, but is not limited to, individuals who are:
- 4.3.1. Mentally and/or physically incapacitated for any reason (such as by mental or physical disability; lack of sleep; alcohol; illegal drugs, date-rape or prescription drug use; unconsciousness; blackout; or involuntary physical restraint);
  - 4.3.2. Forced to give consent in any way, including but not limited to by coercion, intimidation, duress, deception, threats, implied threats, and/or physical force.
  - 4.3.3. Consent to any one form of sexual activity does not automatically imply consent to any other form of sexual activity. Past consent to sexual activity does not imply ongoing future consent. The current or past existence of a relationship does not imply consent. Whether an individual has taken advantage of a position of authority over an alleged victim may be a factor in determining consent or coercion.
- 4.4. **Sexual Conduct with Subordinate Employees or Students:** Employees shall not engage in sexual conduct with subordinate students or employees, as stated in College Policy #309. The purpose of this restriction is to prohibit the abuse of power by employees and the exploitation of subordinate students or employees. That Policy applies regardless of whether there is a violation of this Policy.

- 4.5. **Retaliation Prohibited:** Neither the College nor any member of the College community may Retaliate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the individual has made a good faith report or complaint, or their good faith participation in an investigation, proceeding, or hearing under or related to this Policy.
- 4.5.1. Any retaliatory threat or act of violence against victims or witnesses of sexual violence, moreover, is a third-degree felony under Utah Code § 53B-28-304 and may be subject to criminal prosecution.
- 4.5.2. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination under this Policy.
- 4.6. Nothing in this Policy shall be interpreted as diminishing any party's rights protected under the United States Constitution or employee rights under Title VII of the Civil Rights Act of 1964 to be free from discrimination on the basis of race, color, religion, sex, and national origin or other protected categories.

## 5.0 TITLE IX NOTIFICATION

- 5.1. The College must notify the College Community, of:
- 5.1.1. The name or title, office address, electronic mail address, and telephone number of the employee designated as the Title IX Coordinator.
- 5.1.2. The nondiscrimination policy statement contained in section 4 of this Policy, the Colleges' grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the College will respond.
- 5.1.3. The College must prominently display the contact information and policy statement described in 5.1 on its website and in each handbook or catalog that it makes available to the College Community.
- 5.1.4. Notification of those who are not students or employees may be accomplished by posting the information on the College's website.

## 6.0 REPORTING

- 6.1. **How to Report:** Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), to the Title IX Coordinator using any of the following methods: in person, by mail, by telephone, e-mail or any other means that result in the Title IX Coordinator receiving the person's oral or written report. The contact information

and mailing address of the Title IX Coordinator may be found on the College's website.

- 6.2. **Who Must Report:** The following employees are officials with authority to institute corrective measures who must report sexual harassment or other sex discrimination to the Title IX Coordinator:
  - 6.2.1. The President and all employees reporting directly to the President;
  - 6.2.2. All supervisors, when reports concern their direct or indirect subordinates as potential Complainants or Respondents;
  - 6.2.3. The Provost, all employees who report directly to the Provost, and all college deans when reports concern students as potential Complainants or Respondents.
- 6.3. **Reports of Minor Abuse:** Consistent with Utah Code section 62A-4a-403, anyone who reasonably suspects any incident of sexual harassment or abuse involving a minor shall immediately report to campus police or the local police department. Employees who become aware of allegations involving a minor shall notify the Title IX Coordinator and their supervisor that they have reported the allegation to the police.
- 6.4. **Who May Not Report:** Licensed mental health counselors and medical professionals working within the scope of their license, or designated advocates authorized by the Title IX Coordinator, generally may not report incidents of sexual harassment except with written consent or in instances of imminent danger or when the victim is a minor or vulnerable adult.

## 7.0 CONFIDENTIALITY

- 7.1. The College must maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the College's ability to provide supportive measures.
- 7.2. The College will otherwise keep Title IX matters confidential to the extent possible and consistent with the law.

## 8.0 TRAINING

- 8.1. The College shall train or request training documentation of Title IX Coordinators, investigators, decision-makers, and any person who facilitates an Informal Resolution process on the definition of sexual harassment, the scope of the College's education program or activity, how to conduct an investigation and grievance process including live hearings, appeals, Informal Resolution processes,

and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

- 8.1.1. Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.
- 8.2. The College will train decision-makers on how to determine issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, on evidentiary standards, and on live hearing procedures.
- 8.3. The College must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- 8.4. The College will provide training to the Title IX Coordinator(s), the hearing officer(s), and other necessary parties on all technology to be used in Live Hearings.
- 8.5. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an Informal Resolution process must be made publicly available on the College's website.

