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## Sexual Misconduct Policy

14 December 2018

### I. GENERAL POLICY STATEMENT

LDS Business College (LDSBC) is committed to promoting and maintaining a safe and respectful environment for the campus community. The College will not tolerate sexual harassment, sexual violence, domestic violence, dating violence, or stalking (collectively “Sexual Misconduct”) perpetrated by or against any College students, College employees, participants in College programs and activities, or visitors to its campus. This policy prohibits Sexual Misconduct by College employees (which include all faculty, staff, and administrative employees) and students, whether the behavior occurs on or off campus. This policy also prohibits Sexual Misconduct by or against visitors to the College (such as independent contractors, vendors, visiting lecturers, and visiting student-athletes).

The College will take immediate and appropriate steps to stop Sexual Misconduct, prevent its recurrence, and address its effects. Any person who violates this policy may be subject to discipline up to and including termination of employment, suspension, dismissal, and a ban from campus, depending on the circumstances and the severity of the violation and the violator’s status as an employee, student, or visitor.

The College will work to prevent Sexual Misconduct and address reports of Sexual Misconduct by

- educating members of the campus community about this policy and applicable laws;
- promptly addressing and resolving reports of Sexual Misconduct in accordance with this policy;
- protecting the rights of all parties involved in a complaint; and
- imposing appropriate discipline against those who have engaged in Sexual Misconduct.

Individuals should seek to resolve incidents of Sexual Misconduct by following the procedures set forth in Section IV of this policy.

### II. PROHIBITED CONDUCT

As required by Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act of 1964, the College prohibits sex discrimination in its educational programs or activities,

admission, and employment. Under certain circumstances, Sexual Misconduct may constitute sex discrimination.

Sexual Misconduct prohibited under this policy includes a range of unwelcome sexual conduct, including verbal and physical sexual harassment, sexual assault, and other forms of sexual violence, each of which is a form of prohibited sex discrimination. Other criminal behavior, such as domestic violence, dating violence, and stalking, that is generally (though not exclusively) sex-based is also considered Sexual Misconduct under this policy. This policy does not address consensual sexual activity prohibited under the LDSBC [Honor Code Policies and Procedures](#) or other kinds of sex discrimination of a non-sexual or non-criminal nature prohibited under the [Employee Conduct Policy](#).

### **A. SEXUAL HARASSMENT**

Sexual harassment is unwelcome conduct of a sexual nature and can include unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature whether verbal, nonverbal, or physical. Conduct is unwelcome if the individual toward whom it is directed did not request or invite it and regarded the conduct as undesirable or offensive. A wide variety of sexual conduct may constitute sexual harassment. Examples of sexual harassment include, but are not limited to, the following:

- Sexually suggestive or offensive joking, flirting, or comments
- Unwelcome and intentional touching
- Sexually oriented verbal abuse
- Sexually oriented comments about an individual's body
- Displaying objects or pictures that are sexual in nature
- Sending sexually explicit or offensive text messages or other communications

Sexual harassment of any kind is contrary to the teachings of The Church of Jesus Christ of Latter-day Saints and the LDSBC [Honor Code Policies and Procedures](#) and is considered to be Sexual Misconduct prohibited under this policy.

Sexual harassment directed at employees or students of the College is also a form of sex discrimination which may be prohibited by Title VII of the Civil Rights Act of 1964 (prohibiting unlawful discrimination, including sex discrimination, in employment) and Title IX of the Educational Amendments of 1972 (prohibiting sex discrimination in federally-funded education programs and activities). Sexual harassment prohibited by these laws generally falls within one of two categories:

1. Quid pro quo sexual harassment—when submission to or rejection of the unwelcome sexual conduct is used as a basis for employment decisions affecting an

- employee, or when a teacher or other employee conditions an educational decision or benefit on a student's submission to unwelcome sexual conduct.
2. Hostile environment sexual harassment—when the unwelcome sexual conduct is so severe or pervasive that it alters the conditions of an employee's employment and creates a hostile, intimidating, or abusive working environment or it denies or limits a student's or employee's ability to participate in or benefit from the College's programs or activities.

To avoid the possibility or appearance of quid pro quo sexual harassment, employees and students should avoid dating, romantic, or amorous relationships where a power differential exists. Examples of such relationships include, but are not limited to, a professor or teaching assistant involved in a relationship with his or her student, or a supervisor involved in a relationship with a subordinate employee. If such a relationship exists, it must be approved by both parties with the appropriate supervisor(s), who should document the disclosure of the relationship and confirm with the parties that the relationship is voluntary and not unwelcome to either party. As a general rule, dating, romantic, or amorous relationships should not be entered into or continued while one individual in the relationship has the power to either reward or penalize the other in work or in school.

Sexual harassment that creates a hostile environment is more common than quid pro quo harassment, but it is more difficult to identify. In order for harassment to be sufficiently severe or pervasive to create a hostile environment, the employee or student must subjectively consider the environment to be hostile or abusive and the conduct would also have to be objectively offensive, that is, reasonable people in the employee or student's position would also find the conduct to be offensive, considering all the circumstances.

