



# Title IX Policy Handbook

<b>POLICY TITLE</b>	<b>Policy on Sexual Assault, Sexual and Gender-Based Harassment, Gender-Based Discrimination, and Interpersonal Violence (Title IX Policy)</b>
<b>Effective Date</b>	<b>March 12, 2018</b>

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## 1. STATEMENT OF POLICY

Nightingale (“College”) is committed to providing a safe and non-discriminatory learning and working environment for all members of the N i g h t i n g a l e community. The College does not discriminate on the basis of sex in any of its education or employment programs and activities. To that end, this policy prohibits specific forms of behavior that violate Title IX of the Education Amendments of 1972 (“Title IX”); Title VII of the Civil Rights Act of 1964 (“Title VII”); and/or the Utah Antidiscrimination Act of 1965. The policy also fulfills certain obligations the College has under the Violence against Women Reauthorization Act of 2013 (“VAWA”) and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”).

The College prohibits sexual assault, sexual and gender-based harassment, gender-based discrimination, sexual exploitation, interpersonal violence, and retaliation against a person for the good faith reporting of any of these forms of conduct or participation in any investigation or proceeding under this policy, complicity in the commission of any act prohibited by this policy, and false reporting (collectively “prohibited conduct”). These forms of prohibited conduct, which are defined in Section 6 of this policy, are unlawful, undermine the character and purpose of the College, and will not be tolerated. The College adopts this policy with a commitment to: (1) eliminating, preventing, and addressing the effects of prohibited conduct; (2) fostering the College’s community of trust, in which prohibited conduct is not tolerated; (3) cultivating a climate where all individuals are well-informed and supported in reporting prohibited conduct; (4) providing a fair and impartial process for all parties; and (5) identifying the standards by which violations of this policy will be evaluated and disciplinary action may be imposed. Students or employees who violate this policy may face disciplinary action up to and including expulsion or termination, and third parties who violate this policy may have their contractual or campus access rights terminated. The College will take prompt and equitable action to eliminate prohibited conduct, prevent its recurrence, and remedy its effects. The College conducts ongoing prevention, awareness, and training programs for students and employees to facilitate the goals of this policy.

It is the responsibility of every member of the Nightingale community to foster an environment free of prohibited conduct. All members of the Nightingale community are encouraged to take reasonable and prudent actions to prevent or stop an act of prohibited conduct. The College will support and assist community members who take such actions.

This policy applies to all reports of prohibited conduct occurring on or after the effective date of this policy. Where the date of the prohibited conduct precedes the effective date of this policy, the definitions of misconduct in existence at the time of the alleged incident(s) will be used. The procedures under this policy, however, will be used to investigate and resolve all reports made on or after the effective date of this policy, regardless of when the incident(s) occurred.

## 2. TO WHOM THIS POLICY APPLIES

This policy applies to students who are registered or enrolled for credit- or non-credit-bearing coursework (“students”); college employees, consisting of all faculty (full-time and adjunct faculty, and instructors) (collectively “faculty”) and staff (collectively “employees”); and contractors, vendors, visitors, guests, or other third parties (“third parties”). This policy pertains to acts of prohibited conduct committed by or against students, employees, or third parties when:

- A. the conduct occurs on College grounds or other property owned or controlled by the College;
- B. the conduct occurs in the context of a College employment or education program or activity,

- including, but not limited to on-line, or internship programs; or
- c. the conduct occurs outside the context of a College employment or education program or activity but has continuing adverse effects on or creates a hostile environment for students, employees, or third parties while on College grounds or other property owned or controlled by the College, or in any College employment or education program or activity.

The College administers a separate policy that addresses other forms of discrimination and harassment: The Policy on Preventing and Addressing Discrimination and Harassment Based on Race, Color, National Origin, Religion, Disability, and Other Protected Categories (“Equal Opportunity Policy”). This policy supersedes any conflicting provisions contained in the Equal Opportunity Policy. Where a reporting party jointly alleges conduct that may violate this policy and other conduct that may violate the Equal Opportunity Policy, the Title IX coordinator will determine how the reports should be addressed. The College’s response to claims of sexual assault, sexual or gender-based harassment, gender-based discrimination, and interpersonal violence will be governed by the procedures referenced in this policy.

### **3. APPLICABLE PROCEDURES UNDER THIS POLICY**

The specific procedures for reporting, investigating, and resolving prohibited conduct are based upon the nature of the respondent’s relationship to the College – that is, whether the respondent is a student, employee, or third party. Each set of procedures referenced below is guided by the same principles of fairness and respect for reporting parties, complainants, and respondents. “Reporting party” means the student, employee, or third party who reports a suspected violation of this policy. “Complainant” means the student, employee, or third party who files an official complaint with the College requesting that an investigation be initiated. In some cases, the College may be the complainant. “Respondent” means the student, employee, or third party who has been accused of violating this policy.

A student or employee determined by the College to have committed an act of prohibited conduct is subject to disciplinary action, up to and including expulsion or separation from the College.

Third parties who commit prohibited conduct may have their relationships with the College terminated and/or their privileges of being on College premises withdrawn.

The procedures referenced below provide for a prompt and equitable response to reports of prohibited conduct. The procedures designate specific timeframes for major stages of the process and provide for thorough and impartial investigations that afford all parties notice and an opportunity to present witnesses and evidence and to be informed of the outcome of the investigation and any sanctions and/or remedial measures. The College applies the preponderance of the evidence standard when determining whether this policy has been violated. “Preponderance of the evidence” means that it is more likely than not that a policy violation occurred.

#### **A. Where the Respondent is a Student**

The procedures for responding to reports of prohibited conduct committed by students are detailed in *Procedures for Reports and Investigations Against Students under the Title IX Policy – Appendix A*.

#### **B. is an Employee**

The procedures for responding to reports of prohibited conduct committed by employees are detailed in: *Procedures for Reports and Investigations Against Employees under the Title IX Policy – Appendix B*.

### C. Where the Respondent is a Third Party

The College's ability to take appropriate corrective action against a third party will be determined by the nature of the relationship of the third party to the College. The Title IX coordinator will determine the appropriate manner of resolution consistent with the College's commitment to a prompt and equitable process consistent with federal law, federal guidance, and this policy.

## 4. RESPONSIBLE ADMINISTRATOR – TITLE IX COORDINATOR

Under Title IX:

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

The Title IX coordinator is charged with monitoring the College's compliance with Title IX; ensuring appropriate education and training; coordinating the College's investigation, response, and resolution of all reports under this policy; and ensuring appropriate actions to eliminate prohibited conduct, prevent its recurrence, and remedy its effects. The Title IX coordinator is available to meet with any student, employee, or third party to discuss this policy or the accompanying procedures. The College has also designated deputy Title IX coordinators who assist the Title IX coordinator in the discharge of these responsibilities. The Title IX coordinator delegates authority to a deputy Title IX coordinator to act on their behalf when appropriate under the circumstances. The Title IX coordinator and deputy Title IX coordinators receive appropriate training to fulfill their responsibilities.

Concerns about the College's application of Title IX, VAWA, Title VII, or the Clery Act may be addressed to the Title IX coordinator; the United States Department of Education, Clery Act Compliance Division (at [clery@ed.gov](mailto:clery@ed.gov)); the United States Department of Education, Office for Civil Rights (at [OCR@ed.gov](mailto:OCR@ed.gov) or (800) 421-3481); and/or the Equal Employment Opportunity Commission (at [info@eeoc.gov](mailto:info@eeoc.gov) or (800) 669-4000).

### College Recourses:

The Title IX coordinator and deputy Title IX coordinators can be contacted by telephone, email, or

Skype/WebEx meeting:

### David Lopez

**Title IX Coordinator | 801-689-2160**

[dlopez@nightingale.edu](mailto:dlopez@nightingale.edu)

### Alice Muhammad

**Title IX Investigator | 801-689-2160**

[AMuhammad@nightingale.edu](mailto:AMuhammad@nightingale.edu)

### Campus Safety and Security Authorities (CSA)

Dina Nielsen (Senior Manager, Learner Support Services)

(801) 323-5876

[dnielsen@nightingale.edu](mailto:dnielsen@nightingale.edu)

**David Lopez** (Manager/Title IX Coordinator, Learner Support Services) (801)  
689-2160  
[dlopez@nightingale.edu](mailto:dlopez@nightingale.edu)

**Amanda Bokish** (Manager/Counselor, Learner Advising and Life Resources)  
(801) 210-6676  
[shanlon@nightingale.edu](mailto:shanlon@nightingale.edu)

**Nina Skipps** (Senior Manager Executive,  
Governance & Operations)  
(801) 689-2160  
[nskipps@nightingale.edu](mailto:nskipps@nightingale.edu)

## 5. SUPPORTIVE MEASURES, RESOURCES, AND REPORTING

### A. Supportive, Interim, and Remedial Measures

The College offers a wide range of appropriate measures to provide support and guidance to students and employees throughout the initiation, investigation, and resolution of a report of prohibited conduct. The College also offers reasonable measures to protect reporting parties, complainants, and respondents and facilitate their continued access to College employment or education programs and activities. Available measures include supportive measures (before an investigation has been initiated), interim measures (during an investigation), and remedial measures (after an investigation finding has been issued). These measures include the following:

- No contact orders limiting or preventing communication
- Safety planning
- Limiting access to facilities, activities, or programs
- No trespass orders
- Academic schedule changes
- Alternate course completion options
- Arranging for incompletes or withdrawal from a course or from campus without penalty
- Leaves of absence
- Changing work schedules, job assignments, or work locations
- Interim suspension
- Administrative leave
- Referrals to counseling services and other health providers on and off campus
- Referrals to community and national organizations and resources
- Rescheduling an exam or extending assignment deadlines
- Access to academic supports, such as tutoring
- Preserving eligibility for academic scholarships, financial aid, or internships.

The College will maintain the privacy of any supportive, interim, or remedial measures to the greatest extent possible and will promptly address the violation of any of these measures. The Title IX coordinator has the discretion to impose and/or modify any supportive, interim, or remedial measure and is available to meet with a reporting party, complainant, or respondent to address any concerns about the provision of these measures.

The College will provide reasonable supportive, interim, and remedial measures to third parties as appropriate and available, taking into account the role of the third party and the nature of any contractual relationship with the College.

## **B. Notification of Rights Regarding Remedial and Protective Measures**

When a student or employee reports to the College that they have been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the Title IX coordinator will ensure students and employees receive written notification of all their rights and options, regardless of whether they choose to report prohibited conduct to the College or to the police. This notification will describe options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures. It will also provide 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 for victims, both within the College and in the community. Students and employees are entitled to receive information, assistance, and a broad range of support and remedial measures, as reasonably available, regardless of whether they choose to pursue criminal and/or College disciplinary resolution of prohibited conduct.

## **C. Confidential and Non-Confidential Resources**

The College is committed to protecting the privacy of all individuals involved in the investigation and resolution of a report under this policy. The College also is committed to providing assistance to help students, employees, and third parties make informed choices. With respect to any report under this policy, the College will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to assess the report and to take steps to eliminate prohibited conduct, prevent its recurrence, and remedy its effects.

