

# Utah Tech University Policy



## 164: Protected Class and Non-Title IX Discrimination, Harassment, Sexual Harassment and Retaliation

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### I. Purpose

- 1.1 Utah Tech University (hereinafter referred to as “University”) is committed to maintaining an environment in which every member of the University Community is treated with respect and dignity, equal opportunities are promoted, and discriminatory practices, including unlawful discrimination, are prohibited. Policy 164 defines and prohibits Protected Class and Non-Title IX Discrimination, Harassment, Sexual Harassment and Retaliation against any member of the University Community; establishes expectations to prevent such misconduct; details how to report a violation of Policy 164; and outlines investigatory, disciplinary, and due process procedures for addressing reported violations of Policy 164.

### II. Scope

- 2.1 Policy 164 applies if both the Complainant and Respondent are University Community members; or
- 2.2 If the Respondent is a student or employee of the University; or
- 2.3 If the conduct is by, or involving, any University Community member, and occurs:
  - 2.3.1 On, or may have a continuing effect on, any premises owned, leased or controlled by the University; or
  - 2.3.2 In the context of any University-related or sponsored business,

educational or other program or activity, regardless of location (including travel, study abroad, research, conferences, or internship programs); or

- 2.3.3 Through the use of University-owned or provided technology resources; or
  - 2.3.4 If the conduct has a nexus to the University, such as continuing adverse effect, or the creation or continuation of a hostile environment; or
  - 2.3.5 Where otherwise required by law.
- 2.4 If a Respondent is affiliated with the University, but is not a student or employee of the University, the affiliated entity's procedures may apply to the investigation and any resulting action.
- 2.5 The University has authority to investigate an allegation under Policy 164 if the University becomes aware of an allegation within 180 calendar days from the date the incident(s) occurred. For ongoing misconduct, if the University becomes aware of the alleged misconduct within 180 days of the last incident, the University may also consider investigating an incident that occurred prior to the last 180 days. Any complaint submitted to the University after 180 days must include a statement of good cause explaining why the complaint was not submitted to the University within the 180-day period. The Director of Equity Compliance and Title IX (the Director) will make a determination as to whether the statement of good cause is sufficient to permit an investigation to proceed under Policy 164.
- 2.5.1 When the notice/complaint is submitted to the University affected by a significant time delay, the University will apply the policy and procedures in place at the time of the alleged misconduct.
- 2.6 If the Respondent is unknown or not a member of the University Community, the Office of Equity Compliance and Title IX will assist the affected individual in identifying appropriate University supportive measures and resources and non-University resources, and, at the individual's request, may assist in contacting law enforcement. In addition, the University may take other actions such as providing interim measures or accommodations to protect the individual and the University Community.
- 2.7 Withdrawal or Termination by a Respondent. If during the University's review, investigation, and/or processing of a Complaint a Respondent

employee resigns, or a Respondent student withdraws or terminates enrollment, the University may decide to proceed with the review, investigation and processing of the Complaint. The University also reserves the right to impose sanctions on the former employee or student, including but not limited to conditioning their right to reapply, not providing a reference or placing notations on a student's transcripts.

### III. Definitions

- 3.1 ***Adverse Actions:*** Any act or omission that results in a materially adverse impact on the terms, conditions, and privileges of students, faculty, and staff, violates Policy 164 when it is motivated by discrimination based on protected characteristics or in Retaliation for protected activity. Adverse Actions are not limited to denial of access to programs, services, or the provision of lesser services and do not necessarily involve the loss of money.
- 3.2 ***Advisor:*** Any person a Complainant or Respondent chooses as a support person and/or to consult with during any proceeding or meeting under Policy 164. An Advisor may not speak on behalf of a Party and is limited to being a non-active participant in any proceeding or meeting under Policy 164.
- 3.3 ***Alternate Resolution:*** An informal process by which a mutually agreed-upon resolution of an allegation of Protected Class or Non-Title IX Discrimination, Harassment, Sexual Harassment, or Retaliation is reached.
- 3.4 ***Complaint:*** A report received by the University's Office of Equity Compliance and Title IX alleging Protected Class or Non-Title IX Discrimination, Harassment, Sexual Harassment and/or Retaliation.
- 3.5 ***Complainant:*** A member of the University Community who is alleged to have experienced Protected Class and Non-Title IX Discrimination, Harassment, Sexual Harassment, and/or retaliation.
- 3.6 ***Confidential Resource:*** A mental health counselor, health service provider, a University Ombuds, and/or a victim advocate with whom a Complainant may speak confidentially if a Complainant would like the details of an incident to be kept confidential.
- 3.7 ***Consent:*** Knowing, voluntary, and clear permission by word or action to engage in a sexual activity. Cannot be obtained through coercion, fraudulence, or from a person whom the Respondent knows, or should reasonably know, is incapacitated. Must be given by each participating

party and may be given only by someone who is 18 years of age or older and who is not mentally and/or physically incapacitated. Consent is active, not passive. Consent requires an affirmatively-communicated willingness through words and/or actions to participate in a sexual activity. Silence alone may not be interpreted as Consent.

3.8 ***Consent Responsibility***: Since each individual may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has Consented before engaging in a sexual activity. Policy 164 is violated by a Respondent who engages in a sexual activity with a Complainant without Complainant's Consent.

3.8.1 If Consent is not clearly provided prior to engaging in the sexual activity, Consent may be ratified by word or action at some point during the sexual activity or thereafter, but clear communication from the outset is advisable. Consent requires a clear expression in words or actions that the other individual Consents to a specific sexual activity. Reasonable reciprocation may be implied. For example, if a person kisses you, you can kiss them back (if you want to) without the need to explicitly obtain the person's Consent to being kissed back. Consent can be withdrawn at any time. If Consent is withdrawn, that sexual activity should immediately cease. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be Consent for other sexual activity (such as intercourse). A current or previous intimate relationship is insufficient to constitute Consent. Use of alcohol or drugs does not diminish an individual's responsibility to obtain Consent prior to engaging in a sexual activity.

3.8.2 The existence of Consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar previous pattern evidenced.

3.9 ***Director***: The University's Director of Equity Compliance or designee that is authorized and designated by the University to coordinate its efforts to comply with Protected Class and Non-Title IX responsibilities under state and federal law.

3.10 ***Discrimination***: Treating an individual or group differently or less favorably (e.g., denying rights, benefits, equitable treatment, or access to facilities available to others) on the basis of Protected Class or Non-Title sex-based

Discrimination.

- 3.11 ***Draft Investigative Report:*** A document issued by an investigator providing a summary of Complainant's allegation(s), Respondent's responses (if any), relevant evidence, and material witness statements, as well as preliminary factual findings.
- 3.12 ***Final Investigative Report:*** A document issued by an investigator after each party's opportunity to review the Draft Investigative Report and evidence collected during the investigation, which fairly summarizes all relevant evidence, identifies material witnesses and summarizes their statements, and describes the investigation procedures.
- 3.13 ***Grievance Process:*** A formal process commenced by the filing of a Complaint, including formal investigation and presentation to a Policy 164 Adjudicator for determination as to whether a Respondent is responsible for a violation of Policy 164, and the issuance of any related sanction(s).
- 3.14 ***Harassment:*** Unwelcome or offensive behavior that is based upon an individual's or group's Protected Class. Harassment may include conduct that is verbal, written, or physical in nature. Harassment that creates a Hostile Environment is prohibited by Policy 164. A person is capable of engaging in prohibited Harassment even if the person belongs to the same Protected Class as the individual or group targeted.
  - 3.14.1 Conduct that may constitute Harassment includes, but is not limited to:
    - 3.14.1.1 An epithet, slur, negative stereotyping, or threatening, intimidating or hostile act that relates to an individual's or group's Protected Class;
    - 3.14.1.2 Placing on a wall, bulletin board, email, or elsewhere on University Premises, material that shows hostility or aversion to an individual's or group's Protected Class;
    - 3.14.1.3 Graphic, abusive, degrading, intimidating, or obscene jokes, comments, remarks or gestures directed at an individual based on Protected Class;
    - 3.14.1.4 Physical contact or intimidation against an individual or group based on Protected Class;
    - 3.14.1.5 Teasing, tricking, gossiping, workplace slighting, or excluding an individual from a project or activity, and any other

workplace act, or educational program or activity, including an omission, done or not done taken because of a person's or group's Protected Class; or

