



INTERIM University Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity

Covered Individuals: All Employees and Students; Third Parties Participating in University Programs and Activities

Responsible Executive: Provost

Policy Custodian: Executive Director of the Office of Equity

Last Revised: Date of Latest Revision 2021/1/22

339A.1 PURPOSE AND SCOPE

The University is committed to maintaining a living, learning, and working environment free from Sexual Misconduct and its adverse effects.

This policy explains the University's prohibition of Sexual Misconduct outside an Employment or Education Program or Activity and outlines confidential reporting options and reporting options that result in a response from the University.

This policy implements the requirements of federal Title IX regulations (see 34 CFR 106) and applies to all reported Sexual Misconduct that is alleged to have occurred on or after August 14, 2020.

339A.2 POLICY

The University prohibits Employees, Students, and third parties from engaging in Sexual Harassment; Sexual Assault, Sexual Exploitation, Relationship Violence, and Sex-based Stalking (collectively referred to as "Sexual Misconduct"). The University will take prompt action under this policy to address Sexual Misconduct that occurs outside of an Employment or Education Program or Activity when the Sexual Misconduct likely has continuing adverse effects on, or creates a Hostile Environment for, Students, Employees, or third parties in an Employment or Education Program or Activity and the University is aware that it has occurred.

A Student who engages in Sexual Misconduct or related retaliation may be subject to Sanctions from a warning up to expulsion with a permanent notation on their transcript. An Employee who engages in Sexual Misconduct or related retaliation may be subject to Sanctions from a warning up to termination.

Sex discrimination that does not meet the definitions of Sexual Misconduct is governed by Policy 305: Discrimination Complaints. Sexual Misconduct that occurs within an Employment or Education Program or Activity is governed by Policy 339. Sexual Misconduct in a Study Abroad Program is governed by Policy 339B.

2.1 Title IX Coordinator.

The University has designated a Title IX Coordinator within its Office of Equity and has authorized them to coordinate the University's efforts to implement and monitor compliance with this policy and federal Title IX law and regulations more generally. As set forth in this policy, the Title IX Coordinator is responsible for ensuring that the University promptly responds to Incident Reports of alleged Sexual Misconduct, coordinating effective implementation of Supportive Measures, and informing Claimants of their option to file a Formal Complaint.

The University's Title IX Coordinator is:

[Hilary Renshaw](#)

Title IX Coordinator
titleix@usu.edu
435-797-1266
1475 Old Main Hill
Room 161
Logan, Utah 84322-1475

2.2 Jurisdiction

This policy applies to Sexual Misconduct committed outside an Employment or Education Program or Activity by an Employee, Student, or third party over whom the University has control when the Sexual Misconduct likely has continuing adverse effects on, or creates a Hostile Environment for, Students, Employees, or third parties in an Employment or Education Program or Activity.

2.3 Reporting Options That Will Result in an Incident Report to the Title IX Coordinator

The University encourages any person who has experienced or has knowledge of alleged Sexual Misconduct to report the incident using one of the following methods so that the University can provide parties with the Supportive Measures and resources they need and the University can appropriately address the reported Sexual Misconduct pursuant to this policy.

2.3.1 Reporting to the Title IX Coordinator/Office of Equity

Any person may file an Incident Report with the Title IX Coordinator or Office of Equity at any time, including during non-business hours, by filing an Incident Report online at equity.usu.edu/report, emailing titleix@usu.edu, calling 435-797-1265, visiting the Office of Equity in Old Main, Room 161, or via mail at Office of Equity 1475 Old Main Hill, Logan, Utah 84322-1475. Persons who call after hours may leave a message on the Office's confidential voicemail that will be received within the next business day.

2.3.2 Reporting to Designated University Employees (Reporting Employees)

Certain University Employees are designated as Reporting Employees. Reporting Employees include, but are not limited to, those employees who have the authority to institute corrective measures concerning allegations of Sexual Misconduct. See Policy 340: Required Reporting of Sexual Misconduct. For a list of Employees by title that the University has identified as Reporting Employees by title, see [Reporting Employees list](#).