Privacy and confidentiality have distinct meanings under this policy.

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

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“**FERPA**”). The privacy of an individual’s medical and related records generally is protected by the Health Insurance Portability and Accountability Act (“**HIPAA**”), and there are additional protections under FERPA and Utah law. Access to an employee’s personnel records may be restricted in accordance with Utah law and/or human resources departmental policies.

**Confidentiality:** Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other person without the express permission of the individual. The College has designated individuals who have the ability to have confidential communications as “**confidential employees.**” Confidential employees cannot reveal confidential information to any third party unless there is an imminent threat of harm to self or others. Non-identifying, aggregate data may be shared for statistical purposes consistent



with the Clery Act.

Consistent with the definition of confidential employees, the following resources are available for students and employees seeking confidential, trauma-informed counseling and support:

CONFIDENTIAL RESOURCES		
Resource	Telephone Number	Notes
Rape Recovery Center	(801) 467-7273	2035 South 1300 East
State-wide crisis line	(888) 421-1100	24-hour crisis line
National Sexual Assault Hotline	(800) 656-4673	24-hour hotline
Family Justice Center (YWCA)	(801) 537-8600	24-hour crisis line 310 East 300 South Second Floor Salt Lake City, UT 84111
Higher Ed EAP Program	(800) 252-4555	Employee Assistance Program

The following resources are not confidential, meaning that any reports of prohibited conduct to them must be shared with the Title IX coordinator. However, they are available to provide assistance and support to reporting parties, complainants, and respondents.

NON-CONFIDENTIAL RESOURCES (Students Only)		
Resource	Telephone Number	Address
Learner Support Services	(801) 689-2160	<a href="mailto:dlopez@nightingale.edu">dlopez@nightingale.edu</a>

#### D. College Responsibility to Report Prohibited Conduct

- College Responsibility to Report Prohibited Conduct to Law Enforcement, the State, or the Campus Community:** Under Utah law, the College is required to report to law enforcement and/or the Utah Department of Family Services suspected sexual or physical abuse involving persons under 18 years of age where the sexual partner is more than three years older and entices or coerces participation in sexual activity. Also, under certain circumstances, the College may be required to notify law enforcement and/or the campus community of prohibited conduct in order to provide a safe, non-discriminatory environment for all students. When issuing timely warnings to the College community, the College withholds the names and other personally identifying information of reporting parties while still providing enough information for community members to make safety decisions.
- College Responsibility for Clery Act Reporting:** Pursuant to the Clery Act, the College includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. The Title IX coordinator is responsible for providing information pertaining to reports of prohibited conduct to the College employee responsible for reporting under the Clery Act.

## **E. Reporting Prohibited Conduct**

There are multiple channels for reporting prohibited conduct. A reporting party may choose to report to the College, to law enforcement, to both, or to neither. Reporting parties may simultaneously pursue criminal actions through law enforcement and investigations through the College's procedures. The College will support reporting parties in understanding, assessing, and pursuing these options.

### **1. Reporting to Law Enforcement**

Reporting parties have the right to notify or decline to notify law enforcement. In keeping with its commitment to taking all appropriate steps to eliminate, prevent, and remedy all prohibited conduct, the College urges reporting parties to report prohibited conduct immediately to local law enforcement by contacting:

- a) 911 (for emergencies)
- b) Salt Lake Police Department (801) 799-3000

Police have unique legal authority, including the power to seek and execute search warrants, collect forensic evidence, make arrests, and assist in seeking emergency protective orders. Their jurisdiction reaches beyond the boundary of the campus and for that reason reporting to law enforcement may provide the opportunity for broader protection. Although a police report may be made at any time, reporting parties should be aware that a statute of limitations may apply to certain crimes in Utah. The College will assist reporting parties in notifying law enforcement if they choose to do so.

### **2. Reporting to the College**

The College also urges anyone who experiences or becomes aware of an incident of prohibited conduct to report the incident immediately to the College through the following reporting options:

- a) Contact the College's Title IX coordinator or a deputy Title IX coordinator by telephone, email, or in person during regular office hours at their respective locations, email addresses, and/or phone numbers listed above;

- b) A report may be made anonymously, at <https://nightingale.edu/safety-security/>

However, if any information identifying the reporting party or respondent is given, the report will no longer be considered anonymous and the College will proceed accordingly; or

There is no time limit for reporting prohibited conduct to the College under this policy; however, the College's ability to respond may diminish over time, as evidence may erode, memories may fade, and respondents may no longer be affiliated with the College. If the respondent is no longer a student or an employee, the College will provide reasonably appropriate supportive measures, assist the reporting party in identifying external reporting options, and take reasonable steps to eliminate prohibited conduct, prevent its recurrence, and remedy its effects.

### **3. No Discipline for Drug and Alcohol Violations**

To encourage the reporting of prohibited conduct, the College will not pursue disciplinary action for disclosure of illegal personal consumption of drugs or alcohol where such disclosures are made in connection with a good faith report or investigation of prohibited conduct.

### **F. Requests for Anonymity or That No Investigation or Discipline Be Pursued**

If a party reports prohibited conduct to the College but requests anonymity or that no investigation into a particular incident be conducted or disciplinary action pursued, the College must weigh the reporting party's request against the College's obligation to provide a safe, non-discriminatory environment for all members of the campus community, including the reporting party. If the College honors the request, a reporting party must understand that the College's ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator(s) may be limited. Although rare, there are times when the College may not be able to honor a reporting party's request for anonymity or that no investigation or discipline be pursued in order to provide a safe, non-discriminatory environment for all members of the campus community. The College has designated the Title IX coordinator to evaluate such requests.

When weighing a reporting party's request for anonymity or that no investigation or discipline be pursued, the Title IX coordinator will consider the following factors:

1. The increased risk that the alleged perpetrator will commit additional acts of sexual or interpersonal violence, such as:
  - a. whether there have been other sexual or interpersonal violence complaints about the same alleged perpetrator;
  - b. whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence; or
  - c. whether the alleged perpetrator threatened further sexual or interpersonal violence against the reported victim/survivor or others;
2. Whether the sexual or interpersonal violence was committed by multiple perpetrators;
3. Whether the sexual or interpersonal violence was committed by deceit or manipulation;
4. Whether the sexual or interpersonal violence was perpetrated with a weapon;
5. Whether the reported victim/survivor is a minor;
6. Whether the reported victim/survivor was incapacitated;
7. Whether the College possesses other means to obtain relevant evidence of the sexual or interpersonal violence (e.g., security cameras or personnel, physical evidence); and
8. Whether the reporting party's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors could lead the College to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, the College will likely respect the reporting party's request for anonymity or that no investigation or discipline be pursued.

If the College determines that it cannot carry out a reporting party's request, the College will inform the reporting party prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the College's response. If the College pursues an investigation, it may be required to disclose the identity of the reporting

party and provide all relevant details to the respondent so that they have an opportunity to fully defend themselves against any accusations. Only confidential employees – those listed in Section C above – are able to assure reporting parties of anonymity, subject to limited exceptions. The College will remain ever mindful of the reporting party’s well-being and will take ongoing steps to protect the reporting party from retaliation or harm and work with them to create a safety plan.

The College may not require a reporting party to participate in any investigation or disciplinary proceeding. Because the College is under a continuing obligation to address the issue of sexual and interpersonal violence campus-wide, reports of prohibited conduct (including non-identifying reports) will also prompt the College to consider broader remedial action – such as increased monitoring, supervision, or security at locations where the reported sexual or interpersonal violence occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices.

If the College determines that it can respect a reporting party’s request for anonymity or that no investigation or discipline be pursued, the College will also take immediate action as necessary to protect and assist them.

### **G. Conflict Resolution Prohibited**

The College prohibits mediation or conflict resolution in all matters involving sexual harassment, sexual assault, dating violence, or domestic violence.

## **6. PROHIBITED CONDUCT UNDER THIS POLICY**

Conduct under this policy is prohibited regardless of the sex, sexual orientation, gender identity, or gender expression of the reporting party, complainant, respondent, or third party. Prohibited conduct includes the following forms of behavior as further defined below: sexual assault; sexual harassment; gender-based harassment; gender-based discrimination; sexual exploitation; interpersonal violence including dating violence, domestic violence, and stalking; retaliation; complicity; and false reporting.

### **A. Sexual Assault**

Sexual assault is actual or attempted sexual or intimate contact with another person without their consent or when they are incapable of giving consent.

#### **1. Prohibited Conduct**

- a) Intentionally touching another person’s intimate parts (breasts, buttocks, groin, or genitals, whether clothed or unclothed) without that person’s consent;
- b) Coercing, forcing, or attempting to coerce or force a person to touch their own or another person’s intimate parts without the consent of the person who is being coerced or forced to act;
- c) Rape, which is defined as penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by any sex organ of another person, without that person’s consent;

- d) Sexual activity with a minor under 18 years of age where the sexual partner is more than three years older and entices or coerces participation in sexual activity.
2. Consent
- a) Consent is present when clearly understandable words or actions manifest a knowing, voluntary agreement between parties to engage in specific sexual or intimate contact with each other.
  - b) When determining whether consent was present, the College will consider whether a reasonable, sober person would consider the words or actions of the parties to clearly express a knowing, voluntary agreement between them to engage in specific sexual or intimate contact with each other.
  - c) Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent.
  - d) Consent cannot be inferred from
    - i. Silence, passivity, acceptance, or lack of resistance alone;
    - ii. A current or previous dating or sexual relationship;
    - iii. Consent given on a prior occasion;
    - iv. Consent given to another person (i.e., consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person);
    - v. Attire; or
    - vi. Buying dinner or spending money on a date.
  - e) Consent to one sexual activity does not imply consent to another sexual activity.
  - f) Consent can be withdrawn at any time and for any reason.
  - g) Consent is not effective if it is obtained through the use of physical force, violence, duress, intimidation, coercion, or the threat, either express or implied, of bodily injury. Whether the party used such methods to attempt to obtain consent will be determined by the perception of a sober, reasonable person in the same or similar circumstances.
    - i. **Force** is the use or threat of physical violence or physical strength to overcome an individual's freedom or will to choose whether or not to participate in sexual activity. There is no requirement that a party resists the sexual advance or request, but resistance will be viewed as a clear demonstration of non-consent.
    - ii. **Coercion** is the use of an unreasonable amount of pressure to compel another individual to initiate or continue sexual activity against their will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. Coercion is more than an effort to persuade, entice, or attract another person to have sexual relations. When a person makes clear that they do not want to have sexual relations, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure can constitute coercion. In evaluating whether coercion was used, the College will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.
  - h) Consent may never be given by:
    - i. Persons who are incapacitated (whether as a result of drugs, alcohol, prescription medications, or lack of sleep), unconscious, asleep, or otherwise physically helpless or mentally or physically unable to make informed, rational judgments;
    - ii. Persons under 18 years of age where the sexual partner is more than three years older and entices or coerces participation in sexual activity; or
    - iii. Persons with certain mental disabilities, if their disability was reasonably knowable to a sexual partner.