- 3.14.1.6 Retaliatory Harassment occurs when any similar conduct is done in retaliation for engaging in a Protected Activity.
- 3.14.2 If, following an investigation under Policy 164, unwelcome and offensive conduct is identified but does not currently constitute Harassment, the University may direct a Respondent to cease such conduct, if such conduct might constitute Harassment were it to continue or be repeated.
- 3.14.3 The forgoing definition of Harassment is not intended to limit academic freedom to discuss, teach, research, or publish regarding matters related to protected class. Policy 164 does not prohibit authentic, civil discussions, or the holding of civil expressions of opinions. A person's disagreement with, or dislike for, a statement or expression is not proof that the statement or expression was threatening, intimidating, degrading, objectively offensive, or hostile.
- 3.15 **Mandatory Reporter:** Every University employee except if an employee defined as a Confidential Resource. With the exception of student employees, students are not Mandatory Reporters, but are encouraged to report suspected violations of Policy 164.
- 3.16 **Non-Title IX Sex-Based Status:** A common characteristic of a group that is legally protected from adverse treatment on the basis of sex, gender, sexual orientation, gender identity, gender expression, or pregnancy by which an individual qualifies for protection by a law, policy, or similar authority group and is not otherwise covered by or subject to Title IX and Policy 154.
- 3.17 **Notice of Investigation:** The written communication issued by the Director apprising the parties of the University's initiation of an investigation following the filing of a Complaint.
- 3.18 **Notice of Opportunity to Review Draft Investigative Report and Evidence:** The written communication issued by an investigator to the parties at the conclusion of the initial investigation, apprising the parties and their Advisors of their equal opportunity to review and respond to evidence and the Draft Investigative Report.

- 3.19 **Party:** A Complainant or Respondent.
- 3.20 **Policy 164 Adjudicator:** An individual designated by the Director Compliance to (1) review the Final Investigative Report and factual evidence collected during the University's investigation; (2) to determine whether a policy violation occurred; (3) and to prepare the Written Determination and issue it to the parties.
- 3.21 **Preponderance of Evidence:** More likely than not, based on all the reasonable evidence and reasonable inferences from the evidence. The evidentiary standard used during investigation/review to determine if a policy violation occurred.
- 3.22 **Protected Activity:** Making a good faith report under Policy 164; filing an external Complaint of Protected Class or Non-Title IX Discrimination, Harassment or retaliation; opposing in a reasonable manner and consistent with University policy an action reasonably believed to constitute a violation of Policy 164; participating in proceedings involving a Complaint under Policy 164 or under relevant law; or any other activity protected by federal or state civil rights law.
- 3.23 **Protected Class:** A group with a common characteristic who are legally protected from adverse treatment on the basis of that characteristic. For purposes of Policy 164, Protected Class characteristics include race, ethnicity, color, religion, age, national origin, physical or mental disability, veteran status, genetic information, or any other non-sex-based status protected under applicable federal, state, or local law. (Protected Class characteristics of sex, gender, sexual orientation, gender identity, gender expression, or pregnancy are generally covered under Policy 154 but may be addressed here in cases where Policy 154 does not have jurisdiction under Policy 154). If an individual or group discriminates against, harasses, or retaliates against an individual or group because that person believes the individual or group is a member of a Protected Class, that conduct may violate Policy 164 even if the individual or group does not actually belong to that class.
- 3.24 **Reporter:** An individual who reports conduct alleged to be in violation of Policy 164 but who is not the individual or group who allegedly experienced the prohibited conduct.
- 3.25 **Respondent:** An individual accused of Protected Class or Non-Title IX Discrimination, Harassment, or Retaliation under Policy 164.
- 3.26 **Responsible Employee:** Every University employee except an employee

defined as a Confidential Resource. A Responsible Employee is a Mandatory Reporter for purposes of Policy 164.

- 3.26.1 A Responsible Employee is not required to report information disclosed (1) at public awareness events (e.g., candlelight vigils, protests, or other public forums. In which individuals may disclose conduct prohibited by Policy 164); or (2) during an individual's participation as a subject in an Institutional Review Board-approved human subjects research project. The University may provide information about available resources at public awareness events, however, and an Institutional Review Board may, as it deems appropriate, require researchers to provide such information to all subjects of approved projects. If a Responsible Employee is unsure whether an event would be considered a public awareness event, the Responsible Employee should contact the Director.
- 3.27 **Retaliation:** Conduct against an individual or group involved in a Protected Activity or because of the individual or group's Protected Status or Non-Title IX Sex-Based Status. Retaliation can take many forms, including, but not limited to, an Adverse Action, violence, threat, and/or intimidation that would discourage a reasonable person (under similar circumstances and with similar identity as the Complainant) from engaging in a Protected Activity or as a result of Protected Status or Non-Title IX Sex-Based Status.
- 3.28 **Sanction:** Penalty(ies) or discipline imposed by the Sanctioning Board on a Respondent found to be in violation of Policy 164.
  - 3.28.1 Sanctions for a Student Respondent: Sanctions may include, but are not limited to, educational activities or experiences, loss of privileges, restorative justice measures, service projects, substance abuse and/or mental health care referrals, suspension or expulsion. The Sanctioning Board will determine the appropriate Sanctions.
  - 3.28.2 Sanction for an Employee Respondent: Consistent with University Policies 371 and 372, Sanctions may include, but are not limited to, verbal guidance, corrective discussion, disciplinary actions, written warning, paid or unpaid administrative leave, suspension, or dismissal.
- 3.29 **Sanctioning Board:** A board comprised of three (3) to five (5) University employees selected by the Director who receive annual training on Protected Class and Non-Title IX Discrimination, Harassment, and Sexual Harassment.

- 3.30 **Discrimination:** Adverse Action or conduct toward any University employee or student in the terms or conditions of employment, University admission, education, access to a University program or activity, or other University benefit or service, on the basis of inclusion or perceived inclusion in a Protected Class or Non-Title IX Sex-Based Status, which has the effect of denying or limiting participation in a University program or activity; or used as the basis for a University’s or University employee’s decision affecting the individual (often referred to as “Quid Pro Quo”).
- 3.31 **Non-Title IX Sexual Harassment:** Conduct committed by an individual upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved, which for which the University does not have jurisdiction under Title IX and Policy 154, and which is one of the following:
- 3.31.1 **Quid Pro Quo:** When a University employee conditions the provisions of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct; or
  - 3.31.2 **Unwelcome Conduct:** Conduct determined by a reasonable person to be so frequent or severe that it creates a hostile or offensive working or educational environment. Unwelcome Conduct is evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous pattern that may be evidenced.
  - 3.31.3 **Sexual Assault:** Any sexual act directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent, including but not limited to any of the following:
    - 3.31.3.1 Rape: The carnal knowledge (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, including instances where the victim is incapable of giving Consent because of the victim’s age or because of the victim’s temporary or permanent mental or physical incapacity.
    - 3.31.3.2 Sodomy: Oral or anal sexual intercourse with another person, without the Consent of the victim, including instances in which the victim is incapable of giving Consent because of

the victim's age or because of the victim's temporary or permanent mental or physical incapacity.

3.31.3.3 **Sexual Assault with an Object:** The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving Consent because of age or because of temporary or permanent mental or physical incapacity.

3.31.3.4 **Fondling:** The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving Consent because of age or because of temporary or permanent mental or physical incapacity.

3.31.4 ***Sex Offenses, Non-forcible:*** Includes any of the following:

3.31.4.1 **Incest:** Non-forcible sexual intercourse between persons who are related to each other, within the degrees wherein marriage is prohibited by Utah Law.