The fact that someone did not intend to sexually harass an individual is generally not a defense to a complaint of sexual harassment. In most cases, determining whether the behavior has created a hostile environment depends on the effect the behavior has on the victim (including its effect on an employee's job performance or a student's education) and the surrounding circumstances (such as the type, frequency, and duration of the conduct; the relationship between the alleged perpetrator and victim; the number of people involved in the conduct; and the location and context of the incidents). Unwelcome sexual conduct that is mildly offensive and isolated, incidental, or sporadic does not rise to the level of unlawful sexual harassment under Title IX or Title VII, even though it may still be considered sexual harassment in violation of this policy and the LDSBC [Honor Code Policies and Procedures](#).

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## **B. SEXUAL VIOLENCE, DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING**

Sexual violence is a form of sexual harassment and refers to physical sexual acts perpetrated against a person who has not consented or who is incapable of giving consent. Consent is a voluntary agreement to engage in sexual activity and is determined by all the relevant facts and circumstances. Consent cannot be given by someone who is incapacitated for any reason (i.e., because of the victim's age, disability, unconsciousness, or use of drugs or alcohol).

Additionally, consent cannot be implied by silence, the absence of resistance, or past consent with the same or another person. Even if a person has given his or her consent to engage in sexual activity, consent to engage in further sexual activity can be withdrawn at any time. Consent is invalid where it is given under coercion, force, or threats.

Examples of sexual violence include, but are not limited to, rape, sexual assault, sexual battery, and sexual abuse. Such acts of sexual violence, in addition to being criminal offenses prohibited under the Utah Criminal Code, also constitute Sexual Misconduct prohibited under this policy. A single act of sexual violence (e.g., rape) may be sufficiently severe to create a hostile environment.

Domestic violence, dating violence, and stalking are likewise criminal offenses under the Utah Criminal Code and are also considered Sexual Misconduct prohibited under this policy, even when the criminal behavior is not specifically sexual in nature.

Domestic violence is a violent crime committed by a current or former spouse or intimate partner (or someone similarly situated) or any other person against a victim who is protected from that person's acts under state domestic or family violence laws. Dating violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or to suffer substantial emotional distress.

## **III. REPORTING INCIDENTS**

### **A. Confidentiality, Amnesty, and Leniency for Victims and Witnesses**

LDS Business College exists to provide an educational environment consistent with the ideals and principles of the restored gospel of Jesus Christ. The [LDSBC Honor Code](#) and its observance by the campus community are essential components of LDSBC's mission. The college will not tolerate Sexual Misconduct (defined in this policy as sexual harassment, sexual violence, domestic violence, dating violence, and stalking). Anyone found to have committed Sexual Misconduct as defined in this policy is not entitled to confidentiality or amnesty.

Being a victim of Sexual Misconduct is never a violation of the [LDSBC Honor Code](#). The college strongly encourages the reporting of all incidents of Sexual Misconduct so that support services can be offered to victims (see Section III.D) and Sexual Misconduct can be prevented and stopped.

**Confidentiality.** The college recognizes that victims or witnesses of Sexual Misconduct might be hesitant to report an incident to college officials if they fear the discovery of honor code violations, such as alcohol use, drug use, or consensual sexual activity outside of marriage. To help address this concern and to encourage the reporting of Sexual Misconduct, the Title IX Office will not share the identity of a victim or witness with the Honor Code Office unless requested by such person or a person's health or safety is at risk.

**Amnesty.** Anyone, including a victim, who reports an incident of Sexual Misconduct will not be disciplined by the college for any related honor code violation occurring at or near the time of the reported Sexual Misconduct unless a person's health or safety is at risk. However, with victims or witnesses who have violated the honor code, the college may offer and encourage support, counseling, or education efforts to help students and benefit the campus community.

**Leniency.** To encourage the reporting of Sexual Misconduct, the college will also offer leniency to victims and witnesses for other honor code violations that are not related to the incident but which may be discovered as a result of the investigatory process. Such violations will generally be handled so that the student can remain in school while appropriately addressing these concerns.

In applying these principles, the college may consider any applicable facts and circumstances of each case, including the rights, responsibilities, and needs of each of the involved individuals.

## **B. DUTY TO REPORT**

Some College employees have a duty under this policy to report Sexual Misconduct. Even so, all persons are encouraged to and may voluntarily report incidents of Sexual Misconduct to the Title IX Coordinator. State law imposes additional reporting obligations related to sexual abuse of a child. Victims of Sexual Misconduct are strongly encouraged to report incidents of Sexual Misconduct.