- i) Additional guidance on consent can be found in, Utah Code Ann. 76-5-406 (2015).
3. Incapacitation
    - a) Incapacitation is defined as lacking the ability to understand one's actions.
    - b) Intoxication vs. Incapacitation: Consent cannot be given by a person who is incapacitated. Therefore, it is imperative to be able to determine the difference between incapacitation and intoxication. Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking or using drugs. The impact of alcohol and other drugs varies from person to person.
      - i. Some signs of **intoxication** include, but are not limited to:
        - Slurred speech
        - Weaving or stumbling while walking
        - Exaggerated emotions
      - ii. Some signs of **incapacitation** include, but are not limited to:
        - Inability to speak coherently
        - Confusion on basic facts (day of the week, birthdate, etc.)
        - Inability to walk unassisted
        - Vomiting
        - Incontinence
        - Passing out
        - Blacking out
    - c) It is possible for a person who has been drinking to give consent, however, consent given by someone who has been drinking or using drugs must be clear, voluntary, and unambiguous. To give consent, a person must be able to make informed decisions free from undue influence, pressure, or coercion. If a person lacks the ability to act clearly, voluntarily, and unambiguously, or if a person is unable to make informed decisions free from undue influence, pressure, or coercion, they are incapacitated and cannot give consent.
    - d) In evaluating consent in cases of alleged incapacitation, the College looks for the common signs of incapacitation and asks two questions: (1) Did the respondent know that the complainant was incapacitated and, if not, (2) Should a sober, reasonable person in the same situation have known that the complainant was incapacitated? The College also considers that a person who is incapacitated may not be able to understand some or all of the following questions: "Do you know where you are?" "Do you know how you got here?" "Do you know what is happening?" "Do you know whom you are with?"
    - e) One should be cautious before engaging in sexual activity when either party has been drinking alcohol or using drugs. The introduction of alcohol or drugs may create ambiguity as to whether consent has been sought or given. If one has doubt about either party's level of intoxication, the safe thing to do is to forego all sexual activity.
    - f) The use of alcohol or drugs does not diminish one's responsibility to obtain consent and does not excuse prohibited conduct under this policy.
  4. Guidance on Consent
    - a) It is important not to make assumptions about whether a potential partner is consenting. In order to avoid confusion or ambiguity, participants are encouraged to talk with one another before engaging in sexual activity.
    - b) If confusion or ambiguity arises during sexual activity, participants are encouraged to stop and ensure that there is a mutual willingness to continue that sexual activity.

## B. Sexual and Gender-Based Harassment

1. **Sexual harassment** is any unwelcome sexual advances, request for sexual favors, or other verbal or physical conduct of a sexual nature when either quid pro quo or hostile environment harassment are present.
  - a) **Quid pro quo harassment** – Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person’s education, employment, living environment, or participation in a College program or activity; or:
  - b) **Hostile environment harassment**– Such conduct has the purpose or effect of (a) unreasonably interfering with an individual’s employment, academic performance, or participation in College programs or activities, or (b) creating a working, learning, program or activity environment that a reasonable person would find intimidating, hostile or offensive.
    - i. In determining whether sex or gender-based harassment has created a hostile environment, the College considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not enough, that the conduct was unwelcome to the individual who was harassed. The College will also need to find that a reasonable person in the same position would have perceived the conduct as undesirable or offensive enough to create or contribute to a hostile environment.
    - ii. To make the ultimate determination of whether a hostile environment exists, the College considers a variety of factors related to the severity, persistence, or pervasiveness of the sexual or gender-based harassment, including (a) the type, frequency, and duration of the conduct, (b) the identity and relationships of persons involved; (c) the number of individuals involved; (d) the location of the conduct and the context in which it occurred; and (e) the degree to which the conduct affected a person’s education, employment, living environment, or participation in a College program or activity. The more severe the sexual or gender-based harassment, the less need there is to show a repetitive series of incidents to find a hostile environment. Indeed, a single instance of sexual assault is sufficient to create a hostile environment. Likewise, a series of incidents may be sufficient even if one incident of sexual or gender-based harassment is not particularly severe.
2. **Gender-based harassment** is any unwelcome conduct of a nonsexual nature based on a person’s actual or perceived sex, including conduct based on sexual orientation, gender identity, gender expression, nonconformity with gender stereotypes, pregnancy, childbirth, or pregnancy-related conditions when hostile environment harassment as outlined in 1(b) above is present.

## C. Gender-Based Discrimination

**Gender-based discrimination** is conduct that denies or limits a person’s ability to benefit from or fully participate in educational programs or activities or employment opportunities because of their sex, gender, gender identity, gender expression, non-conformity with gender stereotypes, sexual orientation, pregnancy, childbirth, or pregnancy-related conditions excepting any treatment permitted or required by law. Discrimination occurs when the conduct:

1. Adversely affects a term or condition of an employee’s employment; a student’s education, or

- a third party's access to College programs or activities; or
2. Is used as the basis for or a factor in decisions affecting an employee's employment, a student's education, or a third party's access to College programs or activities.

#### D. Sexual Exploitation

**Sexual exploitation** is purposely or knowingly doing any of the following:

1. Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity;
2. Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., Skype or livestreaming of images);
3. Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person's intimate parts (including genitalia, groin, breasts, or buttocks) in a place where that person would have a reasonable expectation of privacy);
4. Recording or photographing private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts, or buttocks) without consent;
5. Disseminating or posting images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts, or buttocks) without consent; or
6. Prostituting another person.

#### E. Interpersonal Violence

**Interpersonal violence** is an umbrella term that includes dating violence, domestic violence, and stalking.

1. **Dating violence** is any act of physical violence or threatened act of physical violence that occurs between individuals who are involved or have been involved in an intimate or romantic relationship. The factors used in determining the existence of such a relationship include the length of the relationship, the type of relationship, and the frequency of the interaction between the persons involved in the relationship.
2. **Domestic violence** means any misdemeanor or felony crime of violence committed against a current or former spouse, current or former cohabitant, person similarly situated under domestic or family law, or anyone else protected under domestic or family violence law.
3. **Stalking** is a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear bodily injury or to experience substantial emotional distress. Course of conduct means two or more acts, including acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property. Substantial emotional distress means significant mental suffering or anguish. Stalking includes "cyber-stalking," a form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.

#### F. Retaliation

**Retaliation** means any adverse action taken against a person for making a good faith report of prohibited conduct or participating in any proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing, or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy.



All parties to the investigation are expected to maintain the confidentiality of the proceedings and refrain from retaliatory behaviors during the proceeding and after the matter is closed. Repeating allegations of prohibited conduct that have been investigated and closed may give rise to a claim of retaliation. Anyone found to have engaged in retaliatory behaviors may be subject to disciplinary sanctions under this policy.

Retaliation does not include good faith actions lawfully pursued in response to a report of prohibited conduct.

### **G. Complicity**

**Complicity** is any act taken with the purpose of aiding, facilitating, promoting, or encouraging the commission of an act of prohibited conduct by another person.

### **H. False Reporting**

**False reporting** is providing information in any report or proceeding under this policy that is intentionally false or made maliciously without regard for the truth. This provision does not apply to reports made in good faith, even if the facts alleged in the report are not substantiated by an investigation.

The allegation of prohibited conduct may have severe consequences and therefore the College takes very seriously the validity of reported information. All College community members are expected to provide truthful information in any report or proceeding under this policy. An individual who provides information during the course of an investigation that is later found to have been intentionally false or made maliciously without regard for the truth may be subject to disciplinary sanctions under this policy. False or malicious reporting may also violate state criminal statutes and civil defamation laws.

## **7. RIGHTS**

### **A. Proceedings Free of Conflicts of Interest and/or Bias**

Students, employees, and third parties involved in a report or investigation of prohibited conduct have the right to proceedings that are free of conflicts of interest and/or bias.

- A **conflict of interest** occurs where a party has multiple interests, and one of those interests could influence the party's relationship with another interest. Under this policy, actual or potential conflicts arise when financial, professional, academic, or personal considerations compromise, or have the appearance of compromising, a person's judgment and ability to perform their duties and responsibilities to act in a fair and impartial manner.
- **Bias** is an unfair prejudice in favor of or against one thing, person, or group compared with another.

### **B. Access, Information, and Assistance**

Students, employees, and third parties involved in a report or investigation of prohibited conduct also have the right to:

1. Access to resources and support: All parties will be provided access to on and off campus resources, and supportive measures will be made available as appropriate.
2. Be fully informed regarding process: Reporting parties, complainants, and respondents will be informed about the nature and procedures of the investigative process.
3. Investigation updates: Complainants and respondents will be updated as an investigation moves forward.
4. An advisor: Complainants and respondents will be allowed one advisor of their choice during the investigation process. The College will offer trained advisors to help the parties navigate the investigation process.
5. Notice at the conclusion of the investigation: Complainants and respondents will be notified in writing of the findings of fact, determination, sanctions, and appeal rights.
6. Notice of closing of investigation: All parties to the investigation, including reporting parties, complainants, respondents, and third parties, will be notified in writing that the matter has been investigated and closed.

## 8. DISCIPLINARY SANCTIONS

The policy prohibits a broad range of conduct, all of which is serious in nature. The propriety of any particular sanction is reviewed on an individual basis based on the unique facts and circumstances of the particular case. In keeping with the College's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, this policy provides the Title IX coordinator with wide latitude in the imposition of sanctions tailored to the facts and circumstances of the prohibited conduct, the impact of the conduct on the complainant and College community, and accountability for the respondent. The imposition of sanctions is designed to eliminate prohibited conduct, prevent its recurrence, and remedy its effects, while supporting the College's educational mission and legal obligations. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved, or so deleterious to the educational and/or employment environment that it requires severe sanctions.

Violations of this policy may result in sanctions and corrective actions, up to and including termination and/or expulsion, as set forth in more detail in applicable procedures under this policy.

## 9. VIOLATIONS OF CRIMINAL LAW

Behavior that violates this policy may also constitute a crime under state law. For example, the State of Utah criminalizes and punishes forms of sexual assault, domestic violence, stalking, and false reporting. This compilation of criminal statutes is not exhaustive but is offered to notify the College community that some forms of prohibited conduct may subject a person to criminal prosecution and punishment in addition to any sanctions under this policy. *Sexual Assault*: Unlawful Sexual Activity, Utah Code Ann. 76-5-401; Rape, Utah Code Ann. 76-5-402; Forcible Sodomy, Utah Code Ann. 76-5-403; Forcible Sexual Abuse, Utah Code Ann. 76-5-404; Aggravated Sexual Assault, Utah Code Ann. 76-5-405; *Domestic Violence*: Utah Code Ann. 77-36-1; *Stalking*: Utah Code Ann. 76-5-106.5; *Criminal Defamation*: Utah Code Ann. 76-9-404.

## 10. PREVENTION AND AWARENESS PROGRAMS

The College is committed to the prevention of prohibited conduct through regular and ongoing education and awareness programs. Incoming students and new employees receive primary prevention and awareness programming as part of their orientation.