Any person may report Sexual Misconduct to a Reporting Employee via email or other writing, over the phone, or in-person. In order to ensure that the University can provide Supportive Measures, resources, and information about the process for filing a Formal Complaint, Reporting Employees cannot honor requests for confidentiality and are required to report disclosures of alleged Sexual Misconduct to the Title IX Coordinator within 24 hours of receiving the information. Reporting Employees must file these Incident Reports online at equity.usu.edu. An Incident Report filed by a Reporting Employee must include everything the Reporting Employee knows about the alleged Sexual Misconduct, including all information the individual has disclosed to the Reporting Employee. The Reporting Employee shall also attach all documentation that they have received about the incident to the Incident Report. All Reporting Employees must also provide an individual who discloses information related to Sexual Misconduct with information about [support services and reporting options](#). For more information about the obligations of Reporting Employees, see Policy 340: Required Reporting of Sexual Misconduct.

A Reporting Employee's obligations do not apply to Sexual Misconduct in circumstances in which the Reporting Employee is the Claimant.

2.3.3 Reporting to Law Enforcement

A person experiencing an emergency or who is in immediate danger should call 911. Any person may report Sexual Misconduct to USU Police or local law enforcement for investigation and potential criminal prosecution. Law enforcement can also assist with preserving evidence, connecting a Claimant with appropriate medical services, and enforcing a protective order entered by a court. USU Police will notify

the Title IX Coordinator of all incidents of Sexual Misconduct reported to them. For more information on how to report to law enforcement and how the University coordinates with police when criminal proceedings run concurrent with an investigation under this policy, see Procedures 339B: Sexual Misconduct in a Study Abroad Program, section XVI Coordination with Law Enforcement.

2.3.4 Anonymous Reporting

With the exception of a Reporting Employee who must include their name when filing an Incident Report as outlined in [subsection 1.2.3.2](#) of this policy, any person may file an Incident Report anonymously through the University's online reporting system at equity.usu.edu. If the Incident Report does not contain enough information about the alleged Sexual Misconduct and/or the persons involved, the University's ability to address the allegations may be limited. However, the University has discretion to pursue a University-driven Informal Resolution or Formal Investigation based on an anonymous Incident Report in certain circumstances if the Incident Report contains sufficient details about an incident of Sexual Misconduct and/or the person(s) involved. See Procedures 339B: Sexual Misconduct in a Study Abroad Program, subsection XV.A. No Participating Claimant.

2.4 Reporting Options That Will Not Automatically Result in an Incident Report to the Title IX Coordinator

2.4.1 Reporting to Designated Confidential Resources

In order to provide critical support services to campus community members in a confidential setting, the University's professional counselors, non-professional counselors, advocates, and medical staff at the offices and programs listed below are Designated Confidential Resources. These individuals are required to keep all information pertaining to Sexual Misconduct allegations confidential, meaning that they cannot share that information with the Title IX Coordinator, without the express permission of the individual who reported it to them. As such, reports made to Designated Confidential Resources alone will not result in an investigation or further University action beyond the provision of support services, medical attention, or resources. Designated Confidential Resources must provide an individual who discloses information concerning Sexual Misconduct with information about [support services and reporting options](#). For more information about the obligations of Designated Confidential Resources, see Policy 340: Required Reporting of Sexual Misconduct.

All persons working within the following offices or programs, whether as Employees or volunteers, are Designated Confidential Resources:

- [Counseling and Psychological Services \(CAPS\)](#) (available in-person on Logan, Brigham City, Salt Lake, and Tooele campuses, as well as remotely throughout the state);
- [Sexual Assault and Anti-Violence Information Office \(SAAVI\)](#) therapy services;
- [Student Health & Wellness Center](#);
- [USU Eastern Student Counseling Office](#);
- [USU Employee Assistance Program](#);
- [USU Marriage and Family Therapy Clinic](#);
- [USU Psychology Community Clinic](#); and,
- [Sexual Assault and Anti-Violence Information Office \(SAAVI\)](#) advocates.