### **1. Responsible Employees**

A dean, director, department chair, professor, coach, Campus Security Officer, or any other College employee in a managerial or supervisory role ("Responsible Employee") who becomes

aware of or reasonably suspects any incidents of Sexual Misconduct must promptly report all relevant information to the Title IX Coordinator. A Responsible Employee who receives a report of Sexual Misconduct should inform the reporting individual that the employee must report the incident, and the employee should then promptly make the report to the Title IX Coordinator. Responsible Employees with information regarding an incident of Sexual Misconduct who fail to report relevant information or to cooperate in an investigation may be subject to disciplinary action.

The only exceptions to the reporting obligation for Responsible Employees are those situations in which the Responsible Employee received the information as part of a confidential communication in the context of a professional or otherwise privileged relationship (i.e., the Responsible Employee was the reporting person's doctor, therapist, lawyer, ecclesiastical leader, or spouse).

## **2. Child Abuse Reporters**

Any person who has reason to believe that a child (anyone under 18 years old) has been subjected to sexual violence or other forms of abuse or neglect, or who observes a child being subjected to conditions or circumstances which would reasonably result in such abuse or neglect, must report the situation to the nearest peace officer, law enforcement agency, or applicable office of the state Division of Child and Family Services, as required by state law.

## **3. Campus Security Authorities**

A College employee who has been designated as a Campus Security Authority ("CSA") and who receives a report of Sexual Misconduct must relay statistical information about incidents of sexual assault, dating violence, domestic violence, and stalking to Campus Security. CSAs are persons who have responsibility for campus security or who have significant responsibility for student and campus activities. Such persons include, but are not limited to, security staff, vice presidents, chief officers, deans, directors, managers, and Honor Code Office staff. Federal law requires that the College prepare and distribute an annual security report containing statistics for certain crimes that were reported to CSAs. The College must also issue timely warnings about crimes that pose a threat to students and employees.

## **4. Victims of Sexual Misconduct**

In order to protect their own and others' safety, individuals who believe they have been subjected to Sexual Misconduct should make a report even if they have simultaneously been involved in other violations of Campus Security, such as use of alcohol or drugs. Violations of

College policy or the LDSBC [Honor Code Policies and Procedures](#) do not make a victim at fault for sexual violence or other forms of Sexual Misconduct and will be addressed separately from the Sexual Misconduct allegation.

Individuals who believe they have been victims of sexual harassment may seek to resolve the issue privately under the informal resolution provisions of this policy or may report the issue under the formal resolution provisions provided herein. Individuals who believe they have been victims of sexual violence, or those who have suffered severe or pervasive sexual harassment creating a hostile environment, should always come forward and make a report under the formal resolution provisions.

## **B. WHERE TO REPORT**

Sexual Misconduct should be reported to the Title IX Coordinator, Room 938, 801.524.8157, [dbrooksby@ldsbc.edu](mailto:dbrooksby@ldsbc.edu). The names, office addresses, and telephone numbers of the Title IX Coordinator and the deputy coordinators are also posted on the College's Title IX website [HERE](#). In addition, individuals may submit reports, including anonymous reports, through EthicsPoint, the College's 24-hour hotline provider, by telephone at 888-238-1062, or by submitting information online [HERE](#). A report of Sexual Misconduct ("Report") can be made verbally or in writing.

The Title IX Coordinator oversees all Title IX complaints and investigations and coordinates the College's response to sex discrimination. The remainder of this policy outlines various responsibilities of the Title IX Coordinator.

If a Report involves potentially criminal acts (i.e., rape, acquaintance rape, domestic violence, dating violence, sexual assault, or stalking), the alleged victim should be informed in writing that he or she also has the option to make a formal criminal complaint by reporting the incident to Campus Security at 801.240.2771 (Emergency), 801.240.2661 (Non Emergency) or local police by calling 9-1-1. Alleged victims also have the option to decline to notify law enforcement authorities or to be assisted by Responsible Employees in notifying such authorities. Campus Security will notify the Title IX Coordinator of all such reports received.

Inquiries concerning Title IX and unlawful sex discrimination may be referred to the College's Title IX Coordinator or the Human Resource Director. The Office for Civil Rights within the U.S. Department of Education (OCR) investigates claims of unlawful sex discrimination, including sexual harassment and sexual violence, in the College's educational programs and activities. The OCR may be contacted by email at [ocr@ed.gov](mailto:ocr@ed.gov) or through its website at <http://www2.ed.gov/about/offices/list/ocr/index.html>. The U.S. Equal Employment Opportunity

Commission (EEOC) investigates claims of unlawful employment discrimination, including sexual harassment and sexual violence, in the workplace. The EEOC may be contacted by telephone at 800-669-4000 or through its website at <http://eoc.gov/employees/charge.cfm>.