## 11. TRAINING

Incoming students and newly hired employees are required to complete training within 30 days of joining the Nightingale community to understand their responsibilities under this policy. Thereafter, all students and employees are required to participate in mandatory training as determined by the responsible administrator to be appropriate or necessary.

## 12. RELATED POLICIES

1. Policy on Preventing and Addressing Discrimination and Harassment Based on Race, Color, National Origin, Religion, Disability, and Other Protected Categories
2. Policy on Consensual Relationships
3. Supporting Transgender Students and Employees Policy

## 13. HISTORY

<b>Date of Last Action</b>	<b>Action Taken</b>	<b>Authorizing Entity</b>
March, 2018	Policy Revision Adopted	Campus Safety Committee
March, 2017	Policy Revision Adopted	Campus Safety Committee
September, 2016	Final Policy Adopted	Campus Safety Committee
August 20 2016	Interim Policy Adopted	Campus Safety Committee

<b>POLICY TITLE</b>	<b>Procedures for Reports and Investigations Against Students Under the Title IX Policy – Appendix A</b>
Effective Date	November 1, 2017

## 1. INTRODUCTION

Nightingale (“College”) is committed to providing a safe and non-discriminatory environment for all members of the College community. The College prohibits sexual assault, sexual and gender- based harassment, gender-based discrimination, sexual exploitation, interpersonal violence (including dating violence, domestic violence, and stalking), complicity, false reporting, and retaliation (collectively “prohibited conduct”). These forms of prohibited conduct, which are defined in Section 6 of the [College’s Policy on Sexual Assault, Sexual and Gender-Based Harassment, Gender-Based Discrimination, and Interpersonal Violence](#) (“Title IX Policy”), are unlawful, undermine the character and purpose of the College, and will not be tolerated.

This appendix identifies the procedures the College follows when it receives a report alleging prohibited conduct by a student. The College uses these procedures to investigate and adjudicate any such allegations and to impose disciplinary sanctions against students found responsible for violating the policy.<sup>1</sup>

## 2. REPORTING

The College encourages anyone who experiences or becomes aware of an incident of prohibited conduct involving a student or employee to immediately report the incident to the College through the following reporting options:<sup>2</sup>

- By contacting the College’s Title IX coordinator or a deputy Title IX coordinator by telephone, email, or in person during regular office hours at their respective locations, email addresses, and/or phone numbers:

**College Recourses:**

The Title IX coordinator and deputy Title IX coordinators can be contacted by telephone, email, or

Teams/WebEx meeting:

**David Lopez**  
**Manager/Title IX Coordinator, Learner Support Services**  
**801-689-2160**  
[dlopez@nightingale.edu](mailto:dlopez@nightingale.edu)

A reporting party may choose to make a report to the College to pursue resolution under these procedures, may also choose to make a report to law enforcement, or do neither. A reporting party may pursue internal resolution and criminal action at the same time. A reporting party who wishes to pursue criminal action should contact law enforcement directly:

- 911 (for emergencies)
- Salt Lake Police Department (801) 799-3000

The College also offers access and referrals to confidential resources for individuals who are unsure about whether to report prohibited conduct or are seeking trauma-informed counseling or other emotional support in addition to (or without) making a report to the College.

<b>CONFIDENTIAL RESOURCES</b>		
Resource	Telephone Number	Notes
Rape Recovery Center	(801) 467-7273	2035 South 1300 East
State-wide crisis line	(888) 421-1100	24-hour crisis line
National Sexual Assault Hotline	(800) 656-4673	24-hour hotline
Family Justice Center (YWCA)	(801) 537-8600	24-hour crisis line 310 East 300 South Second Floor Salt Lake City, UT 84111
Higher Ed EAP Program	<b>(800) 252-4555</b>	Employee Assistance Program

A broad range of information, assistance, and supportive measures are available to Reporting Parties, complainants, and respondents as enumerated in Section 7 (B) below.

### **3. INFORMATION PROVIDED TO REPORTING PARTY**

Upon receipt of a report of prohibited conduct, the Title IX coordinator will provide the following information to the reporting party as may be suggested by the circumstances:

- The option to seek medical treatment and the importance of obtaining and preserving forensic and other evidence;
- The right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
- College and community resources, the right to seek appropriate and available supportive and interim measures as described in Section 7(B), and how to request those resources and measures;
- The right to seek an investigation under these procedures;
- The right to an advisor if an investigation is pursued, and the availability of trained staff and faculty to serve as an advisor; and
- The College’s prohibition against retaliation and that the College will take prompt action in response to any act of retaliation.

### **4. MEETING WITH REPORTING PARTY AND INITIAL ASSESSMENT**

Upon receiving a report of prohibited conduct, the Title IX coordinator will offer to meet with the reporting party in person or by phone to discuss the report. At this meeting the items in Section III above will be re-addressed, and the Title IX coordinator will ensure that the reporting party receives or has received a written explanation of all available resources and options. The Title IX coordinator will assess or ascertain the following at this meeting:

- The reporting party’s safety and well-being and any necessary supportive measures;

- B. Any concerns or barriers the reporting party has about participating in the College investigation, including concerns regarding disclosure of their identity;
- C. The general nature and circumstances of the report, including the name of the respondent, other parties involved, and any other party with knowledge of the reported incident;
- D. The ages of the reporting party and the respondent;
- E. Whether the reported information and any other available information provides a rational basis for concluding that there is a threat to the health or safety of the complainant or to any other member of the College community, as set forth in the Section 6.

At the meeting with the reporting party, the Title IX coordinator will not request that the reporting party recount the incident(s). Rather, they will only solicit information necessary to determine whether the reported prohibited conduct, if true, would be a violation of the policy.

## **5. REPORTING TO CLERY OFFICER**

Within 24 hours, or as soon as practicable, the Title IX coordinator will communicate the report to the College employee responsible for reporting under the Clery Act (“Clery officer”). The Clery officer will determine whether the report triggers any Clery Act obligations, including entry of the report in the daily crime log and/or issuance of a timely warning, and will take steps to meet those obligations.

## **6. HEALTH AND SAFETY THREAT ASSESSMENT**

If the Title IX coordinator determines that there is a rational basis for concluding that the respondent poses a threat to the health or safety of the reporting party or the College community, the Title IX coordinator will convene a meeting of the Campus Safety Committee (“CSC”). CSC will consider the following risk factors when determining whether the respondent poses a threat to the health or safety of the reporting party or to any other member of the College community:

- A. The increased risk that the alleged perpetrator will commit additional acts of sexual or interpersonal violence, such as:
  - 1. whether there have been other sexual or interpersonal violence complaints about the same alleged perpetrator;
  - 2. whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence; or
  - 3. whether the alleged perpetrator threatened further sexual or interpersonal violence against the reported victim/survivor or others.
- B. Whether the sexual or interpersonal violence was committed by multiple perpetrators;
- C. Whether the sexual or interpersonal violence was committed by deceit or manipulation;
- D. Whether the sexual or interpersonal violence was perpetrated with a weapon;
- E. Whether the reported victim/survivor is a minor;
- F. Whether the reported victim/survivor was incapacitated;
- G. Whether the College possesses other means to obtain relevant evidence of the sexual or interpersonal violence (e.g., security cameras or personnel, physical evidence); and
- H. Whether the reporting party’s report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

## 7. COLLEGE ACTIONS FOLLOWING HEALTH AND SAFETY THREAT

### A. Timely Warnings

Following the threat assessment, the Clery officer will determine whether the respondent or any other individual identified in the report of prohibited conduct poses a serious and ongoing threat to the College community. If appropriate, the College will issue a timely warning in accordance with the Clery Act Timely Warning Policy.

### B. Supportive and Interim Measures

When a student or employee reports to the College that they have been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the Title IX coordinator will ensure students and employees receive written notification of all their rights and options, regardless of whether they choose to report prohibited conduct to the College or to the police.

The Title IX coordinator will implement whatever reasonable supportive and/or interim measures they deem appropriate, with or without the request of the reporting party, to ensure the safety and well-being of the reporting party and the broader College community. These measures may include the following:

- No contact orders limiting or preventing communication
- Safety planning
- Limiting access to facilities, activities, or programs
- No trespass orders
- Academic schedule changes
- Alternate course completion options
- Arranging for incompletes or withdrawal from a course or from campus without penalty
- Leaves of absence
- Changing work schedules, job assignments, or work locations
- Interim suspension
- Referrals to counseling services and other health providers on and off campus
- Referrals to community and national organizations and resources
- Rescheduling an exam or extending assignment deadlines
- Access to academic supports, such as tutoring
- Preserving eligibility for academic, or other scholarships, and financial aid,

Supportive measures are available to the reporting party before an investigation has been initiated and will be designed such that they have no impact on the respondent. Interim measures are available to the complainant and respondent once an investigation has been initiated until a final determination on a policy violation has been made, including after the parties have exercised their rights to appeal as set forth below. Interim measures will be designed such that they have minimal impact on the respondent unless the respondent poses a safety threat to the complainant or other members of the College community.

### C. Determination Regarding Whether Investigation Pursued

#### 1. Request for Investigation

When a reporting party requests an investigation in writing, the Title IX coordinator will consider the information provided by the reporting party to determine the course of the investigation including, in their discretion, whether the allegations meet the threshold of a policy violation and whether a formal investigation as described in Section VIII will be pursued.

## 2. Request for Anonymity, No Investigation, No Discipline

A reporting party may request that personally-identifying information not be shared with the respondent, that no investigation be pursued, and/or that no disciplinary action be taken. The College will seek to honor the reporting party's request(s) if it is possible to do so while also protecting the health and safety of the complainant and the College community. The Title IX coordinator will consider the following factors in evaluating such request(s): (i) the totality of the known circumstances; (ii) the presence of any risk factors, as described in Section 6 of these procedures; (iii) the potential impact of such action(s) on the reporting party and respondent; (iv) any evidence showing that the respondent made statements of admission or otherwise accepted responsibility for the prohibited conduct; (v) the existence of any independent information or evidence regarding the prohibited conduct; and (vi) any other available and relevant information.

- *Determination the request can be honored* – Where the Title IX coordinator determines that the request(s) can be honored, they may nevertheless take steps designed to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the reporting party and the College community, including to offer supportive measures to the reporting party, to provide targeted training or prevention programs, and/or to provide or impose other remedies tailored to the circumstances.
- *Determination the request cannot be honored* – Where the Title IX coordinator determines that a reporting party's request(s) cannot be honored, such as where to do so would impede the College's ability to ensure the health and safety of the College community, the Title IX coordinator will take appropriate actions as may be suggested by the circumstances, including initiating an investigation under these procedures and/or arranging, imposing, or extending supportive or interim measures.
- *Determination to proceed with investigation* – Where the Title IX coordinator determines that the College must proceed with an investigation despite a reporting party's request to the contrary, the College will make reasonable efforts to protect the privacy of the complainant. However, as part of the investigation, the College may be required to speak with the respondent and others who may have relevant information, in which case the reporting party's identity may have to be disclosed in order for the respondent to have an opportunity to fully defend the accusations.
- *Reporting party determination not to participate* – Where a reporting party declines to participate in an investigation, the College's ability to meaningfully investigate and respond to a report may be limited. In such cases, the Title IX coordinator may pursue the report if it is possible to do so without the reporting party's participation in the investigation (e.g., where there is other relevant evidence of the prohibited conduct such as recordings from security cameras, corroborating reports from other witnesses, physical evidence, or any evidence showing that the respondent made statements of admission or otherwise accepted responsibility for the prohibited conduct). In the absence of such other evidence, however, the College will only be able to respond to the report in limited and



general ways (e.g., through the provision of supportive measures). Although a report may be re-opened and investigated at any time, the College will only be able to pursue sanctions where the respondent is a current employee, student, or third party affiliated with the College.