3.31.4.2 **Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of Consent of 18 years of age.

3.31.5 ***Non-Title IX Dating Violence:*** Violence committed by a person who is in, or has been in, a social relationship of a romantic or intimate nature with a Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

3.31.6 ***Non-Title IX Domestic Violence:*** Violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a

child in common, or by a person who is cohabitating with, or has cohabitated with the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Utah, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Utah.

3.31.6.1 The parties must be family members, current or former spouses, or have an intimate relationship and not be merely unrelated roommates.

3.31.7 ***Non-Title IX Sex-Based Stalking***: Engaging in a course of conduct for which the University does not have jurisdiction under Title IX and Policy 154, on the basis of sex directed at a specific person, that would cause a reasonable person to fear for the person's safety, or the safety of others, or suffer substantial emotional distress.

3.31.7.1 For the purposes of this definition, "course of conduct" means two or more acts, including, but not limited to: Acts in which the Respondent directly, indirectly, or through Third Parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

3.31.7.2 "Reasonable person" means a person under a similar circumstance and with a similar identity to the Complainant.

3.31.7.3 Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

3.31.8 ***Non-Title IX Sexual Exploitation***: Any act attempted or committed by a person for sexual gratification, financial gain, or other advancement through the abuse or exploitation of another person's sexuality for which the University does not have jurisdiction under Title IX and Policy 154. Examples include, but are not limited to, non-consensual observation of an individual who is undressed or engaging in a sexual act, non-consensual audio or videotaping of sexual activity, prostituting another person, human trafficking, allowing others to observe a personal consensual sexual act without the knowledge or Consent of all involved parties, and knowingly exposing an individual to a sexually transmitted infection without

that individual's knowledge.

- 3.32 ***Supportive Measures:*** Upon notice of alleged Protected Class or Non-Title IX Discrimination, Harassment and/or Retaliation, non-disciplinary, non-punitive, free of charge individualized services will be offered to the Complainant and/or the Respondent by the University as appropriate and reasonably available. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all parties or the University's educational environment, or deter Protected Class or Non-Title IX Discrimination, Harassment, and/or Retaliation.
- 3.32.1 At the time that Supportive Measures are offered, the Director will inform the Complainant, in writing, that the Complainant may file a Complaint with the University either at that time or in the future, if Complainant has not done so already.
- 3.32.2 The Director will ensure that a Party's wishes are taken into account with respect to Supportive Measures and that the Party's privacy is maintained as much as possible without impairing the University's ability to provide the Supportive Measures. The University will act to ensure as minimal an academic impact on the parties as possible.
- 3.32.3 Supportive Measures may include, but are not limited to: safety planning, counseling, medical, and/or other health care services, academic support, extensions of deadlines or other course or program-related withdrawals, University safety escort services, mutual restrictions on contact between the parties, altering University work and/or housing assignments, referral to community-based service providers, visa and immigration assistance, student financial aid counseling, leaves of absence, referral to the Employee Assistance Program, increased security and monitoring of certain areas of the University premises, and other similar measures.
- 3.32.4 To the extent that maintaining such confidentiality does not impair the ability of the University to provide the Supportive Measures, the University maintains as confidential any Supportive Measures provided to the Complainant or Respondent.
- 3.33 ***University Community Member:*** A student, affiliate, administrator, faculty, volunteer, contractor, staff, trustee, vendor, customer, a participant in a University-sponsored program, service or activity, independent

contractors, volunteers, and guests or visitors to the University Premises.

- 3.34 **University Premises:** All land, buildings, facilities, and other property in the possession of, or owned, used, leased, or controlled by the University.
- 3.35 **Third Party:** An individual who is not a University Community.
- 3.36 **Witness:** An individual who may have information relevant to a report of prohibited conduct.

#### IV. Policy

##### 4.1 Nondiscrimination Notice and Prohibition Against Protected Class and Non-Title IX Discrimination, Harassment, Sexual Harassment, and Retaliation

4.1.1 The University is committed to maintaining an environment in which every member of the University Community is treated with respect and dignity, equal opportunities are promoted, and discriminatory practices, including unlawful Discrimination, are prohibited. The University does not tolerate Harassment or unlawful Discrimination against any member of the University Community due to any Protected Class or Non-Title IX Sex-Based Status under applicable law. The University prohibits Retaliation against any member of the University Community Member who engages in a Protected Activity.

4.2 Prevention and Education. Policy 164 reflects the University's commitment to educate all University Community Members about the nature of Protected Class and Non-Title IX Discrimination, Harassment, Sexual Harassment, and Retaliation. Additionally, Policy 164 reflects the University's interest in providing protections available to all involved. The University is committed to the prevention of Protected Class and Non-Title IX Discrimination, Harassment, Sexual Harassment, and Retaliation through regular and ongoing education and awareness programs provided to the University Community.

4.3 The University has a duty to promptly and thoroughly investigate a Complaint under Policy 164 and, if necessary, to take appropriate remedial action. This process is not an adversarial process.

4.4 The following conduct (as defined in Policy 164) is prohibited:

4.4.1 Harassment;

- 4.4.2 Non-Title IX Sexual Harassment;
  - 4.4.3 Protected Class and Non-Title IX Discrimination; and
  - 4.4.4 Retaliation.
- 4.5 Retaliation Reporting and Response: An act of alleged Retaliation should be reported immediately to the Director and will be promptly investigated. The University will take appropriate steps to protect individuals who fear they may be subjected to Retaliation. A Complaint alleging Retaliation may be filed according to the same procedures for filing a Complaint of Protected Class or Non-Title IX Discrimination, Harassment, or Sexual Harassment.
- 4.6 Nothing in Policy 164 shall be interpreted as diminishing any Party's rights protected under the United States Constitution, or under Title VII of the Civil Rights Act of 1964 to be free from Discrimination.
- 4.7 Office of Equity Compliance and Reporting Information
- 4.7.1 How to Contact the Director: The University will provide and notify applicants for admission and employment, students, and employees of the name or title, office address, electronic mail address, and telephone number of the University employee designated as the Director; the nondiscrimination policy statement contained in Section 4.1 of Policy 164; the University's grievance procedures and Grievance Process contained in Policy 164, including how to report or file a Complaint of Protected Class and Non-Title IX Discrimination, Harassment, and/or Retaliation; and, how the University will respond.
  - 4.7.2 Dissemination of Office of Equity Compliance Information: The University will prominently display the contact information and policy statement described in 4.1 on the University's website and in each handbook or catalog that it makes available to applicants for admission and employment, students, and employees of the University.
  - 4.7.3 How to Report an Equity Compliance concern: Any person may report Protected Class and Non-Title IX Discrimination, Harassment, and/or Retaliation (whether or not the Director using any of the following methods:
    - 4.7.3.1 In Person: Holland Centennial Commons Building, 579 (during

University business hours);

4.7.3.2 By Mail: Addressed to the Director of Equity Compliance and Title IX, 225 South University Avenue, Holland Centennial Commons Building, 579 St. George, UT 84770;

4.7.3.3 By Email: [titleix@utahtech.edu](mailto:titleix@utahtech.edu);

4.7.3.4 Via Online Submission:  
[https://cm.maxient.com/reportingform.php?UtahTech&layout\\_id=0](https://cm.maxient.com/reportingform.php?UtahTech&layout_id=0)

4.7.3.5 Via Other Means: By any other means that results in the Director receiving the person's verbal or written report.

**4.8** Mandatory Reporting by a Responsible Employee: Any Responsible Employee must promptly report any concern of Protected Class and Non-Title IX Discrimination, Harassment and Retaliation to the Director via any of the reporting options listed at <https://titleix.utahtech.edu/>.

4.8.1 Exceptions to the Responsible Employee reporting requirement under Section 4.7.6 are:

4.8.1.1 Disclosures made in the course of academic work product consistent with the assignment (e.g. public speaking class, creative writing assignment, group work).