## 9.0 RECORDKEEPING

- 9.1. The Title IX Office must maintain the following records for seven years:
  - 9.1.1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required by this Policy;
  - 9.1.2. Any disciplinary sanctions imposed on a Respondent;
  - 9.1.3. Any remedies provided to the Complainant designed to restore or preserve equal access to the College's education program or activity;
  - 9.1.4. Any appeal and the result; any Informal Resolution and the result;
  - 9.1.5. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an Informal Resolution process.
- 9.2. For each report to the Title IX Coordinator of sexual harassment in a College education program or activity against a person in the United States, the Title IX Office must create, and maintain for seven (7) years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the Title IX Office must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the College's education program or activity. If the College does not provide a Complainant with supportive measures, then the Title

IX Office must document the reasons why such a response was not unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the College in the future from providing additional explanations or detailing additional measures taken.

## 10.0 PRELIMINARY REVIEW OF REPORTS AND FORMAL COMPLAINTS

10.1. **Scope and Applicability of These Procedures:** All reports and formal complaints of sex discrimination, sexual harassment, and retaliation, as defined in this Policy, are subject to the procedures outlined in this section.

### 10.2. **Preliminary Review of Reports of Sexual Harassment:**

10.2.1. **General Response:** Upon receiving a report of sexual harassment, the Title IX Coordinator shall promptly contact the Complainant to

10.2.1.1. discuss the availability of supportive measures,

10.2.1.2. consider the Complainant's wishes with respect to supportive measures,

10.2.1.3. inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint, and

10.2.1.4. explain the process for filing a formal complaint.

10.2.2. **Emergency Removal of a Student:** The Title IX Coordinator may if appropriate in their professional judgment, refer the matter to the College's CARE Team to assess whether a Respondent should be removed from the College's education programs or activities on an emergency basis. If referred before ordering removal, the CARE Team must undertake an individualized safety and risk analysis, determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

10.2.3. **Employee Leave:** An employee Respondent may be placed on administrative leave in accordance with College policy.

10.3. The Title IX Coordinator must further assess the reported conduct for any Clery obligations, including the issuance of a timely warning, and report to campus or local law enforcement when necessary.

### 10.4. **Grievance Process General Principles:**

10.4.1. Complainants, Respondents, and witnesses shall be treated equitably and with respect throughout the grievance proceedings.

10.4.1.1. The College will evaluate all relevant evidence - both inculpatory and exculpatory - objectively and determine credibility

without respect to a person's status as Complainant, Respondent, or witness.

10.4.2. Deadlines and timeframes provided in this Policy may be extended for a good cause with written notice to the parties including the reason for the extension. Good cause may include considerations such as the unavailability of a party, a party's advisor, or witness; concurrent law enforcement activity; or the need for language assistance or an accommodation of disabilities.

10.4.2.1. Parties may submit a request for a temporary delay to the Title IX Coordinator. Any request for a temporary delay or limited extension should include a good cause statement and the reason(s) for the request. If no good cause is found or other considerations predominate, the Title IX Coordinator may deny the requesting Party's request in writing.

10.4.3. Any person designated as a Title IX Coordinator, Investigator, or decision-maker shall be free of conflict of interest or bias for or against Complainants or Respondents generally or individually.

10.4.4. Respondents, Complainants, and witnesses shall not knowingly make materially false statements or knowingly submit materially false information during the grievance process. However, a determination regarding responsibility alone is not sufficient to conclude that any individual proffered a material falsehood.

10.4.5. Complainants and Respondents shall have supportive measures made available and be given the opportunity to request modifications necessary for physical and/or emotional safety.

10.5. **Formal Complaint:** A formal complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging sex discrimination, sexual harassment, or retaliation. A formal complaint may be filed by a Complainant who is participating in or attempting to participate in an education program or activity of the College at the time of filing the formal complaint.

10.5.1. A formal complaint shall be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information posted for the Title IX Coordinator. The College shall maintain and supply a form to be used for formal complaints.