#### D. Notice to Reporting Party and Respondent of College Actions

The Title IX coordinator will promptly inform the reporting party of any action(s) undertaken by the College to respond to a health or safety threat to the reporting party or the College community, including the decision to proceed with an investigation. The Title IX coordinator also will promptly inform the respondent of any action(s) (including any interim measures) that will directly impact the respondent and provide an opportunity for the respondent to respond to such action(s). The Title IX coordinator retains the discretion to impose and/or modify any supportive or interim measures based on all available information. Interim measures will remain in effect until a final determination on a policy violation has been made, including after the parties have had the opportunity to exercise their right to appeal as set forth in these procedures. A reporting party, complainant, or respondent may challenge supportive or interim measures or other actions, or failure to impose supportive or interim measures or take other actions, by contacting the Title IX coordinator to address any concerns.

#### E. Documentation of Initial Assessment and Determination Regarding Investigation

The initial report, the health and safety threat assessment, and the determinations of the Title IX coordinator regarding whether an investigation is pursued will be documented and retained by the College in accordance with the College's record retention policy.

## 8. INVESTIGATION

An investigation commences when the Title IX coordinator determines that information provided by a reporting party meets the threshold of a policy violation or the College initiates an investigation based on a health and safety threat assessment as described in Section 6. There is no time limit for requesting an investigation.

#### A. Investigation of Other Forms of Discrimination or Harassment

If a report of prohibited conduct also implicates other forms of discriminatory and/or harassing conduct prohibited by the Equal Opportunity Policy, the Title IX coordinator will evaluate all reported allegations to determine whether the alleged prohibited conduct and the alleged Equal Opportunity Policy violation(s) may be appropriately investigated together without unduly delaying the resolution of the report of prohibited conduct. Where the Title IX coordinator determines that a single investigation is appropriate, the investigation will be conducted in accordance with these procedures.

#### B. Assignment to Investigators

After assessing any actual or perceived conflicts of interest and/or bias, the Title IX coordinator will designate one or more internal investigators or an external investigator to conduct a prompt, thorough, fair, and impartial investigation. All investigators will receive annual training on issues related to sexual assault, sexual and gender-based harassment, sex discrimination, dating violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial and that protects the safety of complainants, respondents, and the College community.

while promoting accountability.

### C. **Meeting with Respondent**

After an investigation is initiated, the Title IX coordinator will meet with the respondent to explain the investigation process, advise them of and explain any interim measures in place, and discuss interim measures and resources available to the respondent. At the meeting, the Title IX coordinator will provide the respondent a written Notice of Investigation and arrange for any reasonable interim measures the respondent requests.

### D. **Notice of Investigation**

The Title IX coordinator will notify the complainant and the respondent, in writing, of the commencement of an investigation. Such notice will (1) identify the complainant and the respondent; (2) specify the date, time (if known), location, and nature of the alleged prohibited conduct; (3) identify potential policy violation(s); (4) identify the investigator(s); (5) include information about the parties' respective expectations under the policy and these procedures; (6) explain the prohibition against retaliation; (7) instruct the parties to preserve any potentially relevant evidence in any format; (8) inform the parties how to challenge participation by the investigator on the basis of bias or conflict of interest; and (9) provide a copy of the policy and these procedures. If additional prohibited conduct is alleged during the course of an investigation, a new Notice of Investigation will be issued.

### E. **Investigation Process**

#### 1. Overview

During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed by

the investigator to each other or to any witness. The investigator will exercise discretion in establishing the scope of the investigation. The investigator will notify and seek to meet separately with the complainant, the respondent, and appropriate witnesses and will gather other relevant and available evidence and information, including, without limitation, electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email, and social media sites), and photographs (including those stored on computers and smartphones). The Title IX coordinator will meet with the investigators periodically to ensure that the investigation process is completed in accordance with applicable regulations and guidance and these procedures.

#### 2. Review of Interview Notes

The complainant and respondent will have the opportunity to meet with the investigator and review and comment on the investigator's notes from their respective interviews but will not have access to the notes from the other party's or witnesses' interviews. The investigators may or may not incorporate the comments into their investigation summary.

#### 3. Advisors

During the investigation, the complainant and respondent have the right to choose and consult with an advisor. The advisor may be any person, including an attorney, who is not otherwise a party or witness involved in the investigation, and whose job duties, under the

circumstances, do not create a conflict with the advisory role. The parties may be accompanied by their respective advisors at any meeting or proceeding related to the investigation under these procedures. While the advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings. The College offers trained advisors to help the parties navigate the investigation process.

4. Coordination with Law Enforcement

The Title IX coordinator will contact any law enforcement agency that is conducting its own investigation to inform that agency that a College investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the College in its investigation. At the request of law enforcement, the Title IX coordinator may delay the College investigation temporarily while an external law enforcement agency is gathering evidence. The Title IX coordinator will cause the investigation to promptly resume when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation.

5. Cooperation and Participation

Students are required to cooperate and participate fully in any Title IX investigation and/or request for information by the Title IX coordinator.

6. Timeframe for Completion of Investigation; Extension for Good Cause

Typically, the period from commencement of an investigation through delivery of the letters of determination to the parties will not exceed sixty (60) calendar days. The investigation commences on the date the respondent receives the Notice of Investigation. This 60-day timeframe may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation; to comply with a request by external law enforcement for temporary delay to gather evidence for a criminal investigation; to accommodate the availability of witnesses and College faculty and staff; to account for College breaks or vacations; to account for complexities of a case including the number of witnesses and volume of information provided by the parties; to account for the failure of the parties to respond in a timely manner to requests for information or meetings; or for other legitimate reasons. The Title IX coordinator will notify the parties in writing of any extension of this timeframe and the reason for such extension.

7. Reopening a Closed Investigation

Where a complainant has requested that the College close an investigation and the College has done so, a complainant may request that the investigation be reopened provided that a determination on a policy violation has not been made.

8. Site Visit(s)

The investigator may visit relevant sites or locations and record observations through written, photographic, or other means.

9. Expert Consultation(s)

The investigators may consult medical, forensic, technological, or other experts when

expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation.

#### 10. Findings of Fact

The investigation is a neutral fact-gathering process conducted by investigators who find facts; investigators do not make determinations of policy violations. Following the fact-gathering process, the investigators will make findings of fact after

consideration of the evidence, credibility of the witnesses, and any other available information including the following:

- a. *Prior or subsequent conduct* – The investigator may consider evidence of prior or subsequent conduct of either party in determining pattern, knowledge, intent, or motive. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar prohibited conduct.
- b. *Relevance* – The investigator has the discretion to determine the relevance of any proffered evidence and to include or exclude certain types of evidence. In general, the investigator will not consider statements of personal opinion or statements as to any party's general reputation for any character trait. Rather, investigators will rely on direct observations and reasonable inferences from the facts.
- c. *Prior sexual history* – The investigator will never use the sexual history of a complainant or respondent as evidence of character or reputation.

#### 11. Investigation Summary

After the investigators complete their investigation, they will prepare and submit to the Title IX coordinator an investigation summary which will include the names and dates of meetings with complainant, respondent, and witnesses; a summary of evidence; a determination of the credibility of the witnesses and parties; and a clear and concise statement setting forth their findings of fact. Any relevant documentation will be attached to the investigation summary.

### **F. Determination of Policy Violation; Standard of Review**

Following a review of the investigation summary and consultation with the investigators, the Title IX coordinator will make determinations of policy violations. Using the preponderance of evidence standard, the Title IX coordinator will determine whether it is more likely than not that the respondent engaged in prohibited conduct in violation of the policy.

### **G. Determination of Sanctions and Remedial Measures**

#### 1. Determination of Sanctions

In the event the Title IX coordinator determines by a preponderance of the evidence that the respondent engaged in prohibited conduct in violation of the policy, the Title IX coordinator will determine appropriate sanctions. In determining appropriate sanctions for students, the Title IX coordinator may consult with the Director of Nursing Education.

The Title IX coordinator will consider the following factors in determining appropriate sanctions:

- The severity, persistence, or pervasiveness of the prohibited conduct;

- Whether the prohibited conduct is violent in nature and, if so, whether weapons were involved;
- The impact of the prohibited conduct on the complainant including, by way of example, their ability to participate effectively in College programs, and activities;
- The impact or implications of the prohibited conduct within the College community with reference to the maintenance of a safe, nondiscriminatory and respectful environment conducive to learning, working, and living;
- Prior misconduct by the respondent known to the College, as determined by the respondent’s relevant prior disciplinary history at the College or elsewhere, and any known criminal convictions;
- Whether the respondent has accepted responsibility for the prohibited conduct;
- The sanctions that have been levied for similar prohibited conduct under similar circumstances in the past; and
- Any other mitigating, aggravating, or compelling factors.

2. Available Sanctions

Violations of this policy may result in sanctions and corrective actions, which can include, but are not limited to the following:

<b>DISCIPLINARY SANCTIONS FOR STUDENTS</b>	
Verbal warning	No trespass order issued by SLPD
Written warning	No contact order
Advisory letter	Loss of privileges
Monitoring	Degree revocation
Required training or education	Withholding diploma
Probation	Expulsion
Transcript notation regarding non-academic suspension/expulsion	Revocation of admissions offer
Disciplinary suspension	Community service
Campus access restrictions	

3. Remedial Measures

The Title IX coordinator will determine whether to impose any remedial measures for the protection or well-being of either party, including the extension of any interim measures in place during the investigation. This determination will include the time period for which the remedial measures will remain in effect. Upon request, the Title IX coordinator will consider additional remedial measures. If the Title IX coordinator determines that interim measures will not be continued as remedial measures, they may advise the party of the option of requesting an ADA accommodation through student disability services or the human resources department if applicable under the circumstances.

**H. Notice of Determination and Sanctions**

1. Sanctions

If respondent is found responsible, sanctions will be set forth in the determination letters in the following manner:

- If the respondent has engaged in prohibited conduct, the determination letter to respondent will set forth all sanctions levied against them.

- If the prohibited conduct would not constitute a crime of violence under Utah or federal law, complainant’s letter will include only those sanctions that would directly impact them.
- If the prohibited conduct would constitute a crime of violence under Utah or federal law, the complainant’s letter will include all sanctions levied against respondent.