2.4.2 Reporting to Resource Connection Employees

A Resource Connection Employee is an employee who is neither a Reporting Employee nor a Designated Confidential Resource, but whose position is designated in Procedures 340: Required Reporting of Sexual Misconduct. Most Employees are Resource Connection Employees. For a list of Resource Connection Employees, see [Resource Connection Employees list](#).

Resource Connection Employees are not required to report disclosures of Sexual Misconduct to the Title IX Coordinator. However, all Resource Connection Employees must provide an individual who discloses information concerning Sexual Misconduct with information about [support services and reporting options](#). For more information about the obligations of Resource Connection Employees, see Policy 340: Required Reporting of Sexual Misconduct.

2.5 Reporting Timeframes.

Except for Reporting Employees who must report Sexual Misconduct to the Title IX Coordinator within 24 hours, there is no time limit on reporting Sexual Misconduct to the Title IX Coordinator, the Office of Equity, or a Reporting Employee. As long as the University has jurisdiction, it will address an Incident Report of alleged Sexual Misconduct regardless of when it was filed. However, the University encourages Claimants and other individuals with information about Sexual Misconduct to report as soon as possible. Because time and the status of parties and witnesses as members of the University community are critical factors in evidence collection and preservation, delayed reporting may impact the University's ability to investigate or otherwise offer the full range of responses to allegations of Sexual Misconduct. An Employee Claimant who does not file an Incident Report within 30 days of their departure is not guaranteed a Grievance Process.

2.6 Supportive Measures

The University will provide Supportive Measures to a Claimant who has experienced Sexual Misconduct while at the University regardless of whether they choose to participate in the Grievance Process. See Procedures 339A: Sexual Misconduct outside an Employment or Education Program or Activity, section IX. Supportive Measures.

2.7 Grievance Process

The University will conduct a fair and impartial Grievance Process, free of Conflicts of Interest and Bias, and discrimination. The Grievance Process may include an Informal Resolution or a Formal Investigation, including one that is University-driven. The Grievance Process for violations of this policy, including retaliation, is governed by Procedures 339A: Sexual Misconduct outside an Employment or Education Program or Activity.

2.8 Retaliation

Students and Employees, regardless of whether they are parties, are prohibited from engaging in retaliation including intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege under this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Formal Investigation, Informal Resolution, or hearing under this part.

2.9 Compliance

The Office of Equity shall have authority to ensure compliance with this policy and related state and federal laws, rules, and regulations by the University and its colleges, departments, and programs.

Upon notice of a potential violation or at the request of a relevant administrator, the Office of Equity may conduct compliance reviews related to Sexual Misconduct in the University's colleges, departments, and programs.

2.10 Conflict of Laws

This policy shall not be interpreted to infringe on a party's First Amendment rights.

If there is a conflict between the laws of Utah and Title IX, Title IX preempts and this policy shall be interpreted to comport with Title IX.

Nothing in this policy shall be interpreted to impinge upon an Employee's rights under Title VII of the Civil Rights Act of 1964.

2.11 University's Authority under Other University Policy

This policy and the accompanying procedures shall not be interpreted to prevent the University from addressing a Respondent's conduct that does not meet the definitions of Sexual Misconduct as defined in this policy, but may violate other applicable University policies and/or procedures.

339A.2.3 RESPONSIBILITIES

3.1 Office of Equity

The Office of Equity is the department responsible for responding to and investigating Sexual Misconduct Incident Reports and ensuring the University's compliance with this policy and related state and federal laws, rules, and regulations. More information about the Office of Equity is available at equity.usu.edu.