10.5.2. The formal complaint shall contain written notice of the allegations of sex discrimination, sexual harassment, or retaliation, including a concise statement describing the incident, when and where the misconduct occurred, why the Complainant believes it violates the College policy, and

a proposed resolution. The Complainant shall be instructed to provide and preserve all corroborating or potentially relevant evidence in any format, list potential witness names, and sign the statement. From this information, the Title IX Coordinator shall prepare a Notice of Investigation as defined in Section 12.3.

- 10.5.3. By filing a formal complaint, the Complainant is giving consent for the Title IX Coordinator, designated deputy coordinators, and/or investigators to discuss the information provided with other persons, including the Respondent, who may have relevant factual knowledge of the circumstances of the complaint, and is authorizing the collection and examination of all records and other documentation relevant to the complaint.
- 10.5.4. The Title IX Coordinator may independently initiate a formal complaint and investigation if necessary to provide safe and non-discriminatory educational programs and activities unless doing so would be unreasonable in light of the known circumstances. The Title IX Coordinator may consider a variety of factors, including a pattern of alleged misconduct by a particular Respondent, in deciding whether to sign a formal complaint. When the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party under this Policy and must remain free of bias or conflict of interest with respect to any party. In this situation, the Complainant is treated as a party, though their right to not participate is protected.
- 10.5.5. **Consolidation of Formal Complaints:** The College may consolidate formal complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other party, where the allegations of sexual harassment arising out of the same or similar facts or circumstances.
- 10.5.6. **Mandatory Dismissal of the Formal Complaint:** The College must investigate all allegations in a formal complaint unless the conduct alleged in the formal complaint:
  - 10.5.6.1. Would not constitute sexual harassment as defined in this Policy even if proved;
  - 10.5.6.2. Did not occur in the College's education programs or activities; or
  - 10.5.6.3. Did not occur against a person in the United States.
- 10.5.7. If the conduct falls within the criteria outlined in 10.4.6, the Title IX Office must dismiss the formal complaint or any allegations therein with

regard to that conduct for the purposes of Title IX; such dismissal does not preclude action under another provision of College policy, rules or regulations.

**10.5.8. Voluntary Dismissal of the Formal Complaint:** The Title IX Office may dismiss the formal complaint or any allegations therein, if at any time during the investigation or Hearing:

10.5.8.1. A Complainant notifies the Title IX Coordinator in writing that the Complainant wants to withdraw the formal complaint or any allegations therein;

10.5.8.2. The Respondent is no longer enrolled or employed by the College; or

10.5.8.3. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint.

10.5.9. Upon a mandatory or voluntary dismissal of the formal complaint, the Title IX Coordinator shall promptly send written notice of the dismissal and the reason(s) therefor simultaneously to the parties.

10.5.10. Any party may appeal the dismissal of a formal complaint in accordance with section 15 of this Policy

10.5.11. If the complaint is dismissed under Title IX regulations 34 C.F.R. Part 106, the College may investigate the alleged sexual misconduct for a possible violation of the College's Discrimination Policy.

## 11.0 INFORMAL RESOLUTION

11.1. For matters that proceed after the filing of a Formal Complaint, the College may offer an Informal Resolution process after a formal complaint is filed. Informal Resolution may include a limited inquiry into the facts but typically does not include an investigation. Informal Resolution should be flexible enough to meet the needs of each case and may include mediating an agreement between the parties, separating the parties including no-contact orders, referring a party or both parties to a counseling program, negotiating an agreement for disciplinary action, conducting targeted preventive education and training programs, or providing remedies for the individual harmed by the offense.

11.2. The College is not obligated to offer or facilitate informal resolutions. Because each case is different, the Title IX Coordinator shall determine whether a formal complaint of sexual harassment, discrimination, or retaliation is appropriate for informal resolution. If the allegation falls under Title IX and involves a staff or faculty member of the College, Informal Resolution will not be permitted.



- 11.3. Participation in the Informal Resolution process is voluntary; the College may not require either Party to engage in Informal Resolution as a condition of enrollment or employment or enjoyment of any other right, waiver of the right to investigation and adjudication of formal complaints of sexual harassment. Either Party has the right to withdraw from the Informal Resolution process prior to coming to a final agreement and resume the formal investigation.
- 11.4. When offering an Informal Resolution process, the Title IX Coordinator shall provide to the parties a written notice disclosing: the allegations, the requirements of the Informal Resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations that at any time prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the Informal Resolution process, including the records that will be maintained or could be shared. The Title IX Coordinator shall obtain the 'parties' voluntary, written consent to the Informal Resolution process before proceeding.
- 11.5. The College shall endeavor to conclude informal resolutions promptly and shall keep a written record of all Informal Resolution efforts in accordance with section 9 of this Policy.
- 11.6. After concluding the Informal Resolution of a complaint, the Title IX Coordinator shall notify the Complainant and Respondent of the Resolution that was agreed upon.