2. Determination Letters

The Title IX coordinator will draft separate but similar letters of determination for complainant and respondent that will set forth the findings of fact from the investigation; whether the respondent is responsible or not responsible for any policy violations; what sanctions, if any, will be imposed; and remedial measures, if any, that will be enacted, together with the rationale for the policy determination and sanctions. The determination letters will also advise the complainant and respondent of their right to a review by an appeal panel in accordance with these procedures. The Title IX coordinator will notify the complainant and respondent that their determination letter is available for review in the Title IX coordinator’s office.

3. Meeting with Parties to Review Determination

At a mutually agreeable time, the Title IX coordinator will meet with each party to review their determination letter and will provide a copy of their determination letter, discuss any sanctions and remedial measures that will be put into place, answer any questions regarding the investigation or determination, and notify them of their right to have the determination reviewed by an appeal panel.

4. Sanctions Effective

Sanctions will be implemented upon the expiration of five (5) school days unless a timely appeal has been filed.

**9. APPEAL OF DETERMINATION**

A. General Procedures

1. Grounds

Within five (5) school days of receiving the Determination Letter, the complainant or the respondent may appeal the determination in writing. The grounds for appeal are the following:

- *Procedural Error* – The investigation was not conducted in accordance with these procedures and this resulted in substantial error in the determination of whether there was a policy violation.
- *Bias* – The investigators conducted the investigation, or the Title IX coordinator reached a determination in a biased or partial manner.
- *New Evidence* – There is evidence which was available at the time of the determination, but unknown to the Title IX coordinator, and not in the possession of the party providing the new evidence that would substantially affect the determination. The Title IX coordinator will determine the appropriate course of action depending on the new

evidence submitted.

## 2. Appealing Party

To appeal a determination, the appealing party must submit a written statement citing the grounds for appeal and providing an explanation of their position to the Title IX coordinator or a deputy Title IX coordinator. Under circumstances alleging that the Title IX coordinator reached a determination in a biased or partial manner, a deputy coordinator will be assigned to serve as the acting Title IX coordinator for purposes of the appeal.

## 3. Title IX Coordinator Duties Regarding Appeal

Upon receipt of a notice of appeal, the Title IX coordinator will:

- Inform the party who has not appealed, in writing, of the appeal;
- Appoint a panel of three trained staff or faculty members without conflicts of interest to serve as members of the appeal panel;
- Provide the appeal panel the investigator's interview notes; the investigation summary, including any documentary evidence; and the determination letters.

In cases alleging bias in determination, a person other than the Title IX coordinator who made the determination will be designated to manage all aspects of the appeal.

## 4. Appeal Panel

Within ten (10) school days of their appointment, the appeal panel will meet at a mutually agreeable time to consider the information provided to them and to determine whether the determination should be upheld. The appeal panel has the discretion to speak to the complainant, respondent, witnesses, investigators, or Title IX coordinator in reaching its conclusion but is not required to do so. The appeal panel will not review any other written evidence or documentation besides that provided by the Title IX coordinator.

## B. Decision of Appeal Panel and Further Appeals

### 1. Affirmation of Determination

If the appeal panel determines by a majority vote that there was neither bias nor failure of process, it will affirm the determination and submit its affirmation letter to the Title IX coordinator. The determination will be final and not subject to further appeal. The Title IX coordinator will provide the affirmation letter to the parties within five school days.

### 2. Procedural Error

If the appeal panel decides by a majority vote that the investigation was not conducted in accordance with these procedures, it will submit a letter to the Title IX coordinator setting forth specific procedural error(s). The Title IX coordinator will direct the investigators to re-open the investigation and re-examine the evidence in light of the identified procedural error(s) and provide a revised investigation summary, if appropriate. The Title IX coordinator may assign new investigators to examine the evidence if appropriate under the circumstances. The Title IX coordinator will issue new determination letters and the determination may be appealed in accordance with these procedures by the party who did not file the original appeal.

### 3. Bias

- *Bias in Investigation* – If the appeal panel decides by a majority vote that the investigation was conducted in a biased or partial manner, it will submit a letter to the Title IX coordinator setting forth the specific ways in which the investigation was biased or partial. The Title IX coordinator will take such action as necessary to correct the bias or partiality, which may include assigning a new investigator(s) and/or re-opening the investigation. Once any additional fact finding is complete and a revised investigation summary is received, if appropriate, the Title IX

coordinator will issue a new determination letter and the determination may be appealed in accordance with these procedures.

- *Bias in Determination* – If the appeal panel decides by a majority vote that the Title IX coordinator was biased or partial in reaching the determination, it will submit a letter to the acting Title IX coordinator setting forth the specific ways in which, in its opinion, the determination was biased or partial and requesting a review of the determination. The acting Title IX coordinator will review all documentation provided to the appeal panel and issue a new determination letter and the determination may be appealed in accordance with these procedures.

### 4. No Further Appeal

There is no right of appeal beyond the appeal panel. Any concerns with the adequacy of an investigation can be addressed to the Department of Education, Office for Civil Rights, at [OCR@ed.gov](mailto:OCR@ed.gov) or (800) 421-3481.

## 10. CLOSURE OF INVESTIGATION FILE

### A. Notice of Closure

#### 1. Notice to Parties

Within five (5) school days of the conclusion of the investigation (including exhaustion of all appeals), the Title IX coordinator will provide the complainant, respondent, reporting party, and witnesses written notification that the investigation has been closed and that retaliation is prohibited conduct.

#### 2. Notice to Director of Nursing Education

Within five (5) school days of the conclusion of the investigation (including exhaustion of all appeals), the Title IX coordinator will provide the Director of Nursing Education a copy of the respondent's determination letter and a written notification that the investigation has been closed.

### B. Records Retention

The College will retain all records relating to a report of prohibited conduct, including investigation files and personnel record documentation of disciplinary or other personnel actions, in accordance with the College's record retention policy



<b>POLICY TITLE</b>	<b>Procedures for Reports and Investigations Against Employees Under the Title IX Policy – Appendix B</b>
<b>Effective Date</b>	<b>March 12, 2018</b>

## 1. INTRODUCTION

Nightingale (“College”) is committed to providing a safe and non-discriminatory environment for all members of the College community. The College prohibits sexual assault, sexual and gender-based harassment, gender-based discrimination, sexual exploitation, interpersonal violence (including dating violence, domestic violence, and stalking), complicity, false reporting, and retaliation (collectively “prohibited conduct”). These forms of prohibited conduct, which are defined in Section 6 of the College’s Policy on Sexual Assault, Sexual and Gender-Based Harassment, Gender-Based Discrimination, and Interpersonal Violence (“Title IX Policy”), are unlawful, undermine the character and purpose of the College, and will not be tolerated.

This appendix identifies the procedures the College follows when it receives a report alleging prohibited conduct by an employee. The College uses these procedures to investigate and adjudicate any such allegations and to impose disciplinary sanctions against employees found responsible for violating the policy.<sup>1</sup>

## 2. REPORTING

The College encourages anyone who experiences or becomes aware of an incident of prohibited conduct involving a student or employee to immediately report the incident to the College through the following reporting options:<sup>2</sup>

- By contacting the College’s Title IX coordinator or a deputy Title IX coordinator by telephone, email, or in person during regular office hours at their respective locations, email addresses, and/or phone numbers:

David Lopez  
 Manager/Title IX Coordinator, Learner Support Services  
 801-689-2160  
[dlopez@nightingale.edu](mailto:dlopez@nightingale.edu)

<sup>1</sup> These procedures should be read in conjunction with the Title IX Policy. Certain terms used and not otherwise defined in these procedures are defined in the policy.

<sup>2</sup> Certain College employees, referred to as responsible employees, are required to report to the Title IX coordinator all information disclosed to them about an incident of prohibited conduct. See Title IX Policy at Section IV(C).

- Online at [nightingale.edu/about/resources/Title-IX](http://nightingale.edu/about/resources/Title-IX). A report may be made anonymously. However, if any information identifying the reporting party or respondent is given, the report will no longer be considered anonymous and the College will proceed accordingly; or

A reporting party may choose to make a report to the College to pursue resolution under these procedures, may also choose to make a report to law enforcement, or do neither. A reporting party may

pursue internal resolution and criminal action at the same time. A reporting party who wishes to pursue criminal action should contact law enforcement directly:

- 911 (for emergencies)
- Salt Lake Police Department (801) 799-3000

The College also offers access and referrals to confidential resources for individuals who are unsure about whether to report prohibited conduct or are seeking trauma-informed counseling or other emotional support in addition to (or without) making a report to the College.

<b>CONFIDENTIAL RESOURCES</b>		
Resource	Telephone Number	Notes
Rape Recovery Center	(801) 467-7273	2035 South 1300 East
State-wide crisis line	(888) 421-1100	24-hour crisis line
National Sexual Assault Hotline	(800) 656-4673	24-hour hotline
Family Justice Center (YWCA)	(801) 537-8600	24-hour crisis line 310 East 300 South Second Floor Salt Lake City, UT 84111
Higher Ed EAP Program	<b>(800) 252-4555</b>	Employee Assistance Program

A broad range of information, assistance, and supportive measures are available to reporting parties, complainants, and respondents as enumerated in Section 7 (B) below.

### **3. INFORMATION PROVIDED TO REPORTING PARTY**

Upon receipt of a report of prohibited conduct, the Title IX coordinator will provide the following information to the reporting party as may be suggested by the circumstances:

- The option to seek medical treatment and the importance of obtaining and preserving forensic and other evidence;
- The right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
- College and community resources, the right to seek appropriate and available supportive and interim measures as described in Section 7(B), and how to request those resources and measures;
- The right to seek an investigation under these procedures;
- The right to an advisor if an investigation is pursued, and the availability of trained staff and faculty to serve as an advisor; and
- The College’s prohibition against retaliation and that the College will take prompt action in response to any act of retaliation.

### **4. MEETING WITH REPORTING PARTY AND INITIAL ASSESSMENT**

Upon receiving a report of prohibited conduct, the Title IX coordinator will offer to meet with the reporting party in person or by phone to discuss the report. At this meeting the items in Section III above will be re-addressed, and the Title IX coordinator will ensure that the reporting party receives or has

received a written explanation of all available resources and options. The Title IX coordinator will assess or ascertain the following at this meeting:

- A. The reporting party's safety and well-being and any necessary supportive measures;
- B. Any concerns or barriers the reporting party has about participating in a college investigation, including concerns regarding disclosure of their identity;
- C. The general nature and circumstances of the report, including the name of the respondent, other parties involved, and any other party with knowledge of the reported incident;
- D. The ages of the reporting party and the respondent;
- E. Whether the reported information and any other available information provides a rational basis for concluding that there is a threat to the health or safety of the complainant or to any other member of the College community, as set forth in the Section 6.

At the meeting with the reporting party, the Title IX coordinator will not request that the reporting party recount the incident(s). Rather, they will only solicit information necessary to determine whether the reported prohibited conduct, if true, would be a violation of the policy.

## 5. REPORTING TO CLERY OFFICER

Within 24 hours or as soon as practicable, the Title IX coordinator will communicate the report to the College employee responsible for reporting under the Clery Act ("**Clery Officer**"). The Clery Officer will determine whether the report triggers any Clery Act obligations, including entry of the report in the daily crime log and/or issuance of a timely warning, and will take steps to meet those obligations.