339A.4 REFERENCES

- Titles VI and VII of the Civil Rights of 1964
- Title IX of the Education Amendments of 1972
- Campus Sexual Violence Elimination Act (SAVE) – reauthorization of Violence Against Women Act of 2013
- Utah Antidiscrimination Act and other applicable laws

339A.5 RELATED USU POLICIES

- [USU Policy 305: Discrimination Complaints](#)
- [USU Policy 339: Sexual Misconduct in an Employment or Education Program or Activity](#)
- [USU Policy 339B: Sexual Misconduct in a Study Abroad Program](#)
- [USU Policy 340: Required Reporting of Sexual Misconduct](#)

339A.6 DEFINITIONS

- **Claimant.** A person who is alleged to have experienced conduct that could constitute Sexual Misconduct. Referred to as “complainant” in 34 C.F.R. § 106.30(2020).
- **Coercion.** May consist of intimidation, threats, or other severe conduct that causes a reasonable person to fear significant consequences if they refuse to engage in sexual contact.
- **Conflict of Interest and/or Bias.** A *Conflict of Interest* exists when a non-party individual with a role in the Grievance Process is in a position to gain a personal or self-serving benefit from an action or decision made in their role under this policy, or where a person is otherwise unable to participate with objectivity because of personal or professional relationships with other individuals involved in the process or associated with those involved. *Bias* is unfair prejudice in favor of or against one group compared with another and may include bias against a particular class of parties, (e.g., Respondents in the Grievance Process). Individuals with roles in the Grievance Process are prohibited from considering a party's status as a Claimant or Respondent as a negative factor during consideration of the Formal Complaint. That an individual with a role in the process works for the University alone is not enough, without more, to establish a Conflict of Interest and/or Bias.
- **Consent.** An understandable exchange of words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity. Consent is an agreement to do the same thing at the same time in the same way. Consent can be withdrawn or modified at any time, as long as it is clearly communicated. Consent cannot be assumed based on silence, the absence of “no” or “stop,” the existence of a prior or current relationship, or prior sexual activity.

Sexual Assault occurs when at least one party does not consent to the sexual activity. There is no Consent in the presence of coercion, incapacitation, force, or where the sexual activity violates state law relating to age of Consent.

- **Corrective Action.** Employment-related action (including imposition of Sanctions) undertaken to correct or modify unacceptable job performance or behavior to acceptable standards. Corrective Action measures authorized to be imposed upon Employees include an oral reprimand, written warning, Administrative Leave with or without pay, and dismissal from employment.
- **Designated Confidential Resources.** The University's professional counselors, non-professional counselors, and advocates. They provide critical support services to campus community members in a confidential setting and do not share disclosures of Sexual Misconduct with the Title IX Coordinator or with law enforcement unless they receive express permission to do so from the Claimant.
- **Employee.** A full-time or part-time University faculty, staff, professional research staff, or post-doctoral fellow. For purposes of this policy, a Student Employee may be designated as both a Student and an Employee.
- **Employment or Education Program or Activity.** Locations, events, or circumstances in the United States in which the University has substantial control over both the Respondent and the context in which the Sexual Misconduct occurs. Employment or Education Program or Activity includes all off-campus buildings owned or controlled by a recognized student organization and includes the University's computer and internet networks and digital platforms.
- **Force.** Includes the use of physical force or threats of force that affects a person's ability to Consent to sexual contact.
- **Formal Complaint.** A signed document that indicates the University will proceed with a Formal Investigation of Sexual Misconduct. A Formal Complaint may be signed by the Claimant or by the Title IX Coordinator.
- **Formal Investigation.** The information and evidence-gathering process that begins with the filing of the Formal Complaint and ends when the Investigation Report is issued. Formal Investigations, conducted by the Office of Equity Investigator, include interviewing parties and witnesses, and gathering other relevant evidence, exculpatory and inculpatory. The Formal Investigation may be University or Claimant-driven.
- **Grievance Process.** The process undertaken by the Office of Equity following the filing of a Formal Complaint, which may include a Claimant or University-driven Informal Resolution or Formal Investigation.
- **Incapacitation.** A state in which a person lacks the ability, temporarily or permanently, to Consent to sexual activity including because of a disability, drug or alcohol consumption (whether voluntary or involuntary), or because the person is unconscious, asleep, immobilized, or otherwise unaware that the sexual activity is occurring. A person is not necessarily Incapacitated solely as a result of drinking or using drugs; the level of impairment must be significant enough to render the person unable to give Consent.