4.8.1.2 Others Who Should Report: All other University Community Members who become aware of Protected Class and Non-Title IX Discrimination, Harassment, Sexual Harassment, or Retaliation should report such issues, with the Consent of the alleged victim, to the Director

4.8.1.3 Who May Not Report: Licensed mental health counselors and medical professionals working within the scope of their licenses, or designated advocates authorized by the Director (Confidential Resources), generally may not report incidents of Protected Class or Non- Title IX Discrimination, Harassment, Sexual Harassment or Retaliation except with written Consent, other than in instances of imminent danger or when the victim is a minor or vulnerable adult.

## 4.9 Confidentiality

4.9.1 The University maintains as confidential any Supportive Measures

provided to the Complainant or Respondent, to the extent that maintaining such confidentiality does not impair the University's ability to provide the Supportive Measures.

4.9.2 Except as may be permitted by the federal Family Educational Rights and Privacy Act (FERPA), its regulations, or as required by Utah Government Records and Management Act (GRAMA), the federal Health Information Portability and Accountability Act (HIPAA), or other law, or to carry out the purposes of Policy 164 including conducting any investigation, meeting, or judicial proceeding arising under Policy 164, the University keeps confidential the identity of any individual who makes a report of Protected Class or Non-Title IX Discrimination, Harassment, Sexual Harassment, or Retaliation, including any individual who has filed a Complaint, any Complainant, any individual who has been reported to be in violation of Policy 164, any Respondent, and any Witness. When a Complaint alleging a violation of Policy 164 is investigated, all parties to the investigation, including Witnesses, will be notified of the University's expectation of confidentiality. The University will only release information obtained in the course of an investigation on a "need to know" basis to the extent permitted by Policy 164 and applicable law and consistent with the University's thorough investigation of the Complaint.

4.9.3 Breaches of confidentiality will be reviewed and may be considered a violation of Policy 164 subject to disciplinary action.

4.9.4 The University will protect confidential communications to designated University advocates authorized by the Director and protected under the Utah Campus Advocate Confidentiality Amendments (Utah Code § 53B-28-101 et seq.), where disclosure is not required by applicable federal law, including Title IX, Title VII, or the Clery Act, or Consented to in writing.

4.10 Amnesty: An individual who makes a good faith report of Protected Class or Non-Title IX Discrimination, Harassment, Sexual Harassment, or Retaliation that was directed at the individual or another person or group, will not be Sanctioned by the University for a violation of University policy related to the use of drugs or alcohol which the University discovers because of the report.

4.11 Disability Accommodation in the Formal Grievance Process

4.11.1 The University is committed to providing reasonable

accommodations and support to qualified students, employees or others with disabilities, to ensure equal access to the process outlined in Policy 164. Complainants, Respondents, and other participants to the processes outlined in Policy 164 may request accommodations necessary under the Americans with Disabilities Act (ADA) or Section 504 of the Rehabilitation Act. Students needing such accommodations or support should contact the Disability Resource Center. Employees needing such accommodations should contact the Executive Director of Human Resources. The Disability Resource Center or Human Resources will review the request and, in consultation with the person requesting the accommodation and the Director, determine which accommodations are appropriate and necessary for full participation in the process.

#### 4.12 Rights of Complainant and Respondent Following a Reported Violation of Policy 164.

##### 4.12.1 The Complainant and Respondent have equal rights:

- 4.12.1.1 To be treated with dignity and respect by University employees;
- 4.12.1.2 To take advantage of Supportive Measures;
- 4.12.1.3 To receive timely notice of the proceedings, process, and outcome under Policy 164;
- 4.12.1.4 To have an Advisor, who serves as a support person to the Party and a non-active participant in meetings, conferences, or hearings, present at any meeting, conference, or hearing under Policy 164;
- 4.12.1.5 To refuse to engage in informal resolution of a Complaint;
- 4.12.1.6 To present Witnesses, including fact and expert Witnesses, and other inculpatory and exculpatory evidence;
- 4.12.1.7 To receive amnesty for certain student misconduct, such as drug and alcohol violations, that occurred ancillary to the Complaint at hand and consistent with Policy 164;
- 4.12.1.8 To be free from Retaliation for reporting violations of Policy 164 or cooperating with an investigation;
- 4.12.1.9 To be informed in writing of the outcome or resolution of the

Complaint, any Sanctions, and the rationale for the outcome, where permissible;

4.12.1.10 To exercise a right of appeal as afforded in Policy 164.

4.12.2 The Complainant shall have the right to:

4.12.2.1 At all times decide if or when to file a Complaint, report to law enforcement, and determine whether to proceed with a Complaint, at the individual's discretion.

4.12.3 The Respondent shall have the right to:

4.12.3.1 Be presumed not responsible for all allegations until found responsible for alleged misconduct under in violation of Policy 164.

#### 4.13 Training

4.13.1 The University shall comply with federal law requirements for training of the Director, investigators, Policy 164 Adjudicators, Appeal Examiners, and any person who facilitates an informal resolution process (jointly or as applicable in their respective roles) on:

4.13.1.1 the definitions of Protected Class and Non-Title IX Discrimination, Harassment, Sexual Harassment and Retaliation;

4.13.1.2 the scope of Policy 164 and procedures as it applies to the University's education programs and activities;

4.13.1.3 reporting, confidentiality, and privacy requirements;

4.13.1.4 definitions of all prohibited conduct under Policy 164 and how to apply the definition of Consent consistently, impartially, and in accordance with Policy 164;

4.13.1.5 how to conduct an unbiased investigation;

4.13.1.6 the University's Grievance Process, appeal, and the informal resolution process;

4.13.1.7 how to uphold fairness, equity, and due process;

4.13.1.8 how to determine appropriate Sanctions; and,

- 4.13.1.9 how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias, including implicit bias.
- 4.13.2 Training materials will promote impartial investigations and adjudications of Complaints of Protected Class and Non-Title IX Discrimination, Harassment, Sexual Harassment and Retaliation.
- 4.13.3 The University will ensure investigators and Policy 164 Adjudicators are trained on how to determine issues of relevance of evidence.
- 4.13.4 The University will ensure that investigators are trained in how to investigate thoroughly, reliably, and impartially, and on issues of relevance, in order to create an investigative report that fairly summarizes relevant evidence.

#### 4.14 Recordkeeping

- 4.14.1 The Office of Equity Compliance will maintain the following documentation for a period of seven (7) years of each Protected Class and Non-Title IX Discrimination, Harassment, Sexual Harassment, and/or Retaliation matter which is investigated or resolved:
  - 4.14.1.1 Record of the investigation including any Written Determination regarding responsibility, any audio, audiovisual recording, or transcript required by Policy 164;
  - 4.14.1.2 Any Sanction(s) imposed on a Respondent, and any remedies provided to a Complainant designed to restore or preserve equal access to the University's education program, employment or activity;
  - 4.14.1.3 Any appeal and the result; and
  - 4.14.1.4 Any informal resolution and the result.
- 4.14.2 For each report to the Director of Protected Class or Non-Title IX Discrimination, Harassment, Sexual Harassment, or Retaliation, in a University education program, employment, or activity against a person, the Office of Equity Compliance must create, and maintain for a period of seven (7) years, a record of any action, including any Supportive Measures, taken in response to a report or Complaint of Protected Class or Non-Title IX Discrimination, Harassment, Sexual Harassment, or Retaliation. In each instance, the Office of Equity

Compliance 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 University's education program, employment, or activity. If the University does not provide a Complainant with Supportive Measures, then the Office of Equity Compliance must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the University in the future from providing additional explanations or detailing additional measures taken.