## 6. HEALTH AND SAFETY THREAT ASSESSMENT

If the Title IX coordinator determines that there is a rational basis for concluding that the respondent poses a threat to the health or safety of the reporting party or the College community, the Title IX coordinator will convene a meeting of the Threat Assessment and Behavioral Intervention Committee ("**TABIC**"). TABIC will consider the following risk factors when determining whether the respondent poses a threat to the health or safety of the reporting party or to any other member of the College community:

- A. The increased risk that the alleged perpetrator will commit additional acts of sexual or interpersonal violence, such as:
  - 1. whether there have been other sexual or interpersonal violence complaints about the same alleged perpetrator;
  - 2. whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence; or
  - 3. whether the alleged perpetrator threatened further sexual or interpersonal violence against the reported victim/survivor or others.
- B. Whether the sexual or interpersonal violence was committed by multiple perpetrators;
- C. Whether the sexual or interpersonal violence was committed by deceit or manipulation;
- D. Whether the sexual or interpersonal violence was perpetrated with a weapon;
- E. Whether the reported victim/survivor is a minor;
- F. Whether the reported victim/survivor was incapacitated;
- G. Whether the College possesses other means to obtain relevant evidence of the sexual or interpersonal violence (e.g., security cameras or personnel, physical evidence); and
- H. Whether the reporting party's report reveals a pattern of perpetration (e.g., via illicit use of drugs

or alcohol) at a given location or by a particular group.

## **7. COLLEGE ACTIONS FOLLOWING HEALTH AND SAFETY THREAT ASSESSMENTS**

### **A. Timely Warnings**

Following the threat assessment, the Clery officer will determine whether the respondent or any other individual identified in the report of prohibited conduct poses a serious and ongoing threat to the College community. If appropriate, the College will issue a timely warning in accordance with the **Clery Act Timely Warning Policy**.

### **B. Supportive and Interim Measures**

When a student or employee reports to the College that they have been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the Title IX coordinator will ensure students and employees receive written notification of all their rights and options, regardless of whether they choose to report prohibited conduct to the College or to the police.

The Title IX coordinator will implement whatever reasonable supportive and/or interim measures they deem appropriate, with or without the request of the reporting party, to ensure the safety and well-being of the reporting party and the broader College community. These measures may include the following:

- No contact orders limiting or preventing communication
- Safety planning
- Limiting access to facilities, activities, or programs
- No trespass orders
- Academic schedule changes
- Alternate course completion options
- Arranging for incompletes or withdrawal from a course or from campus without penalty
- Leaves of absence
- Changing work schedules, job assignments, or work locations
- Interim suspension
- Referrals to counseling services and other health providers on and off campus
- Referrals to community and national organizations and resources
- Rescheduling an exam or extending assignment deadlines
- Access to academic supports, such as tutoring
- Preserving eligibility for academic, athletic, or other scholarships, financial aid, internships, study abroad, or foreign student visas

Supportive measures are available to the reporting party before an investigation has been initiated and will be designed such that they have no impact on the respondent. Interim measures are available to the complainant and respondent once an investigation has been initiated until a final determination

on a policy violation has been made, including after the parties have exercised their rights to appeal as set forth below. Interim measures will be designed such that they have minimal impact on the respondent unless the respondent poses a safety threat to the complainant or other members of the College community.

### **C. Determination Regarding Whether Investigation Pursued**

#### **1. Request for Investigation**

When a reporting party requests an investigation in writing, the Title IX coordinator will consider the information provided by the reporting party to determine the course of the investigation including, in their discretion, whether the allegations meet the threshold of a policy violation and whether a formal investigation as described in Section VIII will be pursued.

#### **2. Request for Anonymity, No Investigation, No Discipline**

A reporting party may request that personally-identifying information not be shared with the respondent, that no investigation be pursued, and/or that no disciplinary action be taken. The College will seek to honor the reporting party's request(s) if it is possible to do so while also protecting the health and safety of the complainant and the College community. The Title IX coordinator will consider the following factors in evaluating such request(s):

(i) the totality of the known circumstances; (ii) the presence of any risk factors, as described in Section 6 of these procedures; (iii) the potential impact of such action(s) on the reporting party and respondent; (iv) any evidence showing that the respondent made statements of admission or otherwise accepted responsibility for the prohibited conduct; (v) the existence of any independent information or evidence regarding the prohibited conduct; and (vi) any other available and relevant information.

- *Determination the request can be honored* – Where the Title IX coordinator determines that the request(s) can be honored, they may nevertheless take steps designed to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the reporting party and the College community including to offer supportive measures to the reporting party, to provide targeted training or prevention programs, and/or to provide or impose other remedies tailored to the circumstances.
- *Determination the request cannot be honored* – Where the Title IX coordinator determines that a reporting party's request(s) cannot be honored, such as where to do so would impede the College's ability to ensure the health and safety of the College community, the Title IX coordinator will take appropriate actions as may be suggested by the circumstances including initiating an investigation under these procedures and/or arranging, imposing, or extending supportive or interim measures.
- *Determination to proceed with investigation* – Where the Title IX coordinator determines that the College must proceed with an investigation despite a reporting party's request to the contrary, the College will make reasonable efforts to protect the privacy of the complainant. However, as part of the investigation, the College may be required to speak with the respondent and others who may have relevant information, in which case the reporting party's identity may have to be disclosed in order for the respondent to have an opportunity to fully defend the accusations.

- *Reporting party determination not to participate* – Where a reporting party declines to participate in an investigation, the College’s ability to meaningfully investigate and respond to a report may be limited. In such cases, the Title IX coordinator may pursue the report if it is possible to do so without the reporting party’s participation in the

investigation (e.g., where there is other relevant evidence of the prohibited conduct such as recordings from security cameras, corroborating reports from other witnesses, physical evidence, or any evidence showing that the respondent made statements of admission or otherwise accepted responsibility for the prohibited conduct). In the absence of such other evidence, however, the College will only be able to respond to the report in limited and general ways (e.g., through the provision of supportive measures). Although a report may be re-opened and investigated at any time, the College will only be able to pursue sanctions where the respondent is a current employee, student, or third party affiliated with the College.

#### **D. Notice to Reporting Party and Respondent of College Actions**

The Title IX coordinator will promptly inform the reporting party of any action(s) undertaken by the College to respond to a health or safety threat to the reporting party or the College community, including the decision to proceed with an investigation. The Title IX coordinator also will promptly inform the respondent of any action(s) (including any interim measures) that will directly impact the respondent and provide an opportunity for the respondent to respond to such action(s). The Title IX coordinator retains the discretion to impose and/or modify any supportive or interim measures based on all available information. Interim measures will remain in effect until a final determination on a policy violation has been made, including after the parties have had the opportunity to exercise their right to appeal as set forth in these procedures. A reporting party, complainant, or respondent may challenge supportive or interim measures or other actions, or failure to impose supportive or interim measures or take other actions, by contacting the Title IX coordinator to address any concerns.

#### **E. Documentation of Initial Assessment and Determination Regarding Investigation**

The initial report, the health and safety threat assessment, and the determinations of the Title IX coordinator regarding whether an investigation is pursued will be documented and retained by the College in accordance with the College’s record retention policy.

## **8. INVESTIGATION**

An investigation commences when the Title IX coordinator determines that information provided by a reporting party meets the threshold of a policy violation or the College initiates an investigation based on a health and safety threat assessment as described in Section 6. There is no time limit for requesting an investigation.

#### **A. Investigation of Other Forms of Discrimination or Harassment**

If a report of prohibited conduct also implicates other forms of discriminatory and/or harassing conduct prohibited by the Equal Opportunity Policy, the Title IX coordinator will evaluate all reported allegations to determine whether the alleged prohibited conduct and

the alleged Equal Opportunity Policy violation(s) may be appropriately investigated together

without unduly delaying the resolution of the report of prohibited conduct. Where the Title IX coordinator determines that a single investigation is appropriate, the investigation will be conducted in accordance with these procedures.

## **B. Assignment to Investigators**

After assessing any actual or perceived conflicts of interest and/or bias, the Title IX coordinator will designate one or more internal investigators or an external investigator to conduct a prompt, thorough, fair, and impartial investigation. All investigators will receive annual training on issues related to sexual assault, sexual and gender-based harassment, sex discrimination, dating violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial and that protects the safety of complainants, respondents, and the College community while promoting accountability.

## **C. Meeting with Respondent**

After an investigation is initiated, the Title IX coordinator will meet with the respondent to explain the investigation process, advise them of and explain any interim measures in place, and discuss interim measures and resources available to the respondent. At the meeting, the Title IX coordinator will provide the respondent a written Notice of Investigation and arrange for any reasonable interim measures the respondent requests.

## **D. Notice of Investigation**

The Title IX coordinator will notify the complainant and the respondent, in writing, of the commencement of an investigation. Such notice will (1) identify the complainant and the respondent; (2) specify the date, time (if known), location, and nature of the alleged prohibited conduct; (3) identify potential policy violation(s); (4) identify the investigator(s); (5) include information about the parties' respective expectations under the policy and these procedures; (6) explain the prohibition against retaliation; (7) instruct the parties to preserve any potentially relevant evidence in any format; (8) inform the parties how to challenge participation by the investigator on the basis of bias or conflict of interest; and (9) provide a copy of the policy and these procedures. If additional prohibited conduct is alleged during the course of an investigation, a new Notice of Investigation will be issued.

## **E. Investigation Process**

### **1. Overview**

During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed by the investigator to each other or to any witness. The investigator will exercise discretion in establishing the scope of the investigation. The investigator will notify and seek to meet separately with the complainant, the respondent, and appropriate witnesses and will gather other relevant and available evidence and information, including, without limitation, electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email, and social media sites), and photographs (including those stored on computers and smartphones). The Title IX coordinator will meet with the investigators periodically to ensure that the investigation process is completed in accordance with applicable regulations and

guidance and these procedures.

2. Review of Interview Notes

The complainant and respondent will have the opportunity to meet with the investigator and review and comment on the investigator's notes from their respective interviews but will not have access to the notes from the other party's or witnesses' interviews. The investigators may or may not incorporate the comments into their investigation summary.

3. Advisors

During the investigation, the complainant and respondent have the right to choose and consult with an advisor. The advisor may be any person, including an attorney, who is not otherwise a party or witness involved in the investigation. The parties may be accompanied by their respective advisors at any meeting or proceeding related to the investigation under these procedures. While the advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings. The College offers trained advisors to help the parties navigate the investigation process.

4. Coordination with Law Enforcement

The Title IX coordinator will contact any law enforcement agency that is conducting its own investigation to inform that agency that a College investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the College in its investigation. At the request of law enforcement, the Title IX coordinator may delay the College investigation temporarily while an external law enforcement agency is gathering evidence. The Title IX coordinator will cause the investigation to promptly resume when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation.

5. Cooperation and Participation

Employees are required to cooperate and participate fully in any Title IX investigation and/or request for information by the Title IX coordinator.