### **C. OTHER PROCEDURES AND SERVICES FOR VICTIMS**

A student or employee who reports to the College that he or she has been a victim of dating violence, domestic violence, sexual assault, or stalking—even if the offense occurred off campus—will be provided with a written explanation of victims’ rights and options as follows:

1. Procedures victims should follow, including information about preserving evidence, reporting the offense, and obtaining protective orders
2. Information about how confidentiality will be protected
3. Existing counseling, health, mental health, victim advocacy, legal assistance, student financial aid, and other services available for victims, both within the College and in the community
4. Options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures
5. Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking
6. Possible sanctions or protective measures the College may impose following a final determination of an institutional disciplinary procedure

In situations where criminal conduct is involved or personal safety is a concern, it is important that victims of Sexual Misconduct preserve evidence as necessary to prove the crime or secure a protective order through the court system. Victims may choose to seek medical treatment in order to preserve evidence, treat injuries, or prevent sexually transmitted diseases. It is also possible to get a rape kit or find a Sexual Assault Nurse Examiner (SANE) through law enforcement or local hospitals. Health care services are available at local hospitals.

Counseling, advocacy, and support are available to victims whether or not they choose to make an official Report. Additional resources are available to provide ongoing support during the institutional disciplinary or criminal process.

The College will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, student financial aid, and other services available for victims, both within the institution and in the community. Such information will be made available through various College communications and on the College’s Title IX website [HERE](#).

#### **D. COMPLAINT AND ACTIVITY LOG**

The College's Title IX Coordinator will maintain a confidential log of Title IX complaints and activity. To the extent that other campus departments receive complaints of Sexual Misconduct, are involved with complaint investigations, or conduct any part of the resolution proceedings, they should promptly report this activity to the Title IX Coordinator for entry into the confidential log, even if the complaints are resolved without the involvement of the Title IX Coordinator.

#### **E. RETALIATION**

Retaliation or intimidation against an individual who has made a Report or provided information in connection with an investigation of Sexual Misconduct is strictly prohibited. Retaliation is any adverse action taken against an individual because he or she has engaged in a legally protected action opposing Sexual Misconduct or participating in a Sexual Misconduct proceeding if the adverse action is reasonably likely to deter the person or others from pursuing their rights. Similarly, intimidation is any adverse action or threat of action reasonably likely to prevent or dissuade an individual from making a Report or providing information in connection with a Sexual Misconduct investigation. Individuals who participate in a Sexual Misconduct investigation should be advised that College policy and federal law prohibit retaliation against them or against individuals closely associated with them and should be assured that the College will take steps to prevent retaliation and will take strong responsive action to any act of retaliation of which it becomes aware. An individual who feels that he or she has been subjected to retaliation should report the incident to the Title IX Coordinator or the Human Resource Director.

#### **IV. COMPLAINT RESOLUTION PROCEDURES**

The following procedures are designed to provide for the prompt and equitable investigation and resolution of reports of Sexual Misconduct perpetrated by or against College employees, students, or campus visitors. These procedures will include a prompt, fair, and impartial process from the initial investigation to the final result. Additionally, these procedures will be conducted by officials who do not have a conflict of interest or bias for or against the parties and who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

## **A. INFORMAL RESOLUTION**

Whenever it is reasonably possible and safe to do so, an individual who believes he or she has been subjected to Sexual Misconduct (“Complainant”) may attempt to resolve the issue privately and constructively with the person responsible for the alleged misconduct (“Respondent”). However, an attempt at informal resolution is not required and is not appropriate, even on a voluntary basis, in instances of sexual violence or other criminal behavior, or when sexual harassment is severe or has become pervasive.

The goal of informal resolution is to conclude the matter to the satisfaction of both parties quickly and confidentially. Either party may enlist the assistance of the Title IX Coordinator or the Human Resource Director in this effort. If satisfactory resolution is not reached after such informal efforts, or if the Complainant believes informal resolution is not possible or may be unsafe, he or she may forego the informal resolution process or discontinue it at any time and address the concern using the formal resolution process described below.

## **B. FORMAL RESOLUTION**

The formal resolution process may be initiated by submitting a Report to the Title IX Coordinator. Anyone can submit a Report under this policy; however, the submission of such a Report does not prevent the Complainant from subsequently pursuing informal resolution with the Respondent in appropriate circumstances.

### **1. Selection of the Investigator**

Upon receiving a Report, the Title IX Coordinator will either select a qualified employee to promptly investigate the allegations in the Report (“Investigator”) or choose to conduct the investigation themselves. Generally, the Title IX Coordinator will serve as the Investigator for allegations against a student or against a campus visitor if the alleged victim is a student. The Human Resource Director will generally serve as the Investigator for allegations against College employees, including student employees unless the alleged misconduct occurred outside the student employment context. The Human Resource Director will also generally serve as the Investigator for allegations against visitors to campus if the alleged victim is a College employee or another visitor to campus. The Title IX Coordinator will consider any conflicts of interest, time constraints, or other relevant factors in selecting an Investigator.

The Complainant and the Respondent may each raise issues regarding bias or a potential conflict of interest of investigators or others involved in the resolution process by contacting the Title IX coordinator.