- 4.15 Motivating Factor. A University Community Member may establish Discrimination by showing that a Protected Class, Non-Title IX Sex-Based Status, or Protected Activity were motivating factors in the Adverse Action, Harassment, or sexual Harassment. Because many actions can have multiple or mixed motives, an institution or individual can defend claims by showing that the action would have occurred even in the absence of Discrimination, Harassment, or sexual Harassment.
  - 4.15.1 The University reserves the right to find a violation of Policy 164 when the evidence shows that an individual's Protected Class, Non-Title IX Sex-Based Status, or Protected Activities were a motivating factor behind an Adverse Action, Discrimination, Harassment, or sexual Harassment. Other factors and motives may be considered in determining Sanctions or remedies.
- 4.16 Standard of Proof. The Policy 164 Adjudicator will decide, by a Preponderance of the Evidence, whether there is sufficient evidence to support a finding of a violation of Policy 164.
- 4.17 Overlap with other University Policies.
- 4.18 Policy 164 recognizes overlap between the Student Rights and Responsibilities, employee handbook rules and other University policies. Policy 164 takes precedence with respect to matters covered under Policy 164. When conduct can be charged under two University policies (or a series of related acts/transactions implicates violations of two policies), the policies may run concurrently if the University deems it appropriate to do so. For Non-Title IX Discrimination, Sexual Harassment, or Discrimination, Policy 164 governs and takes precedence only in circumstances when the University Policy does not have jurisdiction over the alleged misconduct under Title IX and Policy 154. Policy 154 will take precedence.

## **V. References**

- 5.1 Utah Code Ann. § 13-7
- 5.2 Title VI and VII of the Civil Rights Act of 1964
- 5.3 Title IX of the Higher Education Amendments Act of 1972 (Title IX)
- 5.4 The Age Discrimination in Employment Act of 1967 as amended in 1978
- 5.5 The Americans with Disabilities Act of 1990 as amended in 2008
- 5.6 Section 504 of the Rehabilitation Act of 1973
- 5.7 The Genetic Information Nondiscrimination Act of 2008
- 5.8 The Vietnam Era Veteran’s Readjustment Assistance Act
- 5.9 The Family Education Rights and Privacy Act of 1974 (FERPA)
- 5.10 Executive Order 11246 regarding discriminatory practices in hiring and employment
- 5.11 41 CFR 60-1.35(c)
- 5.12 The Higher Education Act of 1965 as amended by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act
- 5.13 University Policy 154: Sex-Based Discrimination, Sexual Harassment, and Retaliation
- 5.14 University Policy 552: Student Conduct Code

## **VI. Procedures**

- 6.1 Initial Review of a Report under Policy 164
  - 6.1.1 Initiating a Complaint Under Policy 164. Once a report alleging that Policy 164 has been violated is received by the Office of Equity Compliance, the Director will promptly contact the Complainant or Reporter to gather information about the allegation(s) and determine whether the alleged behavior constitutes a potential violation of Policy 164. If so, the Director will assign the case to an investigator(s) for investigation. If the Director determines that the allegations, even if found to be true, would not constitute a policy violation, the Director has the discretion to either close the

investigation or address the allegations informally.

- 6.1.2 The Director must notify the University's Clery Officer of any report which may fall under the Clery Act, and the University's Clery Officer in the University's police department will further assess the reported conduct for any Clery obligations, including issuance of a timely warning.
- 6.1.3 Complaints Against Director of Equity and Compliance. Any Complaints of alleged violations of Policy 164 against the Director of Equity and Compliance should be reported using the University's Whistleblower Hotline: <https://utahtech.edu/report-a-concern/>
- 6.1.4 Conduct Prohibited Under Policy 164. Policy 164 is interpreted in a manner consistent with the applicable federal, state, and/or local laws. However, the University reserves the right to find a violation of this Policy 164 even when the conduct does not rise to the level that would violate federal, state, or local law.
- 6.1.5 The Director will determine whether the Complainant prefers a supportive and remedial response, an Informal Resolution option, or a formal investigation and Grievance Process.
  - 6.1.5.1 If supportive and remedial response is preferred, the Director will communicate with the Complainant to identify Complainant's wishes, and the Director will then seek to facilitate implementation. No formal Grievance Process is initiated, though the Complainant may elect to initiate one later, if desired.
  - 6.1.5.2 If an Informal Resolution option is preferred, the Director assesses whether the reported concern is suitable for Informal Resolution and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
  - 6.1.5.3 If a formal Grievance Process is preferred, the Director determines if the misconduct alleged falls within the scope of Policy 164r:
    - 6.1.5.3.1 If it does, the Director will initiate the Grievance Process and an investigation, directing the investigation to address: an incident, and/or a pattern of alleged misconduct, based on the nature of the Complaint.

6.1.5.3.2 If it does not fall within the scope of Policy 164, the Director determines that Policy 164 does not apply and assesses if another University policy may apply, which resolution process may be applicable, and, if possibly falling under another University policy, will refer the matter accordingly. If the case falls under the jurisdiction of Policy 154, the Director will retain the case and proceed with the process outline in Policy 154.

6.1.5.4 If the Complainant asks the Director not to pursue an investigation, the Director may not be able to honor this request if doing so would prevent the University from meeting its obligations and responsibilities as indicated throughout this Policy 164.

6.1.6 Immediate Removal: The Director may use sole discretion, or confer with the University's Crisis Assessment Risk and Evaluation (CARE) team, to determine whether a Respondent must be removed from one or more University education programs, employment, or activities on an emergency basis as an immediate threat to the physical health or safety of any University Community Member arising from the allegations of misconduct. The Director may take immediate action when necessary to secure the physical health and/or safety of a Complainant. At the time that an Immediate Removal is imposed, the Director will inform the Respondent of the Immediate Removal action and the reason(s) for the action, and inform the Respondent that a meeting will take place to review the Immediate Removal.

6.1.6.1 Immediate Removal Meeting Procedures: As soon as practical, but no later than ten (10) University Business Days from the time the Immediate Removal is imposed, a meeting will take place between the Respondent, the Director, and a University police officer to review the Immediate Removal. The Respondent will have an opportunity at the meeting to demonstrate to the Director and the University police officer why the Immediate Removal should not continue. An Advisor for the Respondent may accompany the Respondent to this meeting as a support person, but the Advisor may not actively participate in the meeting.

6.1.6.2 Based on a reasonable evaluation of the information

presented by the Respondent at the meeting, the Director will notify the Respondent within 48 hours of the meeting of the Director's decision to remove, sustain, or modify the Immediate Removal.

- 6.1.6.3 Non-Student Employee Leave: A non-student employee Respondent may be placed on paid administrative leave in accordance with Policy 164.

## 6.2 Informal Resolution

- 6.2.1.1 Informal Resolution: At any time prior to reaching a determination regarding responsibility, the University may facilitate an Informal Resolution process, such as mediation, that does not involve a full investigation and adjudication. The decision to enter into an Informal Resolution will be a voluntary option to the parties, and neither Party may be required to enter into such.
- 6.2.1.2 Informal Resolution can include two different approaches: when the parties agree to resolve the matter through an Alternate Resolution (including mediation, restorative justice practices, etc.); or when the Respondent accepts responsibility for violating policy, and desires to accept a Sanction and end the resolution process.
- 6.2.1.3 To initiate an Informal Resolution, a Complainant needs to submit a Complaint as defined above. If a Respondent wishes to initiate an Informal Resolution, they should contact the Director to so indicate.
- 6.2.1.4 It is not necessary to pursue an Informal Resolution first in order to pursue a formal Grievance Process, and any Party participating in an Informal Resolution can stop the process at any time and begin or resume the formal Grievance Process.
- 6.2.1.5 Prior to implementing Informal Resolution, the University will provide the parties with written notice of the reported misconduct and any Sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University.

6.2.1.6 The Director will obtain voluntary, written confirmation that all parties wish to resolve the matter through an Informal Resolution before proceeding and will not pressure the parties to participate in an Informal Resolution.

## 6.2.2 Alternate Resolution

6.2.2.1 The Complainant and the Respondent must Consent in writing to the use of Alternate Resolution.

6.2.2.2 The Director must approve the use of Alternate Resolution. The Director may look to the following factors to assess whether Alternate Resolution may be most successful for all parties: the parties' amenability to Alternate Resolution; likelihood of potential resolution, taking into account any power dynamics between the parties; the parties' motivation to participate; civility of the parties; cleared violence risk assessment/ongoing risk analysis; disciplinary history; whether an emergency removal is needed; skill of the Alternate Resolution facilitator with this type of Complaint; Complaint complexity; emotional investment/intelligence of the parties; rationality of the parties; goals of the parties; adequate resources to invest in Alternate Resolution (time, staff, etc.)

