

April 26, 2019

MEMORANDUM

TO: State Board of Regents
FROM: David L. Buhler
SUBJECT: Board of Regents Policy 842, *Restrictions on Faculty/Staff Relationships with Students*

Issue

During the 2019 session, the Legislature passed HB 391, which directs the Board or institutions to establish policies prohibiting sexual conduct between subordinate students and employees in a position of special trust, such as professors, instructors, supervisors. Protecting the safety and well-being of students is our primary concern. Further, failure to adopt a policy would waive governmental immunity for claims of sexual battery, potentially increasing liability costs.

Background

Relationships between subordinate students and employees in positions of special trust create potential legal liability, exposing institutions to claims of sexual harassment, hostile work environment, or sexual assault. Subordinate students are in a vulnerable position because the special trust employee can negatively impact their educational opportunities. That power imbalance between subordinate students and special trust employees could lead to nonconsensual sexual conduct, which institutions should prevent.

This policy will help protect students, meet the requirements of the law, maintain governmental immunity, and reduce liability risks.

Commissioner's Recommendation

The Commissioner recommends the Regents approve R842, effective immediately.

David L. Buhler
Commissioner of Higher Education

DLB/ /GTL
Attachments

R842-1. Purpose: To restrict USHE institution employees who hold positions of special trust from engaging in sexual relationships or sexually explicit communications with subordinate students.

R840-2. References

- 2.1. Utah Code Section 63G-7-301
- 2.2. Utah Code Section 76-5-404.1
- 2.2. Regent Policy R121—Regent Functions

R842-3. Definitions

- 3.1. **"Educational Opportunities"** means a student's admission to an institution or programs within an institution; receipt of financial aid; assessment of academic performance placement in academic opportunities such as internships, assistantships; and graduation.
- 3.2. **"Sexual Conduct"** includes any sexual relationship or sharing any sexually explicit or lewd communication, image, or photograph.
 - 3.2.1. Sharing sexually explicit or lewd communication, image or photograph does not include any communication, image, or photograph that faculty shares with students as part of a legitimate academic exercise, such as pedagogical requirements for health, science, or art courses.
- 3.3. **"Special trust employee"** means an employee of a higher education institution who is in a position of special trust, as defined in Section 76-5-404.1, with a higher education student.
- 3.4. **"Subordinate student"** means a student of a higher education institution whose educational opportunities could be adversely impacted by a special trust employee.

R842-4. Policy

- 4.1. Special trust employees shall not engage in sexual conduct with subordinate students.
- 4.2. All special trust employees who are engaging in sexual conduct with a subordinate student at the time of this policy's effective date shall immediately disclose the relationship to their direct supervisors or be subject to disciplinary action up to and including termination. Institutions shall take appropriate action to bring the conduct into compliance with this policy.

¹ Approved

4.3. Institutions may enact policies that adopt matching or more restrictive standards governing sexual relationships between special trust employees and subordinate students. Until an institution establishes a policy, this policy controls.