## 2. Confidentiality

Given the sensitive nature of Sexual Misconduct allegations and the potential for damage to the parties' personal reputations, all Reports will be investigated as confidentially as reasonably possible. All participants in the investigation—including the Complainant, the Respondent, the Investigator, and individuals interviewed by the Investigator—should keep the allegations and proceedings confidential, and should provide information only to those College and governmental employees who are authorized to investigate the Report or who otherwise have a legitimate need to know. Records kept by the College relating to Sexual Misconduct allegations are not publicly available, but in the event that the College is required to make any such records publicly available, any identifying information about the Complainant will be excluded, to the extent permissible by law, to protect the Complainant's confidentiality. Federal law requires the College to publicly disclose statistics about reported incidents of sexual assault, domestic violence, dating violence, and stalking; however, no personally-identifiable information is maintained or published for purposes of such reporting.

Notwithstanding the foregoing confidentiality provisions, Complainants and any witnesses who participate in an investigation of Sexual Misconduct should be advised that their confidentiality will be preserved only to the extent it does not interfere with the College's ability to investigate the Report and take corrective action, and that if the investigation results in litigation, the College may be legally required to disclose any information it has received.

If a Complainant requests that his or her identity be kept confidential or asks the College not to pursue an investigation, the Complainant should be notified that (1) the College's ability to investigate and respond to the Report may be limited by such a request, and (2) under some circumstances the College may not be able to honor such a request. The College will take all reasonable steps to investigate and respond to a Report consistent with the Complainant's request for confidentiality. However, without conducting a full investigation or disclosing the full nature of the Report (including its source) to the Respondent, the College may be unable to impose any discipline, and its corrective actions might be limited to informing the Respondent that allegations of discriminatory behavior have been made against him or her, preserving a record of the discrimination allegation in the Respondent's employment or student disciplinary file, and pursuing other steps to limit the effects of the alleged harassment and prevent its recurrence, such as training or surveys in the affected area or department. Complainants who desire complete confidentiality may be advised that they can address their confidential concerns to ecclesiastical leaders, mental or physical health providers, or their own legal counsel.

The Complainant should also be advised that the College may not be able to honor a request for confidentiality or to forego an investigation if such a request would prevent the College from meeting its responsibility to provide students and employees with a safe and nondiscriminatory environment and its corresponding obligations to provide a thorough and impartial investigation and a prompt and equitable resolution of the Report. The Investigator, in consultation with the Title IX Coordinator, is responsible for evaluating requests for confidentiality or to forego an investigation.

The Investigator will consider the following factors in determining whether to disclose the identity of a Complainant or pursue an investigation contrary to the Complainant's request:

- the seriousness of the alleged Sexual Misconduct
- the age or maturity of the Complainant
- the existence of any previous accusations against the alleged violator
- the existence of independent evidence to substantiate the allegations
- in the case of accusations against a student, the rights of the student under the [Confidentiality of Records](#) policy and corresponding federal and state privacy laws or laws mandating disclosure

If the Investigator determines he or she cannot honor a Complainant's request for confidentiality or a Complainant's request to forego an investigation, the Investigator will inform the Complainant prior to commencing an investigation.

### **3. Preliminary Assessment**

Upon receiving a Report of Sexual Misconduct, the Title IX Coordinator and the Investigator will promptly perform a preliminary assessment based on the facts reported to determine whether they provide reasonable cause to believe a violation of this policy may have occurred. If there is no reasonable cause to believe a violation occurred, no further action will be taken and the Complainant will be informed that his or her Report has been considered and will not be investigated. If reasonable cause is found, an investigation will proceed as provided below.

### **4. Interim Measures**

Based on any information acquired in the course of the preliminary assessment or investigation, the Title IX Coordinator or Investigator may recommend that interim measures be taken to protect the Complainant or others from further acts of Sexual Misconduct or retaliation while the investigation is still pending. This recommendation should be submitted to the office or individual within the College administration authorized to implement the recommendation. If

requested and available, interim measures will be provided whether or not a victim of Sexual Misconduct chooses to report the crime to Campus Security or local law enforcement. The College will provide written notification to victims about options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or other protective measures. In situations deemed to be extreme or dangerous, the office or individual within the College administration authorized to impose discipline on the Respondent (the “Responsible Administrator”) may take interim disciplinary action against the Respondent, up to and including a temporary suspension and ban from campus; in such cases both parties will receive simultaneous written notification. Other remedial interim measures may also be appropriate, such as special training in the affected department or area, or the dissemination of information about how to report Sexual Misconduct. The nature of any interim measures granted to a victim will be kept confidential to the extent reasonably possible.

#### **5. The Complainant’s Written Complaint, Supporting Documentation, and Evidence**

If a Complainant has not already submitted a sufficient written statement in connection with the initial Report, the Investigator will invite the Complainant to prepare and sign a written statement of the facts involved (“Complaint”). The Complaint should clearly and concisely describe the incident(s), including when and where the alleged Sexual Misconduct occurred. The Complaint may also include an explanation as to why the Complainant believes the Respondent’s behavior was unlawful or in violation of College policy, corroborating facts and evidence, the names of other individuals who may have information relevant to the Complaint, other materials or evidence in support of the Complaint, and a proposal for an appropriate resolution. The Complaint may not exceed ten pages in length, exclusive of attached documents and supporting materials, and must be submitted within five business days of the Investigator’s request. Based on the Complainant’s written and oral statements, the Investigator will prepare a written summary of the allegations (“Summary”).