6.2.2.3 The ultimate determination of whether Informal Resolution is available or successful is to be made by the Director. The Director maintains records of any resolution that is reached, and failure to abide by this resolution agreement may result in appropriate responsive/disciplinary actions. Results of Complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

## 6.2.3 Respondent Accepts Responsibility for Alleged Violation(s)

6.2.3.1 The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal Grievance Process will be paused, and the Director will determine whether Informal Resolution can be used according to the criteria in Section 6.3 above.

6.2.3.2 If Informal Resolution is appropriate, the Director will

determine whether all parties and the University are able to agree on responsibility, Sanctions, and/or remedies. If so, the Director will implement the accepted findings that the Respondent is in violation of Policy 164 and the Director will implement the agreed-upon Sanction(s) and/or responsive action(s), in coordination with other appropriate administrator(s), as necessary.

6.2.3.3 This Informal Resolution result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of the Informal Resolution. If the parties cannot agree on all terms of the Informal Resolution, the formal Grievance Process will resume at the same point where it was paused, if the Grievance Process was commenced.

6.2.3.4 When an Informal Resolution is reached, the appropriate Sanction(s) or responsive action(s) will be promptly implemented in order to effectively stop the Discrimination, Harassment, sexual Harassment, or Retaliation prevent its recurrence, and remedy the effects of the misconduct, both on the Complainant and the University Community.

### 6.3 Grievance Process General Principles

6.3.1 Complainants, Respondents, and Witnesses will be treated equitably and with respect throughout the Grievance Proceedings.

6.3.2 No Right to Confront Parties or Witnesses. The Director is not required to conduct evidentiary hearings as part of the Grievance Process. As a result, parties should not anticipate or expect direct confrontation or an opportunity to cross-examine other parties or Witnesses. The Director may, in some cases, meet with the parties together if this will facilitate an Informal Resolution.

6.3.3 The Director, investigator, Policy 164 Adjudicator, Sanctioning Board member, and the Appeal Examiner will evaluate all relevant evidence, both inculpatory and exculpatory, objectively and determine credulity without respect to a person's status as Complainant, Respondent, or Witness.

6.3.4 Any deadlines or timeframe provided in Policy 164 may be extended by the Director for good cause with written notice to the parties citing the reason(s) for the extension. Good cause may include considerations such as the absence of a Party, a Party's Advisor, or

Witness; concurrent law enforcement activity or investigation; or the need for language assistance or accommodation of disabilities.

6.3.4.1 A Party may also submit a request for a temporary delay or limited extension to the Director. Any such request should include the reason(s) for the request. If the request is reasonable under the circumstances, the Director may grant the request in whole or part. If no good cause exists, the Director may deny the request in writing.

6.3.5 Any person designated as a Director, investigator, Policy 164 Adjudicator, Sanctioning Board member, or Appeal Examiner shall be free of conflict of interest or bias for or against Complainants or Respondents generally or individually. All potential instances of bias or a conflict of interest must be promptly reported to the Director. The Director will determine whether actual bias or an actual conflict of interest exists by consulting with appropriate University representatives. If the Director is the individual alleged to have bias or a conflict of interest, then a representative from Human Resources will determine whether any bias or conflict of interest exists.

6.3.6 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.

6.3.7 Complainants and Respondents shall have Supportive Measures made available and be given the opportunity to request modifications necessary for physical and/or emotional safety.

6.3.8 After a Complaint is received by the Director, the Complainant shall be instructed by the Director to provide and preserve all corroborating or potentially relevant evidence in any format, and to provide a list of potential Witness names and contact information if available.

6.3.9 The University will provide written notice (with sufficient time for the Party to prepare to participate) of the date, time, location, participants, and purpose of all investigative interviews or other meetings.

6.3.10 Consolidation of Complaints. The University may consolidate

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 Protected Class or Non-Title IX Discrimination, Harassment, Sexual Harassment, or Retaliation arise out of the same facts or circumstances.

#### 6.4 Investigation

6.4.1 Every University Community Members must fully cooperate with the University's procedures and processes under Policy 164. In some circumstances, a refusal to cooperate by a University Community Member may result in discipline.

6.4.2 After the Director determines that a Complaint falls within the scope of Policy 164 and determines that it cannot be resolved through the Informal Resolution Process, the University will conduct a thorough, impartial investigation by interviewing Witnesses, collecting documentary evidence, and preparing a written report of relevant evidence. The purpose of the investigation is to gather all relevant evidence and prepare an Investigation Report for the Policy 164 Adjudicator. The burden of gathering evidence rests on the University and not on the parties. The University reserves the right to retain an external investigator to conduct the investigation following Policy 164. The University strives to complete all investigations within sixty (60) University Business Days, however, an investigation may take longer depending on the nature, extent, and complexity of the allegations, availability of Witnesses, police involvement, and/or other circumstances. The process proceeds as follows:

6.4.2.1 The Director will assign the Complaint to an internal or external investigator who has no apparent conflict of interest. If the Director determines an assigned investigator has a conflict of interest or is otherwise unavailable, the Director may assign the Complaint to another investigator.

6.4.3 Notice of Investigation: Upon initiating an investigation, the Director will provide the parties with a Notice of Investigation, with copies of Policy 164 and the Complaint. The Notice of Investigation shall include:

6.4.3.1 A meaningful summary of the allegations;

6.4.3.2 The identity of the parties involved (if known);

- 6.4.3.3 The precise misconduct being alleged;
  - 6.4.3.4 The date and location of the alleged incident(s) (if known);
  - 6.4.3.5 The specific policy sections implicated;
  - 6.4.3.6 A description of the applicable procedures;
  - 6.4.3.7 A statement of the potential Sanctions/responsive action(s) that could result;
  - 6.4.3.8 A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination;
  - 6.4.3.9 A statement about the University's policy on Retaliation;
  - 6.4.3.10 Information about the privacy of the process;
  - 6.4.3.11 A statement informing the parties that Policy 164 prohibits knowingly false statements, including knowingly submitting false information during the resolution process;
  - 6.4.3.12 Information on the right for each Party to have an Advisor of their choosing for the sole purpose of providing support to the Party;
  - 6.4.3.13 The name of the investigator(s);
  - 6.4.3.14 Instructions to notify the Director upon receipt of the Notice of Investigation of any perceived conflict of interest or bias that the assigned investigator(s) may have; and
  - 6.4.3.15 An instruction to preserve any evidence that may be related to the allegation(s).
- 6.4.4 Amendments and updates to the Notice of Investigation may be made as the investigation proceeds and more information becomes available regarding the addition or dismissal of various allegations.
- 6.4.5 The Notice of Investigation will be written and may be delivered by one or more of the of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official University records, or emailed to the parties' University-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. If the

Notice of Investigation is delivered in person, Respondent will be instructed to schedule an initial interview at a later date in order to allow Respondent sufficient time to secure an Advisor and fully consider and understand the information provided in the notice.

- 6.4.5.1 An investigator may conduct all, or any part of, an investigation by in-person communication or the use of audio or virtual technology.
- 6.4.5.2 Flexibility of Investigative Process. Most investigations will follow similar steps, but the order of those steps may vary. For example, a Complainant's Witnesses or Respondent's supervisor might be interviewed before the Respondent.
- 6.4.5.3 The University 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 University obtains the Party's voluntary, written Consent to do so for the Grievance Process under Policy 164.
- 6.4.5.4 Advisors and Witnesses will be instructed by the investigator(s) that the University expects them to maintain the privacy of the information learned due to their participation in the process. This information may not be shared with a Third Party or any other person or group, disclosed publicly, or used for purposes not explicitly authorized by the University.
- 6.4.6 The University presumes the Respondent is not responsible for the alleged misconduct until a determination regarding responsibility is made at the conclusion of the Grievance Process.
- 6.4.7 The University will provide an equal opportunity for the parties to identify relevant Witnesses for the investigator to contact, including fact and expert Witnesses, and to provide other inculpatory and exculpatory evidence to the investigator.
- 6.4.8 Each Party may choose to be accompanied by an Advisor of the Party's choice, who may be an attorney (at the Party's own expense), to any related meeting or proceeding during the

investigation. The Advisor may not disrupt a meeting or other proceeding or speak on behalf of the Party. If an Advisor is disruptive, the Advisor may be excluded from the meeting and future meetings or proceedings. The sole role of the Advisor will be to privately consult with the Party.