## 12.0 FORMAL INVESTIGATIONS

- 12.1. If a Complainant files a formal complaint or the Title IX Coordinator signs a formal complaint, the College shall conduct a thorough, impartial investigation by interviewing witnesses, collecting documentary evidence, and preparing a written report of findings. When a Formal Complaint is filed, the Complainant consents to release their identity to the Respondent party. The purpose of the investigation is to establish whether there is a reasonable basis, based on a preponderance of the evidence, to conclude the Respondent violated this Policy. The College reserves the right to engage an outside investigator to conduct all or part of the investigation. Investigations under this Policy shall incorporate the following standards:
  - 12.1.1. The burden of proof and the burden of gathering evidence sufficient to reach a determination rests on the College and not on the parties.

- 12.1.1.1. The College shall not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the College obtains the Party's voluntary, written consent to do so for a grievance process under this Policy.
- 12.1.2. The College shall presume the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- 12.1.3. The College will not restrict the ability of either Party to discuss the allegations under investigation or to gather and present relevant evidence. This section notwithstanding:
- 12.1.3.1. Retaliation is prohibited. Attempts to alter or prevent a witness's or Party's testimony are forms of prohibited retaliation.
- 12.1.3.2. Parties may be directed to cease communications with one another (i.e., a "no contact order").
- 12.1.3.3. Parties' communications remain subject to state laws protecting against defamation and tortious invasions of privacy, such as intrusion upon seclusion, the publication of private facts, and false light claims.
- 12.1.4. The College shall provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- 12.1.5. Investigators or others shall not question the Complainant or otherwise seek evidence regarding the Complainant's sexual predisposition or prior sexual conduct with anyone other than the Respondent(s).
- 12.1.6. Parties may choose to be accompanied by an advisor of their choice, who may but need not be an attorney, to any related meeting or proceeding. The Advisor may not disrupt the meetings or other proceedings or speak on behalf of the Party, generally, the Advisor is limited to listening and quietly conferring with the Party. If an advisor is disruptive even after the warning, the Investigator may exclude them from meetings.
- 12.1.7. At any time before or during the investigation, the Investigator may recommend that the College provide support measures for a party or

witness. Any individual's intentional interference with support measures may be considered retaliatory and a separate violation of this Policy.

12.1.8. If either Party fails to participate in the investigation, the Investigator (s) may make findings without the response of that Party, potentially leading to an unfavorable outcome for that Party, or the College may dismiss the case according to section 10.4.8 of this Policy.

12.1.8.1. The College will provide to a party whose participation is expected or invited, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the Party to prepare to participate.

12.1.8.2. The College will provide each Party with equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including all inculpatory or exculpatory evidence, whether relied upon or not in reaching findings so that each Party can meaningfully respond to the evidence prior to the conclusion of the investigation.

- 12.2. The Title IX Coordinator shall choose the Investigator (s), except in cases where the Title IX Coordinator or others involved in the investigation have a conflict of interest, in which case the College's Counsel shall select an internal or external impartial investigator(s).
- 12.3. Upon initiating an investigation, the College shall provide the parties with a notice of investigation, and a copy of this Policy. A notice of investigation shall include statements informing the parties that the Respondent is presumed not responsible for the alleged conduct and that a determination of responsibility is made at the conclusion of the grievance process; that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and who may inspect and review evidence; and inform the parties of any provision in the College's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during a grievance process.
- 12.4. If, at any point during the investigation, the College determines a need to investigate allegations not included in the formal complaint, the College must provide notice of the additional allegations to the parties as known.
- 12.5. Upon conclusion of the investigative fact-finding, the Investigator (s) shall prepare a draft report that summarizes the Complainant's allegations, and Respondent's responses, summarize the relevant evidence and the material witnesses supporting or opposing the allegation(s).