The Investigator will ask the Complainant to review the Summary, make any necessary corrections, and affirm it with a signature. If the Complainant refuses to sign the Summary of the allegations, the Investigator may either (a) note that the allegations have been withdrawn and terminate the investigation, or (b) note that the Complainant has refused to sign the Summary of the allegations, but that the investigation will nevertheless proceed to determine what occurred and to protect the College’s interest in maintaining an environment free from sex discrimination.

A copy of the Summary will be provided to the Respondent at a point in the investigation when the Investigator deems it advisable. The Investigator, in consultation with the Title IX

Coordinator, may redact the Summary copy before providing it to the Respondent to protect the identity or safety of the Complainant or any witnesses or for any other reason as the Investigator deems advisable.

## **6. The Respondent's Written Response, Supporting Documentation, and Evidence**

The Respondent may prepare and submit a signed written statement in response to the Summary of allegations ("Response"). The Response should indicate whether the Respondent admits or denies the allegations in the Summary and should provide any exculpatory facts or evidence, including the names of other individuals who may have information relevant to the allegations and other materials in response to the Summary. The Response may also include an explanation as to why the Respondent believes any admitted conduct was lawful or was not in violation of College policy and whether any resolution proposed by the Complainant is or is not appropriate. The Response may not exceed ten pages in length, exclusive of attached documents and supporting materials, and must be submitted within five business days of delivery of the Summary to the Respondent. While reasonable efforts will be made to communicate with the Respondent, delivery occurs when the College sends the Summary to the email and residential address of the Respondent that is on file with the College.

If the Respondent submits a Response, a copy of the Response will be provided to the Complainant at a point in the investigation when the Investigator deems it advisable. The Investigator may redact the Response copy before providing it to the Complainant to protect the identity or safety of any witnesses or for any other reason as the Investigator deems advisable.

## **7. Concurrent Investigations or Processes**

An investigation conducted under these procedures will be conducted independent of any associated criminal investigation or any other College investigation or procedures. If the College determines the issues raised in this investigation may be relevant to its determination in another non-criminal investigation or another process that is simultaneously pending at the College, it may direct that the other investigation or process be suspended until this investigation and any appeals or administrative reviews are concluded. However, an investigation under these procedures will not be suspended pending the conclusion of a criminal investigation or any other investigation, though the fact-finding portion of the investigation may be delayed temporarily while the police are gathering evidence. While the findings and conclusions of one investigation will not determine the outcome of any other, any evidence or findings developed in any College or non-college/university investigation may be shared with and considered in any other college or university investigation.

## **8. Cooperation with College Investigations**

Employees or students who fail to cooperate in the investigation, including those who knowingly or recklessly misrepresent any facts or who withhold pertinent information, may be subject to disciplinary action up to and including suspension or dismissal from the College or termination of College employment. The knowing or reckless reporting of false charges of Sexual Misconduct will be treated as a material breach of the LDSBC [Honor Code Policies and Procedures](#), subjecting the individual making the false accusations to similar disciplinary action.

## **9. Support Person**

Only the Complainant and Respondent are permitted to participate in the formal resolution process; however, each party may be accompanied by one support person. Attorneys for the parties may not attend proceedings as the support person unless the Summary includes allegations of dating violence, domestic violence, sexual assault, or stalking. A party's support person may attend for purposes of observation but will not be permitted to participate in any employee or student interview, meeting, or other proceeding that may take place under these procedures. A support person may be immediately excluded from the proceedings if he or she attempts to intervene or participate in any way.

## **10. The Investigation**

The investigation should be thorough, prompt, adequate, reliable, and impartial. The College will, in good faith, attempt to conclude the investigation and resolution within sixty calendar days of the Title IX Coordinator receiving the Report. If, as a result of the complexity of the case, unavailability of witnesses, or other extenuating facts and circumstances, the investigation cannot reasonably be concluded within the sixty-day period, the Complainant and the Respondent will be provided with written notice of the delay and the reason for the delay.

During the investigation, the Investigator will consider the Complaint and Response, conduct interviews, and review any other documents or evidence submitted by the parties or discovered during the investigation. An investigation under these procedures is an internal College employment or student disciplinary matter.

At any time during the investigation, either of the parties or the Investigator may propose a resolution of the matter. If both the Complainant and the Respondent are satisfied with this proposed resolution, and if the Investigator, the Title IX Coordinator, and the Responsible

Administrator are also satisfied that the College's interests are protected, the matter may be resolved as proposed.