- 6.4.9 At any time before or during the investigation, an investigator may recommend that the University provide Supportive Measures to a Party or Witness. Any individual's intentional interference with Supportive Measures may be considered Retaliation and a separate violation of Policy 164.
- 6.4.10 If either Party fails to participate in the investigation, the investigator may still proceed with the investigation and make factual findings without the response or participation of that Party, or the University may dismiss the case.
- 6.4.11 The University will provide each Party an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Complaint, including all inculpatory or exculpatory evidence, so that each Party can meaningfully respond to the evidence prior to the conclusion of the investigation.
- 6.4.12 If, at any point during the investigation, the University determines a need to investigate allegations not included in the Complaint, the University must provide notice of additional allegations to the parties, if known.
- 6.4.13 Upon conclusion of the investigative fact-finding, the investigator shall prepare a Draft Investigative Report that summarizes the Complainant's allegations and Respondent's responses, summarizes the relevant evidence and the material Witnesses supporting or opposing the allegation(s), and includes preliminary factual findings.
- 6.4.14 Before the Draft Investigative Report is finalized as the Final Investigative Report, the investigator(s) will issue a written Notice of Opportunity to Review Draft Investigative Report and Evidence, attaching a copy of the Draft Investigative Report in a secure electronic format or hard copy format, which notifies the parties and their Advisors of their equal opportunity to review any evidence obtained as part of the investigation that is directly related to the allegations in the Complaint, including evidence upon which the

University does not intend to rely in reaching a determination of responsibility, whether inculpatory or exculpatory.

- 6.4.15 Any effort, by either Party to distribute, reproduce, alter, post, or otherwise circulate the investigate summary may result in a charge of a violation of Policy 164 and may result in a policy violation determination and Sanctions pursuant to the process outlined in Policy 164.
- 6.4.16 The parties may submit a written response to the investigator via email within ten (10) University Business Days of the date of the Notice of Opportunity to Review Draft Investigative Report and Evidence. This is the parties' final opportunity to submit any additional information or Witnesses. In the absence of good cause, an investigator 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 consider any written response, information, or evidence provided by the parties.
- 6.4.17 Within seven (7) University Business Days of the expiration of the parties' written response period, the investigator(s) will prepare a proposed Final Investigative Report that contains a statement of the factual allegations and the positions/responses of the parties; fairly summarizes all of the relevant evidence; contains the names of material Witnesses; and describes the procedural steps taken during the investigation. If an investigation involves multiple Complainants, multiple respondents, or both, the investigator(s) may prepare a single Final Investigative Report.
- 6.4.18 Within three (3) University Business Days of the investigator's completion of the proposed Final Investigative Report, the Director or designee shall review and approve the report to ensure compliance with Policy 164.
- 6.4.19 Once the Final Investigative Report is reviewed and approved by the Director or designee, it shall be provided by the investigator to the parties, in a secure electronic transmission or hard copy format and simultaneously submitted to the Policy 164 Adjudicator.

## 6.5 Policy Violation Finding(s) and Written Determination

- 6.5.1 The Policy 164 Adjudicator will review the Final Investigative Report

and may review the evidence provided to the investigator during the investigation. After reviewing the Final Investigative Report and any evidence which the Adjudicator deems necessary to reach a determination, the Policy 164 Adjudicator shall make a finding based on the Preponderance of the Evidence with respect to each alleged policy violation. Each finding will be one of the following: “responsible”, “not responsible” or “insufficient evidence”.

6.5.2 The Policy 164 Adjudicator will the prepare a Written Determination which must include:

6.5.2.1 Identification of the allegations potentially constituting a violation of Policy 164;

6.5.2.2 A description of the procedural steps taken from the receipt of the Complaint through the Written Determination, including any notifications to the parties, interviews with the parties and Witnesses, and methods used to gather other evidence;

6.5.2.3 Findings of fact supporting the Written Determination;

6.5.3 Conclusions regarding the application of Policy 164 to the facts;

6.5.3.1 A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility.

6.5.4 The University’s procedures and permissible bases for the Complainant and Respondent to appeal.

6.5.5 The Policy 164 Adjudicator will provide the Written Determination to the Director and to the parties simultaneously via email within ten (10) University Business Days of receipt of the Final Investigative Report from the Director.

6.5.6 The Written Determination regarding responsibility becomes final when the Appeal Outcome is final or the time to appeal has passed without an appeal being filed. If the Policy 164 Adjudicator determines that the findings of fact do not support a violation of Policy 164, the Complainant may appeal this determination to an Appeal Examiner as outline in Section 10 of Policy 164. If the Policy 164 Adjudicator determines that the findings of fact do support the determination of a violation of Policy 164, Respondent may appeal this determination to an Appeal Examiner(s) after the issuance of

the Sanctioning Decision.

## 6.6 Sanctions

### 6.6.1 Sanctions for Students

6.6.1.1 If the Respondent is a student and a policy violation has been determined, a copy of the Final Investigative Report and the Written Determination will be sent to the Dean of Students or designee. The Dean of Students or designee will convene a Sanctioning Board to determine appropriate Sanctions. The Sanctioning Board will use their best efforts to complete the Sanctioning process within fifteen (15) University Business Days.

6.6.1.2 The Sanctioning Board will set a date for a Sanctioning Conference. The Sanctioning Board will consist of three (3) to five (5) employees who receive annual training on Protected Class and Non-Title IX Discrimination, and Harassment, Sexual Harassment, and Retaliation.

6.6.1.2.1 The Dean of Students or designee will send a copy of the Notice of Sanctioning Conference to the Complainant and the Respondent via email no later than ten (10) University Business Days prior to the Sanctioning Conference date. Complainant and Respondent are notified in the Notice of Sanctioning Conference that they have an opportunity to meet individually with the Dean of Students or designee for a Pre-Sanctioning Conference meeting.

6.6.1.2.2 Each Party has two (2) University Business Days from the date the Notice of Sanctioning Conference is emailed to challenge any of the Sanctioning Board members on the ground of perceived bias. To challenge a Sanctioning Board member, a Party must submit a concise written statement (no more than one page) stating the reason(s) for the challenge and why the Sanctioning Board member is perceived to be biased against the Party. The Dean of Students or designee will review any challenges received and determine if the challenged Sanctioning Board member needs to be replaced.

### 6.6.1.3 Pre-Sanctioning Conference Procedures

- 6.6.1.3.1 Each Party may contact the Office of the Dean of Students to arrange a meeting with the Dean of Students or designee prior to the.
- 6.6.1.3.2 Both parties may submit a written impact statement to the Sanctioning Board, due at least five (5) University business days prior to the day of the Sanctioning Conference.
- 6.6.1.3.3 A Pre-Sanctioning Conference packet, which will include a summary of the Sanctioning Conference process and the parties' written impact statements (if submitted by the parties), will be made available to both parties and the Sanctioning Board members at least two (2) University Business Days prior to the scheduled Sanctioning Conference. The Sanctioning Board will also be provided the Final Investigation Report, and the Written Determination in their Pre-Sanctioning packets.

### 6.6.2 Advisors

- 6.6.2.1 Each Party is permitted one (1) Advisor to accompany the Party at the Sanctioning Conference. No less than two (2) University Business Days prior to the Sanctioning Conference, each Party intending to have an Advisor present at the Sanctioning Conference must submit to the Dean of Students or designee written notice identifying who will accompany them as their Advisor. The role of Advisors is limited under applicable provisions of Policy 164.