- 12.6. Before the report is finalized, investigators will give Complainant and Respondent and their advisors' equal opportunity to review any evidence obtained as part of the investigation that is directly related to the allegations in the formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination of responsibility, whether inculpatory or exculpatory, in electronic or hard copy format.
- 12.7. The parties may submit a written response or information to the Investigator within ten (10) calendar days of the date of the notice of the opportunity to review the draft report and evidence. This is the parties' final opportunity to submit any additional information or witnesses. In the absence of good cause, investigators shall not consider information discoverable through the exercise of due diligence that is not provided to the Investigator (s) at this juncture. The Investigator(s) shall then consider any written response, information, or evidence provided by the parties.
- 12.8. The investigator(s) shall then prepare a final investigation report that contains a statement of the allegations, the positions/responses of the parties, a summary of relevant evidence and material witnesses the Investigator (s) relied on, and the proposed findings of facts, conclusions, and recommendations.
  - 12.8.1. The proposed findings of fact, conclusions and recommendations by the Investigator are based on the Investigator's review of the evidence. The Hearing Panel must independently and objectively view the evidence as adduced at the Hearing and make its own findings, conclusions, and recommendations and cannot simply defer to the Investigator's findings of fact, conclusions, and recommendations.
  - 12.8.2. A recommended decision of "unfounded" indicates that the Investigator concludes either that there is insufficient evidence to conclude that the event(s) occurred as alleged, or even if the event(s) occurred, it/they did not constitute sexual harassment or retaliation.
  - 12.8.3. A recommended decision of "inconclusive" means that the Investigator concludes the evidence did not reach a preponderance of the evidence.
  - 12.8.4. A recommended decision of "substantiated" means that the Investigator concludes that a violation of the Policy has been established by a preponderance of the evidence.
- 12.9. The Title IX Coordinator, or designee, and the College's counsel or designee shall review each draft final investigation report or summary before it is finalized to ensure compliance with this Policy.

- 12.10. The final report shall be provided to the parties and their advisors, if any, in an electronic or hard copy format, at least ten (10) days prior to any hearing under this Policy, for their review and written response.
- 12.11. The final investigation report shall be submitted to the responsible college administrator or designee with authority to implement actions and/or discipline necessary to resolve the complaint (unless a conflict of interest or other special circumstance exists, in which case the College's counsel will recommend to the President a designee to serve as an alternative responsible college administrator).
- 12.12. Nothing in this procedure shall be interpreted to alter the status of otherwise at-will employees.

### 13.0 LIVE HEARINGS

- 13.1. Upon receipt of the Final Investigation Report, the Title IX Coordinator will appoint a Hearing Panel. A Hearing Panel may consist of up to 3 persons to be selected from a list of qualified and trained individuals. A Hearing Officer may be appointed who may or not be a voting member of the Hearing Panel but will be charged with administering the Hearing, ruling on evidence, and other procedural matters in consultation with and on behalf of the decision-makers.
- 13.2. Upon appointing a Hearing Officer or Hearing Panel (hereinafter "Hearing Officer"), the Title IX Coordinator or Hearing Officer will issue to the parties and the parties' advisors, in either an electronic or hard copy format, a Notice of Hearing containing dates, deadlines, and/or requirements appropriate for the orderly administration of the live Hearing as determined by the Hearing Officer assigned to the live Hearing under this Policy.
  - 13.2.1. The Notice of Live Hearing will contain a statement informing the parties that the Live Hearing will be in real-time, either in person or via technology, enabling the Hearing Officer and the parties to simultaneously see and hear the Party and witnesses answering questions.

### 13.3. **Required Disclosures**

- 13.3.1. As outlined in section 12.10, the parties and the parties' advisors receive in either an electronic or hardcopy format a copy of the Final Investigation Report and all evidence, exculpatory or inculpatory—whether or not the evidence was relied upon to reach the findings in the Final Investigation Report—related to the allegations in the Formal Complaint, including the Party's responses to the draft report.
- 13.3.2. **Disclosure of Expert Testimony.** A party shall disclose the identity of any person who may be used at the Live Hearing to present expert opinion evidence to the College and other parties no later than ten (10) days prior

to the date of the Live Hearing or as otherwise required by the Hearing Officer.

13.3.2.1. Unless otherwise stipulated, this disclosure shall be accompanied by a written report prepared and signed by the witness or Party. The report shall contain the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; and the expert's qualifications as a witness.