6. Timeframe for Completion of Investigation; Extension for Good Cause

Typically, the period from commencement of an investigation through delivery of the letters of determination to the parties will not exceed sixty (60) calendar days. The investigation commences on the date the respondent receives the Notice of Investigation. This 60-day timeframe may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation; to comply with a request by external law enforcement for temporary delay to gather evidence for a criminal investigation; to accommodate the availability of witnesses and College faculty and staff; to account for College breaks or vacations; to account for complexities of a case including the number of witnesses and volume of information provided by the parties; to account for the failure of the parties to respond in a timely manner to requests for information or meetings; or for other legitimate reasons. The Title IX coordinator will notify the parties in writing of any extension of this timeframe and the reason for such extension.

7. Reopening a Closed Investigation



Where a complainant has requested that the College close an investigation and the College has done so, a complainant may request that the investigation be reopened that a determination on a policy violation has not been made.

8. Site Visit(s)

The investigator may visit relevant sites or locations and record observations through written, photographic, or other means.

9. Expert Consultation(s)

The investigators may consult medical, forensic, technological, or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation.

10. Findings of Fact

The investigation is a neutral fact-gathering process conducted by investigators who find facts; investigators do not make determinations of policy violations. Following the fact-gathering process, the investigators will make findings of fact after consideration of the evidence, credibility of the witnesses, and any other available information including the following:

- *Prior or subsequent conduct* – The investigator may consider evidence of prior or subsequent conduct of either party in determining pattern, knowledge, intent, or motive. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar prohibited conduct.
- *Relevance* – The investigator has the discretion to determine the relevance of any proffered evidence and to include or exclude certain types of evidence. In general, the investigator will not consider statements of personal opinion or statements as to any party's general reputation for any character trait. Rather, investigators will rely on direct observations and reasonable inferences from the facts.
- *Prior sexual history* – The investigator will never use the sexual history of a complainant or respondent as evidence of character or reputation.

11. Investigation Summary

After the investigators complete their investigation, they will prepare and submit to the Title IX coordinator an investigation summary which will include the names and dates of meetings with complainant, respondent, and witnesses; a summary of evidence; a determination of the credibility of the witnesses and parties; and a clear and concise statement setting forth their findings of fact. Any relevant documentation will be attached to the investigation summary.

**F. Determination of Policy Violation; Standard of Review**

Following a review of the investigation summary and consultation with the investigators, the Title IX coordinator will make determinations of policy violations. Using the preponderance of evidence standard, the Title IX coordinator will determine whether it is more likely than not that the respondent engaged in prohibited conduct in violation of the policy.

## G. Determination of Sanctions and Remedial Measures

### 1. Determination of Sanctions

In the event the Title IX coordinator determines by a preponderance of the evidence that the respondent engaged in prohibited conduct in violation of the policy, the Title IX coordinator will determine appropriate sanctions. In determining appropriate sanctions for faculty, the Title IX coordinator will consult with the president, the provost, and the appropriate school dean, as further described in the faculty manual. In determining appropriate sanctions for staff, the Title IX coordinator may consult with the executive director of human resources.

The Title IX coordinator will consider the following factors in determining appropriate sanctions:

- The severity, persistence, or pervasiveness of the prohibited conduct;
- Whether the prohibited conduct is violent in nature and, if so, whether weapons were involved;
- The impact of the prohibited conduct on the complainant including, by way of example, their ability to participate effectively in College employment, programs, and activities;
- The impact or implications of the prohibited conduct within the College community with reference to the maintenance of a safe, nondiscriminatory and respectful environment conducive to learning, working, and living;
- Prior misconduct by the respondent known to the College, as determined by the respondent's relevant prior disciplinary history at the College or elsewhere, and any known criminal convictions;
- Whether the respondent has accepted responsibility for the prohibited conduct;
- The sanctions that have been levied for similar prohibited conduct under similar circumstances in the past; and
- Any other mitigating, aggravating, or compelling factors.

### 2. Available Sanctions

Violations of this policy may result in sanctions and corrective actions, which can include, but are not limited to the following:

DISCIPLINARY SANCTIONS FOR EMPLOYEES	
Staff	Faculty
Verbal warning	Verbal warning
Written warning	Written warning
Required training or education	Required training or education
Transfer or demotion	Suspension with pay
Revocation of employment offer	Suspension without pay
Suspension with pay	Termination of contract
Suspension without pay	
Termination of contract	
Termination of employment	

### 3. Remedial Measures

The Title IX coordinator will determine whether to impose any remedial measures for the protection or well-being of either party, including the extension of any interim measures in place during the investigation. This determination will include the time period for which the remedial measures will remain in effect. Upon request, the Title IX coordinator will consider additional remedial measures. If the Title IX coordinator determines that interim measures will not be continued as remedial measures, they may advise the party of the option of requesting an ADA accommodation through student disability services or the human resources department if applicable under the circumstances.

## H. Notice of Determination and Sanctions

### 1. Sanctions

If respondent is found responsible, sanctions will be set forth in the determination letters in the following manner:

- If the respondent has engaged in prohibited conduct, the determination letter to respondent will set forth all sanctions levied against them.
- If the prohibited conduct would not constitute a crime of violence under Utah or federal law, complainant's letter will include only those sanctions that would directly impact them.
- If the prohibited conduct would constitute a crime of violence under Utah or federal law, the complainant's letter will include all sanctions levied against respondent.

### 2. Determination Letters

The Title IX coordinator will draft separate but similar letters of determination for complainant and respondent that will set forth the findings of fact from the investigation; whether the respondent is responsible or not responsible for any policy violations; what sanctions, if any, will be imposed; and remedial measures, if any, that will be enacted, together with the rationale for the policy determination and sanctions. The determination letters will also advise the complainant and respondent of their right to a review by an appeal panel in accordance with these procedures. The Title IX coordinator will notify the complainant and respondent that their determination letter is available for review in the Title IX coordinator's office.

### 3. Meeting with Parties to Review Determination

At a mutually agreeable time, the Title IX coordinator will meet with each party to review their determination letter and will provide a copy of their determination letter, discuss any sanctions and remedial measures that will be put into place, answer any questions regarding the investigation or determination, and notify them of their right to have the determination reviewed by an appeal panel.

### 4. Sanctions Effective

Sanctions will be implemented upon the expiration of five school days unless a timely appeal has been filed.

## 9. APPEAL OF DETERMINATION

### A. General Procedures

#### 1. Grounds

Within five (5) school days of receiving the determination letter, the complainant or the respondent may appeal the determination in writing. The grounds for appeal are the following:

- *Procedural Error* – The investigation was not conducted in accordance with these procedures and this resulted in substantial error in the determination of whether there was a policy violation.
- *Bias* – The investigators conducted the investigation or the Title IX coordinator reached a determination in a biased or partial manner.
- *New Evidence* – There is evidence which was available at the time of the determination but unknown to the Title IX coordinator and not in the possession of the party providing the new evidence that would substantially affect the determination. The Title IX coordinator will determine the appropriate course of action depending on the new evidence submitted.

#### 2. Appealing Party

To appeal a determination, the appealing party must submit a written statement citing the grounds for appeal and providing an explanation of their position to the Title IX coordinator or a deputy Title IX coordinator. Under circumstances alleging that the Title IX coordinator reached a determination in a biased or partial manner, a deputy coordinator will be assigned to serve as the acting Title IX coordinator for purposes of the appeal.

#### 3. Title IX Coordinator Duties Regarding Appeal

Upon receipt of a notice of appeal, the Title IX coordinator will:

- Inform the party who has not appealed, in writing, of the appeal;
- Appoint a panel of three trained staff or faculty members without conflicts of interest to serve as members of the appeal panel;
- Provide the appeal panel the investigator's interview notes; the investigation summary, including any documentary evidence; and the determination letters.

In cases alleging bias in determination, a person other than the Title IX coordinator who made the determination will be designated to manage all aspects of the appeal.

#### 4. Appeal Panel

Within ten (10) school days of their appointment, the appeal panel will meet at a mutually agreeable time to consider the information provided to them and to determine whether the

determination should be upheld. The appeal panel has the discretion to speak to the complainant, respondent, witnesses, investigators, or Title IX coordinator in reaching its conclusion but is not required to do so. The appeal panel will not review any other written evidence or documentation besides that provided by the Title IX coordinator.

## **B. Decision of Appeal Panel; No Further Appeals**

### 1. Affirmation of Determination

If the appeal panel determines by a majority vote that there was neither bias nor failure of process, it will affirm the determination and submit its affirmation letter to the Title IX coordinator. The determination will be final and not subject to further appeal. The Title IX coordinator will provide the affirmation letter to the parties within five school days.

### 2. Procedural Error

If the appeal panel decides by a majority vote that the investigation was not conducted in accordance with these procedures, it will submit a letter to the Title IX coordinator setting forth specific procedural error(s). The Title IX coordinator will direct the investigators to re-open the investigation and re-examine the evidence in light of the identified procedural error(s) and provide a revised investigation summary, if appropriate. The Title IX coordinator may assign new investigators to examine the evidence if appropriate under the circumstances. The Title IX coordinator will issue new determination letters and the determination may be appealed in accordance with these procedures by the party who did not file the original appeal.

### 3. Bias

- *Bias in Investigation* – If the appeal panel decides by a majority vote that the investigation was conducted in a biased or partial manner, it will submit a letter to the Title IX coordinator setting forth the specific ways in which the investigation was biased or partial. The Title IX coordinator will take such action as necessary to correct the bias or partiality, which may include assigning a new investigator(s) and/or re-opening the investigation. Once any additional fact finding is complete and a revised investigation summary is received, if appropriate, the Title IX coordinator will issue a new determination letter and the determination may be appealed in accordance with these procedures.
- *Bias in Determination* – If the appeal panel decides by a majority vote that the Title IX coordinator was biased or partial in reaching the determination, it will submit a letter to the acting Title IX coordinator setting forth the specific ways in which, in its opinion, the determination was biased or partial and requesting a review of the determination. The acting Title IX coordinator will review all documentation provided to the appeal panel and issue a new determination letter and the determination may be appealed in accordance with these procedures.

### 4. No Further Appeal

There is no right of appeal beyond the appeal panel. Any concerns with the adequacy of an investigation can be addressed to the Department of Education, Office for Civil Rights, at

## 10. CLOSURE OF INVESTIGATION FILE

### A. Notice of Closure

#### 1. Notice to Parties

Within five (5) school days of the conclusion of the investigation (including exhaustion of all appeals), the Title IX coordinator will provide the complainant, respondent, reporting party, and witnesses written notification that the investigation has been closed and that retaliation is prohibited conduct.

#### 2. Notice to Executive Director of Human Resources or Provost

Within five (5) school days of the conclusion of the investigation (including exhaustion of all appeals), the Title IX coordinator will provide the executive director of human resources or provost, as appropriate, a copy of the respondent's determination letter and a written notification that the investigation has been closed.

### B. Records Retention

The College will retain all records relating to a report of prohibited conduct, including investigation files and personnel record documentation of disciplinary or other personnel actions, in accordance with the College's record retention policy.