At the conclusion of the investigation, the Investigator will determine, based on the preponderance of the evidence (i.e., whether it is more likely than not), whether the Respondent has in fact engaged in Sexual Misconduct or other behavior in violation of College policy. The Investigator will promptly communicate findings and a recommendation of appropriate resolution, including any disciplinary sanctions, to the Responsible Administrator, and may provide the Responsible Administrator with a report of findings describing the evidence and reasoning supporting the Investigator's findings and recommendation.

### **11. Resolution and Disciplinary Sanctions**

Upon receiving the Investigator's findings and recommendations, the Responsible Administrator will promptly determine the resolution of the allegations of Sexual Misconduct, including the imposition of any disciplinary sanctions, as provided in the applicable disciplinary policy. The Responsible Administrator may consult with the Investigator and Title IX Coordinator in making this determination. Any person found in violation of this policy may be subject to discipline as described below, depending on the circumstances and the severity of the violation.

The Responsible Administrator(s) and the applicable disciplinary policy will be determined as follows:

- The Responsible Administrators for allegations of Sexual Misconduct against a faculty member are the faculty member's dean and chair or director, who shall administer any discipline consistent with the [Employee Conduct](#) policy. Possible sanctions include verbal counseling, written warning, probation, reassignment, demotion, reduction in pay, suspension, termination of faculty employment, and a ban from campus. If the dean and the chair or director conclude there may be adequate cause for involuntary termination of the faculty member's employment, the Vice President of Academics will be consulted and must give final approval for the termination.
- The Responsible Administrator for allegations of Sexual Misconduct against a non-faculty employee is the director over the employee's area, who shall administer any discipline in consultation with the Human Resource Director. Possible sanctions include verbal counseling, written warning, probation, reassignment, transfer, demotion, reduction in pay, suspension, termination of employment, and a ban from campus.

- The Responsible Administrator for allegations of Sexual Misconduct against a student is the Honor Code Office, which shall administer any discipline consistent with LDSBC [Honor Code Policies and Procedures](#). Possible sanctions include counsel and education, referral (to a responsible person or agency—e.g., reconciliation process), warning, probation, suspension withheld, short-term suspension, suspension, dismissal, and a ban from campus. If the student is also an employee of the College, the Investigator will provide a copy of the findings and recommendation to the student employee’s manager, who will administer any discipline affecting the student’s employment status in consultation with the Human Resource Director. Possible sanctions include those identified above for other non-faculty employees.
- The Responsible Administrators for allegations of Sexual Misconduct against a visitor to campus who is neither a student nor an employee of the College are the vice president over the College unit that originally invited the visitor to campus, or the vice president’s designee, and, if a violation is found, the College Banning Committee. If the visitor was not invited to campus, the Responsible Administrator is the College Banning Committee. Possible sanctions include banning the visitor from all or a part of the College campus.

The resolution shall include, in addition to any discipline imposed, reasonable steps designed to correct any discriminatory effects on the Complainant and on others who may have been affected, and to prevent the recurrence of any discriminatory or otherwise inappropriate actions. Possible protective measures that may be imposed following the investigation include the following: making interim measures permanent, offering remedies and accommodations to the Complainant, implementing changes in programs or activities, or providing training for the campus community or specific groups or individuals.

The Responsible Administrator will communicate the outcome of the investigation and resolution, including any sanctions, and the College’s procedures to appeal the results in writing to both the Complainant and the Respondent simultaneously (“Outcome Notice”). However, the Responsible Administrator may choose not to disclose the discipline imposed by the resolution, and will not disclose the discipline imposed on a student except under one of the following circumstances:

- the discipline directly affects the other party—such as when the student is ordered to stay away from the other party, is transferred to another job, worksite, class, or is suspended or dismissed from the College;

- the Complainant alleged Sexual Misconduct involving a crime of violence or a non-forcible sex offense; or
- the student gives his or her written permission to disclose the discipline.

The College may also report findings of criminal misconduct to the police and may report criminal or other serious misconduct to an individual's ecclesiastical leaders as it deems appropriate in its absolute discretion.

## **12. Review of Outcome**

A party who remains unsatisfied with the outcome may request an administrative review or appeal of the investigation outcome and resolution ("Review"). The Complainant or Respondent must request a Review within five business days of delivery of the Outcome Notice to the parties. A request for Review may not exceed five pages in length. The party requesting a Review must identify at least one of the following grounds in requesting the Review:

- The outcome of the investigation is clearly contrary to the preponderance of the evidence.
- A procedural error significantly impacted the outcome of the investigation (e.g., a substantiated bias or material deviation from these procedures).
- New evidence, unavailable to the party during the original investigation, has been discovered that could substantially impact the original outcome. This new evidence and an explanation of its potential impact must be included in the request for review.
- The discipline imposed is substantially disproportionate to the severity of the violation (i.e., too severe or not severe enough).
- The non-disciplinary aspects of the resolution are not reasonably designed to correct the discriminatory effects on the Complainant and on others who may have been affected or to prevent the recurrence of further discriminatory or otherwise inappropriate actions.