13.3.2.2. A party seeking to present the testimony of an expert witness at the Live Hearing shall certify that the individual providing the expert testimony is qualified to offer the opinions.

13.3.2.3. The Hearing Officer may exclude expert testimony that is not relevant, or is otherwise excludable due to a lack of foundation, lack of scientific basis, etc.

13.3.3. Prior to the hearing date, the College, through the Hearing Officer, shall provide the Complainant and Respondent a list of witnesses and documents that will be called and presented at the Live Hearing. The Complainant and Respondent shall then have three days to designate additional witnesses and documents that they wish to present at the Live Hearing. The College will produce witnesses within its control; the Parties must arrange for the appearance of persons outside the College's control. Witnesses who are not disclosed may be excluded absent a showing of good cause for their non-disclosure.

13.4. **Advisors:** Parties may be accompanied to the Live Hearing by the Advisor, who may be, but is not required to be, an attorney.

13.4.1. The College will not limit the choice or presence of a party's Advisor, but the Hearing Officer may limit an advisor's participation if the Advisor becomes unreasonably disruptive to the proceedings or exclude the Advisor in extreme cases.

13.4.2. If an attorney appears on behalf of a party, notice served on the attorney is considered notice to the Party.

13.4.3. Advisors may participate in the Live Hearing through asking the other party and any witness relevant questions and follow-up questions, including those challenging credibility.

13.4.3.1. Cross-examination of the other Party or witnesses at the Live Hearing must be conducted directly, orally, and in real-time by a party's Advisor and never by a party personally.

- 13.4.3.2. If a party does not have an advisor present at the Live Hearing, the College shall provide without fee or charge to that Party, an Appointed Advisor to conduct cross-examination on behalf of that Party. See the definition of an Appointed Advisor for further details.
- 13.5. The College is not a party to the Live Hearing, but the College shall generally arrange for and produce witnesses and evidence insofar as they are under the control of the College.
  - 13.5.1. The College must remain objective and impartial throughout the grievance process, including impartially presenting the evidence to the Hearing Officer or Hearing Panel for determination.
  - 13.5.2. The standard of proof for determining a violation of this Policy is a preponderance of the evidence.
  - 13.5.3. At the Live Hearing, it shall be presumed the Respondent is not responsible for the alleged conduct until evidence is produced showing otherwise.
- 13.6. **Hearing Officer or Hearing Panel Responsibilities**
  - 13.6.1. The Hearing Officer or Hearing Panel cannot be the same person(s) as the Title IX Coordinator or the Investigator (s).
  - 13.6.2. The Hearing Officer shall conduct necessary pre-hearing proceedings to maximize the fairness and efficiency of the Live Hearing, including the following:
    - 13.6.2.1. The Parties will be advised of the names of the Hearing Panel members and Hearing Officer prior to the Live Hearing, and any Party may object in a timely manner to a member for actual bias. An objection shall be reviewed by the Hearing Officer prior to the Live Hearing, and a substitute shall be selected if bias is found. Hearing Panel members shall also withdraw themselves if they are biased. The Hearing Panel members shall select one of them as the Hearing Officer to make administrative decisions and conduct the Hearing, or a non-voting Hearing Officer may be appointed to make administrative decisions and conduct the Live Hearing in consultation with and on behalf of the Hearing Panel. The Hearing Officer shall notify the Parties of the hearing schedule and procedures. During all phases of a Live Hearing, a Respondent and a Complainant may each be accompanied by one Advisor.
    - 13.6.2.2. A pre-hearing conference may be scheduled by the Hearing Officer to discuss scheduling and evidentiary issues and to make

pre-rulings on matters of contention. This conference may include stipulations as to the evidence and the investigation report, anticipated timing, and reasonable time limits for presentations of evidence.

13.6.3. The Hearing Officer shall regulate the course of the Live Hearing to obtain full disclosure of relevant facts and to afford all parties a reasonable opportunity to present their positions. In general, each Party will be asked to make an opening statement summarizing their position. Witnesses, including the Parties, shall then be called by the Hearing Officer, who will ask questions to elicit the 'witness' testimony. The Hearing Officer shall afford the parties' advisors the opportunity to ask questions and conduct cross-examination. The Parties will then be asked to make a closing statement.