It is not an excuse that the party initiating sexual contact was intoxicated and therefore did not realize the incapacity of the other. In evaluating cases involving alleged incapacitation, the University considers whether the person initiating the sexual conduct knew or should have known the other person was incapacitated.

- **Incident Report.** A report of alleged Sexual Misconduct filed online, via email, by phone, by mail, or in-person to the Office of Equity, Title IX Coordinator, or a Reporting Employee.
- **Informal Resolution.** A process in which parties agree to resolve a Formal Complaint without completing an investigation and/or hearing. An Informal Resolution may be facilitated through arbitration, mediation, restorative justice, or another appropriate method. Such an agreement may include Sanctions or other disciplinary measures.

- **Relationship Violence.** Includes Dating Violence and Domestic Violence.
 - **Dating Violence.** Dating violence includes violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Claimant. The existence of such a relationship shall be determined based on a consideration of the following factors: (a) the length of the relationship, (b) the type of relationship, and (c) the frequency of interaction between the persons involved in the relationship.
 - **Domestic Violence.** Domestic Violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the Claimant, by a person with whom the Claimant shares a child in common, by a person who is cohabitating with or has cohabitated with the Claimant as a spouse or intimate partner, by a person similarly situated to a spouse of the Claimant under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or by any other person against an adult or youth Claimant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. A criminal charge or conviction is not a predicate for an allegation of Domestic Violence to be brought under this policy.
- **Reporting Employee.** Any Employee designated as such by Policy 340: Required Reporting of Sexual Misconduct. Employees identified as Reporting Employees are required to report all information they receive concerning incidents of Sexual Misconduct to the Title IX Coordinator.
- **Resource Connection Employee.** An employee who is neither a Reporting Employee or a Designated Confidential Resource. Sexual Misconduct disclosures made to a Resource Connection Employee will not automatically result in an Incident Report to the Title IX Coordinator or a further University response. However, a Resource Connection Employee will provide information about [support services and reporting options](#). Most employees are Resource Connection Employees.
- **Respondent.** An individual who is alleged to have committed Sexual Misconduct.
- **Sanction.** Disciplinary or punitive action taken against a Respondent after they are found by the Hearing Panel to have violated this policy.
- **Sex-based.** The University considers actions based on someone's sex assigned at birth, gender identity, gender expression, and/or sexual orientation to be sex-based.
- **Sex-based Stalking.** Engaging in a course of conduct directed at a specific person or persons based on sex, that would cause a reasonable person to fear for their safety or for the safety of others or to suffer substantial emotional distress. Stalking may occur in person, by telephone, mail, electronic communication, social media, or any other action, device, or method.

A course of conduct is two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through a third party, follows, monitors, observes, surveils, threatens, intimidates, harasses, or communicates to or about a person, or interferes with a person's property by telephone, mail, electronic communication, social media, or any other action, method, device, or means.

- **Sexual Assault.** Includes any sexual act or attempted sexual act, including Rape, Sodomy, Sexual Assault with An Object, or Fondling, directed against another person without their Consent. This includes instances where the person is incapable of giving Consent because of their age or because of a temporary or permanent mental or physical incapacity. Sexual Assault also includes unlawful sexual acts, such as Incest and Statutory Rape.
 - **Rape.** Sexual intercourse with another person without their Consent.
 - **Sodomy.** Oral or anal sexual intercourse with another person without their Consent.
 - **Sexual Assault with An Object.** The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person without their Consent.
 - **Fondling.** The touching of the private body parts of another person for the purpose of sexual gratification without their Consent.