Except as otherwise specified in the applicable College policy or procedure, the final resolution of the Responsible Administrator will be affirmed unless the party seeking Review demonstrates, by clear and convincing evidence, that one or more of these conditions has been met.

Any Review should be initiated and conducted pursuant to the applicable College policy or procedure, as follows:

- A faculty member who is dissatisfied with a final resolution may initiate a grievance or file an appeal pursuant to the [Appeal and Grievance Policy](#). A faculty member may appeal a resolution resulting in the involuntary termination of his or her employment pursuant to the [Separation of Employment](#) policy.
- Administrative and staff employees who are dissatisfied with the final resolution that results in disciplinary sanctions against them may submit a grievance pursuant to the [Appeal and Grievance Policy](#). Full-time administrative and staff employees may seek an administrative review of a resolution resulting in the termination of their employment under the same policy.
- When the resolution includes disciplinary sanctions affecting a student's Honor Code standing, the student may seek a review pursuant to the LDSBC [Honor Code and Investigation and Administrative Review Process](#).

In situations where there is no other College policy or procedure that applies, (e.g., for administrative or staff employee Complainants or student Complainants who are dissatisfied with the final resolution), the Complainant may petition the immediate supervisor of the Responsible Administrator who determined the resolution for a Review.

In all cases where a Review is requested, the individual conducting the Review ("Reviewer") will provide a copy of the Review petition to the party not requesting Review and invite him or her to submit a written response within five business days of receiving the Review petition. The Reviewer will evaluate the Review petition, any response submitted by the other party, and the documentary record of the investigation and resolution process. Within thirty calendar days of receiving the parties' submissions or lapse of time to respond, the Reviewer will provide the parties with a written determination as to whether the party requesting Review has met his or her burden of demonstrating, by clear and convincing evidence, that one or more of the grounds for Review identified above is present.

In any Review, the Reviewer should consult with the Investigator and/or the Title IX Coordinator prior to issuing a decision on the Review.

### **C. EXHAUSTION OF REMEDIES**

A student or employee may not initiate civil litigation or civil administrative remedies against the College or its employees, agents, officers, or trustees until all the remedies provided by these procedures have been exhausted.

#### **D. WAIVER OF CLAIMS**

Failure to submit a Complaint or to pursue a Review or other administrative review or appeal within the stated deadlines or to exhaust the remedies provided by these procedures within the time provided will constitute a waiver of the student's or employee's right to pursue any claim against the College in the matter, unless the right to pursue a statutory claim is preserved by law or the College waives this clause in writing.

#### **V. TRAINING**

The College will seek to make all employees and students familiar with the contents of this policy. All administrators, deans, chairs, directors, managers, and supervisors are responsible to ensure that employees within their areas of stewardship are properly trained on their obligations under this policy and applicable laws.

The Title IX Coordinator will develop and oversee training and education programs to promote the awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking. The Human Resource Director may assist in fulfilling that responsibility. All training sessions and participants should be documented, and those records should be provided to the Title IX Coordinator. Such training and education shall consist of at least the following:

1. Primary prevention and awareness programs for all incoming students and new employees, and ongoing prevention and awareness campaigns for continuing students and employees, including at least the following information:
  - a. A clear statement that the College prohibits domestic violence, dating violence, sexual assault, and stalking, and definitions for these offenses under the Utah Criminal Code.
  - b. The definition of consent under the Utah Criminal Code.
  - c. Safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of one of the offenses listed in subsection (a) against another person.
  - d. Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks.
  - e. Information about this policy, including

- i. information about discipline the College may impose for Sexual Misconduct;
    - ii. procedures for victims of Sexual Misconduct to follow, including written information about the importance of preserving evidence and reporting offenses to the College and law enforcement authorities;
    - iii. procedures for institutional disciplinary actions; and
    - iv. information about preserving victim confidentiality.
  - f. Written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available to victims of Sexual Misconduct both on campus and in the community.
  - g. Written notification of victims about their options for, and available assistance in, changing academic, living, transportation, and working situations or protective measures.
2. Annual training for the Title IX Coordinator, Deputy Title IX Coordinators, Investigators and Responsible Administrators on issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

**APPLICABILITY:** This policy applies to all College students, all College personnel (including faculty, administrative and staff employees, volunteers, and representatives), and all visitors to the College (including, but not limited to, independent contractors, vendors, visiting lecturers, and visiting student-athletes).

**RESPONSIBLE COLLEGE OFFICERS:** Title IX Coordinator, Vice President of Student Services, Human Resource Director, Vice President of Academics

**RESPONSIBLE COLLEGE OFFICES:** Student Development Center and Human Resources

**PRIOR VERSION:** 23 March 2015

**RELATED COLLEGE POLICIES:**

- [Confidentiality of Records](#)
- [Employee Conduct](#)
- [Separation of Employment](#)
- [Appeal and Grievance](#)
- [Honor Code Policies and Procedures](#)
- [Honor Code Investigation and Administrative Review Process](#)