13.6.3.1. Before a party or witness answers a cross-examination or other question; the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

13.6.4. On the Hearing Officer's own motion or upon objection by a party's Advisor, the Hearing Officer:

13.6.4.1. May exclude evidence that is irrelevant or unduly repetitious.

13.6.4.2. Shall exclude irrelevant questions directed to a party or witness.

13.6.4.3. Shall exclude evidence privileged in the courts of Utah unless the parties specifically waive the privilege at issues.

13.6.4.4. Shall exclude questions or evidence about the Complainant(s)' sexual predisposition or prior sexual behavior as not relevant unless 1) questions or evidence of the Complainant(s)' prior sexual behavior is offered to prove that someone other than Respondent(s) committed the conduct alleged by Complainant(s), or 2) questions or evidence concern specific incidents of the Complainant(s)' prior sexual behavior with respect to Respondent(s) and are offered to prove consent.

13.6.4.5. May receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document.

13.6.5. Standard of Evidence admitted by the Hearing Chair or Hearing Panel.



- 13.6.5.1. For cases that fall within the Federal Title IX regulations (34 C.F.R. Part 106), if a party or witness does not submit to cross-examination at the Live Hearing, the Hearing Officer must not rely on any statement of that Party or witness in reaching a determination regarding responsibility and cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence for the Live Hearing or refusal to answer cross-examination or other questions.
  - 13.6.6. The College shall record the Hearing and provide a copy or transcript of the Hearing to the parties for inspection and review.
  - 13.6.7. The Hearing shall be conducted with all parties physically present in the same geographical location, or the Hearing Officer may choose to hold the Live Hearing virtually, with technology enabling participants simultaneously to see and hear each other.
  - 13.6.8. Nothing in this section precludes the Hearing Officer from taking other appropriate measures necessary to preserve the integrity of the Live Hearing.
  - 13.6.9. After the close of the Live Hearing, the Hearing Officer or Hearing Panel will issue a Written Determination regarding responsibility and sanctions if any.
- 13.7. Written Determination**
- 13.7.1. The Hearing Officer or Hearing Panel will provide the Written Determination to the Title IX Coordinator within 14 days after the Live Hearing concludes. The written determination must include:
    - 13.7.1.1. Identification of the allegations potentially constituting sexual harassment as defined in this Policy.
    - 13.7.1.2. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination including any notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held.
    - 13.7.1.3. Findings of fact supporting the determination.
    - 13.7.1.4. Conclusions regarding the application of the College policy to the facts.
    - 13.7.1.5. Using the same criteria established in section 13 of this Policy, a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, and disciplinary sanctions the College imposes on the Respondent, and

whether the institution shall provide remedies designed to restore and preserve equal access to the College's education program and activity to the Complainant.

13.7.1.6. Proposed sanctions if responsibility is found and in accord with section 14 below.

13.7.1.7. The College's procedures and permissible bases for the Complainant and Respondent to appeal, along with who the Appeal Officer is and their contact information.

13.7.2. The Hearing Officer shall provide the Written Determination to the Title IX Coordinator, the responsible College official, the parties, and the parties' advisors simultaneously.

13.7.3. The determination regarding responsibility and sanctions becomes final either on the date that the recipient provides the parties with the written determination of the result of the Appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

#### 14.0 SANCTIONS AND REMEDIES

14.1. The Hearing Panel shall promptly determine the appropriate sanctions and remedies based on the hearing findings, including offering remedies to the Complainant and/or College community, implementing changes in programs and activities, providing training, and imposing any disciplinary sanctions. In consultation with the Dean of Students and the College's counsel or designee, (and with Human Resources when the Respondent is an employee) the Hearing Panel shall ensure any proposed sanctions and remedies are appropriate to end the prohibited conduct, to prevent further violation of this Policy, and remedy the effects of any violation. In determining the appropriate sanction(s), the Hearing Panel shall be guided by the following considerations:

14.1.1. The severity, persistence, or pervasiveness of the misconduct;

14.1.2. The nature of violence in the misconduct and/or use of weapons, drugs, or alcohol (if applicable);

14.1.3. The impact of the misconduct on the Complainant;

14.1.4. The impact or implications of the misconduct on the College community;

14.1.5. Prior misconduct by the Respondent, including the Respondent's relevant prior disciplinary history;

14.1.6. Whether the Respondent has accepted responsibility for the misconduct;

14.1.7. The maintenance of a safe, non-discriminatory, and respectful working and learning environment; and

- 14.1.8. Any other mitigating, aggravating, or compelling factors.
- 14.2. Respondents who are found to have violated this Policy may be subject to the following sanctions:
  - 14.2.1. Faculty/Staff: Possible sanctions against faculty and non-faculty employees for violations of this Policy include verbal counseling, written warning, probation, reassignment, transfer, demotion, reduction in pay, suspension, termination of employment, and order of no trespassing on campus and/or in College programs, services, and activities. Sanctions imposed pursuant to this Policy shall preclude a separate grievance or other challenges even if normally allowed under other College Policies.
  - 14.2.2. Students: Possible sanctions against students for violations of this Policy include fines, restitution, suspension, warning, probation, expulsion, withholding diploma, community service, educational paper, revocation of certificate or degree, discretionary sanction, organizational sanction, and notation on the student's transcript.
  - 14.2.3. Vendors/Contractors/Visitors: Possible sanctions against vendors, contractors, or visitors to campus who are neither students nor employees of the College include banning the individuals from all or part(s) of the College and/or ending business relationships with the vendors and contractors.
- 14.3. The Hearing Panel shall send the sanctions and remedies - subject to an appeal if made - in writing to the Complainant, Respondent, Title IX Coordinator, and the appropriate College administrator. However, the sanctions shall not disclose to the Complainant the discipline imposed on a Respondent student, except under the following circumstances:
  - 14.3.1. The discipline directly affects the other Party, such as when the Respondent student is ordered to stay away from the other Party, is transferred to another job site, worksite, class, or is suspended or dismissed from the College; or
  - 14.3.2. The Complainant alleged sexual harassment involving a crime of violence or a non-forcible sex offense; or
  - 14.3.3. The Respondent student gives their written permission to disclose the discipline.
- 14.4. The College complies with all applicable reporting requirements and reserves the right to report findings of criminal misconduct to the police.
- 14.5. **Student Amnesty:** The College strongly encourages students to report incidents of sexual misconduct to College officials. However, the College recognizes that students who have been drinking alcohol and/or using drugs at the time that sexual misconduct occurs may be hesitant to report such incidents due to fear of potential consequences for

their own conduct. A Complainant or witness acting in good faith who reports any incident of sexual misconduct to College official or to police will not be subject to the Student Code of Conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the incident being reported.

14.5.1. This Policy only provides amnesty from violations of the Snow College Student Code of Conduct. It does not grant amnesty for criminal, civil, or legal consequences for violations of Federal, State, or Local law. For information regarding immunity from alcohol-related criminal offenses, please see Utah Code section 32B-4-423.

## 15.0 APPEALS

- 15.1. Any party may appeal the Hearing Panel's decision regarding responsibility or from the dismissal of any portion of a formal complaint for any of the reasons listed below.
  - 15.1.1. A procedural irregularity that affected the outcome of the Hearing.
  - 15.1.2. New evidence that was not reasonably available at the time of the decision or dismissal.
  - 15.1.3. The Title IX coordinator, the investigators, or the Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.
- 15.2. If the Respondent has been determined responsible for sexual harassment, any party may simultaneously appeal the decision regarding sanctions for any the following reasons:
  - 15.2.1. The decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.
  - 15.2.2. The sanction is clearly unreasonable in light of the known circumstances.
- 15.3. The Appeal Officer must receive written notice of a Party's intent to appeal within ten (10) days after the Hearing Officer issues the decision.
- 15.4. Upon granting an appeal, the Appeal Officer must notify both parties within five (5) days.
- 15.5. The Appeal Officer must be free of any bias or conflict of interest with respect to any party.
- 15.6. The Appeal Officer must not be anyone involved in the grievance process before the Appeal.
- 15.7. The parties may submit a written statement to the Appeal Officer supporting or opposing the decision of the Hearing Officer based upon the grounds set forth above.

- 15.7.1. The Appeal Officer must receive any written statements within ten (10) days from the Hearing Officer sending the notice to the parties.
- 15.8. The Appeal Officer will review all written statements, reports, evidence, and recordings and make a written decision.
- 15.9. The Appeal Officer's written report may affirm or modify the Hearing Officer's decision, remand the decision to the hearing officer, order a new investigation or overturn the decision.
- 15.10. The Appeal Officer will simultaneously issue a report to both parties detailing the decision and the rationale for the decision.
- 15.11. The Appeal Officer's decision is final.