- **Incest.** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law (e.g., a sibling or parent/child relationship).
- **Statutory Rape.** Sexual intercourse with a person who is under Utah's statutory age of Consent.
- **Sexual Exploitation.** Sexual Exploitation is intentional or knowing conduct by an individual in which they take or attempt to take non-consensual sexual advantage of another for the individual's own benefit, or to benefit anyone other than the one being exploited. Sexual Exploitation includes intentionally or knowingly:
 - 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;
 - Engaging in voyeurism, including observing or allowing another to observe private sexual or intimate activity, for example disrobing, bathing, toileting, without the Consent of the individual(s) being observed, whether from a hidden location or through electronic means, e.g., via video streaming.
 - Recording, photographing, disseminating and/or posting images of private sexual or intimate activity and/or a person's intimate parts (including genitalia, groin, breasts and/or buttocks) without the person's Consent;
 - Engaging in the recruitment, transportation, harboring, or receipt of a person for the purposes of a commercial sex act(s) without the person's Consent;
 - Demanding financial compensation, sexual contact, or some other benefit under threat of disseminating or posting an image, video or other recording, of private sexual or intimate activity and/or a person's genitalia, groin, breasts, and/or buttocks;
 - Exposing another person to a sexually transmitted infection without the other's knowledge; and/or
 - Through one's actions, aiding or assisting another person in committing an act of Sexual Misconduct.
- **Sexual Harassment.** Includes Hostile Environment and Quid Pro Quo.
 - **Hostile Environment.** Unwelcome sex-based conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an Employment or Education Program or Activity.
 - **Quid Pro Quo.** An Employee's conditioning the provision of a University aid, benefit, or service on a person's participation in unwelcome sexual conduct.
- **Sexual Misconduct.** Referred to as "sexual harassment" in 34 C.F.R. § 106.30 (2020). Sexual Misconduct is conduct on the basis of sex including one or more of the following types of conduct:
 - Relationship Violence;
 - Sexual Exploitation;
 - Sexual Harassment;
 - Sexual Assault; and,
 - Sex-based Stalking.
- **Student.** A person who is currently registered or enrolled at the University for credit or non-credit-bearing course work.
- **Study Abroad.** A University-sponsored program in which a Student may participate in courses outside the United States in order to obtain University course credit.
- **Supportive Measures.** Non-disciplinary, non-punitive individualized services offered as deemed appropriate by the Office of Equity based on the circumstances of the incident and without fee or charge to the Claimant and/or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the University's Employment or Education Program or Activity without unreasonably burdening the other party and include measures designed to protect the safety of all parties or the University's educational environment, and/or to deter Sexual Misconduct. Supportive Measures may include but are not limited to counseling, extensions of deadlines or other academic course-related adjustments, work or class schedule changes, campus security or

law enforcement escort services, mutual no-contact orders, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

- **Title IX Coordinator.** The person designated to coordinate the University's efforts to implement and monitor compliance with the University's Sexual Misconduct policies, including Policy 339: Sexual Misconduct in an Employment or Education Program or Activity; Policy 339B: Sexual Misconduct in a Study Abroad Program, this policy, and with federal Title IX law and regulations more generally. As set forth in this policy, the Title IX Coordinator is responsible for ensuring the University's prompt response to Incident Reports of alleged Sexual Misconduct, coordinating effective implementation of Supportive Measures, and informing Claimants of their option to file a Formal Complaint. The Title IX Coordinator works within the Office of Equity.
- **University-driven Investigation.** An investigation of allegations of Sexual Misconduct undertaken by the University when, as determined by the Safety Risk Panel, there is an immediate threat to the physical health or safety of a Student or other individual(s) arising from the allegations and/or there are allegations that suggest a pattern of Sexual Misconduct by a Student, Employee, or third party over whom the University has control and there is no participating Claimant.

RESOURCES

Notice of Non-Discrimination

- USU is committed to a learning and working environment free from discrimination, including harassment. For USU's non-discrimination notice, see <https://equity.usu.edu/non-discrimination>.

Procedures

- [USU Procedures 339A: Sexual Misconduct Outside an Employment or Education Program or Activity](#)

Contacts

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POLICY HISTORY