### 6.6.3 Sanctioning Conference

- 6.6.3.1 Participation in the Sanctioning Conference is voluntary for both Complainant and Respondent. The Sanctioning Conference will proceed with or without participation of one or both parties.
- 6.6.3.2 Each Party present has an opportunity to make a brief (no more than ten (10) minutes) verbal statement to the Sanctioning Board.

- 6.6.3.3 The Sanctioning Board may ask questions of each Party present at the Sanctioning Conference.
  - 6.6.3.4 Parties will not be in the Sanctioning Conference room at the same time. When a Party is not in the Sanctioning Conference room, that Party will be able to listen to the Sanctioning Conference proceedings via phone or electronic means from a separate room.
  - 6.6.3.5 At the conclusion of the parties' verbal statements, if any, the Sanctioning Board will have the option to ask questions of the parties or of the Dean of Students. The Sanctioning Board will then deliberate regarding the appropriate sanction(s) for the violation of Policy 164. Sanctions may include, but are not limited to, educational activities or experiences, loss of privileges, restorative justice measures, service projects, substance abuse and/or mental health care referrals, suspension or expulsion. Decisions of the Sanctioning Board are determined by a simple majority vote. To assist the Sanctioning Board in its deliberations, the Dean of Students or designee may provide the Sanctioning Board with University precedent in similar cases, as well as Respondent's history of conduct and prior sanctions, if any.
- 6.6.4 Within ten (10) University Business Days after the Sanctioning Conference, the Sanctioning Board chair will notify the Director or designee in writing of the Sanctioning Decision imposed by the Sanctioning Board. The Director or designee will then notify the parties and the Dean of Students or designee via email of the Sanctioning Board's Decision within two (2) University Business Days of receiving such notification from the Sanctioning Board.
- 6.6.5 The Dean of Students or designee will communicate with the Respondent and track and document the completion of any Sanction(s), and report completion of the Sanction(s) to the Director.
- 6.6.6 Sanctions for Employees
- 6.6.6.1 If the Respondent is a University employee and the Policy 164 Adjudicator determines a policy violation occurred, a summary of policy violation findings will be provided to the Executive Director of Human Resources (or designee) and the Respondent's supervisor who will together, in consultation with the Director, determine what, if any, disciplinary action is

warranted. If disciplinary action is proposed, Human Resources will assist the supervisor in initiating the applicable disciplinary process. Disciplinary and appeal process for University employees are addressed in the following policies:

6.6.6.1.1 University Policy 371

6.6.6.1.2 University Policy 372

## 6.7 Appeals

6.7.1 Either party may appeal the Written Determination and/or the Sanctioning Decision, except that in the case of the Sanctioning Decision of a University employee respondent, as noted in Sections 6.6.6.1 et seq., the disciplinary and appeal process will be governed by Policies 371 and 372 respectively. The Appeal Outcome is final.

6.7.2 A Party may appeal the finding of responsibility or a Sanction for any of the following reasons:

6.7.2.1 A substantive procedural error occurred in the investigation or hearing process that significantly impacted the outcome reflected in the Written Determination. A mere deviation from investigative procedures is not a basis for appeal unless significant prejudice is alleged to have resulted due to the procedural deviation.

6.7.2.2 New evidence that was not reasonably available at the time of the issuance of the Written Determination or dismissal, which could substantially impact either the determination of whether a violation of Policy 164 occurred or the severity of the Sanction.

6.7.2.3 The Director, the investigator(s) or the Policy 164 Adjudicator had a conflict of interest or substantiated bias that affected the outcome.

6.7.2.4 The outcome was clearly erroneous based on the facts and evidence provided to the Policy 164 Adjudicator.

6.7.2.5 The Sanctions imposed are substantially disproportionate to the severity of the policy violation(s).

6.7.3 The Director must receive a Party's written Notice of Appeal within then (10) University Business Days after the issuance of the Written

Determination or, in the case there is a finding of responsibility, the Party's receipt of the Sanctioning Decision. The Notice of Appeal must outline the ground(s) for the appeal and attach any supporting documentation.

6.7.4 Within five (5) University Business Days of the receipt of an appeal, the Director will notify all parties (and for student Respondent cases the Dean of Students or designee, or for employee Respondent cases the Executive Director of Human Resources):

6.7.4.1 That a Notice of Appeal has been filed;

6.7.4.2 An Appeal Examiner(s) has been assigned to consider the appeal;

6.7.4.3 Contact information for the Appeal Examiner(s);

6.7.4.4 That the Director has confirmed that the Appeal Examiner(s) has no known conflict of interest;

6.7.5 Within ten (10) University Business Days of the Director sending such notice to the parties, each Party may submit a Written Statement on Appeal to the Appeal Examiner(s) supporting or challenging the Written Determination and/or Sanctioning Decision.

6.7.6 The Appeal Examiner(s) may review the parties' Written Statements on Appeal, Written Determination, Sanctioning Decision, Final Investigative Report, and all evidence collected during the investigation.

6.7.7 The Appeal Examiner(s)'s Written Decision on Appeal may affirm or modify the Written Determination, the Sanctioning Decision, remand the decision to the Policy 164 Adjudicator, order a new investigation, or overturn the Written Determination and/or Sanctioning Decision in whole or in part.

6.7.8 The Appeal Examiner(s)'s Written Decision on Appeal is final and concludes the University's process under Policy 164.

6.7.9 Appeal Examiner(s) Composition:

6.7.9.1 A single impartial external Appeal Examiner selected by the Director; or

6.7.9.2 An Appeal Examiner Panel comprised of four University

employees: two full-time, tenured faculty members and two full-time staff members selected jointly by the Director, the Faculty Senate, and the Staff Association to serve a three (3)-year, staggered term, who will have full voting rights.

- 6.7.9.2.1 Appeal Examiner Panel Chair: One pool member will be randomly selected to chair each Appeal Examiner Panel as necessary; each can vote when selected as chair; each cannot concurrently serve as a chair or member of any other appeal board committee currently convened. Chairs may recuse themselves from any appeal board for any potential conflict of interest or potential bias.
- 6.7.9.2.2 Appeal Examiner Panelists: A pool of six (6) University employees, three (3) full-time, tenured faculty and three (3) full-time staff will be selected jointly by the Title IX Coordinator, the Faculty Senate, and the Staff Association to serve staggered three (3) year terms as part of an Appeal Examiner Panel pool. Three (3) members will be randomly selected to serve on a specific Appeal Examiner Panel from the member pool and the chair pool, with each member having the right of recusal for any potential conflict of interest or potential bias.

## 6.8 Support Services

6.8.1 Both Complainant and Respondent will be given information regarding support services, including confidential counseling for students and/or employees. The Director will assist both parties to ensure that they have access to all available support service resources.

6.8.1.1 Office of Equity Compliance and Title IX [HCC](mailto:579titleix@utahtech.edu)  
[579titleix@utahtech.edu](mailto:579titleix@utahtech.edu)  
435-652-7731

6.8.1.2 Office of Ombuds  
ombuds@utahtech.edu Cox 215

6.8.1.3 LGBTQ+ Resource Center  
lgbtq@utahtech.edu 435-652-7753  
Browning Learning Resource Center #207

- 6.8.1.4 AVP for Campus Diversity & Inclusion Center Director  
tasha.toy@utahtech.edu 435-652-7735  
Browning 211
- 6.8.1.5 Booth Wellness Center  
435-652-7755  
1037 E. 100S.
- 6.8.1.6 National Suicide Prevention Hotline  
1-800-273-TALK (8255) or 988
- 6.8.1.7 Crisis Text Line  
Text 'Home' to 741741
- 6.8.1.8 University Police  
435-627-4300

## VII. Addenda – N/A

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Policy Owner: General Counsel

Policy Steward: Director of Equity Compliance / Title IX Coordinator

History:

Approved 8/13/20

Revised 4/30/21

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