



# **POLICY MANUAL**

## **GENERAL**

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### **Number 305**

**Covered Individuals:** USU Employees, Students and Visitors

**Subject:** Discrimination Complaints

**Date of Origin:** January 24, 1997

**Date of Revision:** February 10, 2020 (via executive memorandum)

**Effective Date:** February 10, 2020

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### **305.1 POLICY**

Utah State University is committed to providing an environment free from harassment and other forms of discrimination based on race, color, religion, sex, gender identity or expression, sexual orientation, national origin, age (40 and older), disability, or status as a protected veteran. Consistent with its prohibition against sex discrimination, Utah State University prohibits and is committed to addressing and preventing sexual violence.

Utah State University employees and students cannot, because of race, color, religion, sex, gender identity or expression, sexual orientation, national origin, age, disability, status as a protected veteran, refuse to hire; discharge; promote; demote; terminate; discriminate in compensation; or discriminate regarding terms, privileges, or conditions of employment, against any person otherwise qualified Employees and students also cannot discriminate in the classroom, residential halls, or in on/off-campus University-sponsored events and activities.

### **305.2 REFERENCES**

- Titles VI and VII of the Civil Rights of 1964
- Title IX of the Higher Education Amendments of 1972
- Sections 503 and 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act;
- Vietnam Era Veterans' Readjustment Assistance Act of 1974;
- Executive Order 11246 (as amended)

- Campus Sexual Violence Elimination Act (SaVE) – reauthorization of Violence Against Women Act of 2013
- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act
- Utah Anti-Discrimination Act and others as applicable.

### **305.3 DEFINITIONS**

**3.1 Administrator:** The administrator at the dean/vice president or the department head/director level with direct line responsibility over the college, department, office, agency or other operational unit of the university in which the claimed discrimination or harassment occurred

**3.2 Complaint:** an allegation of discrimination/harassment.

**3.3 Preponderance of evidence:** (<https://hr.usu.edu/files/policies/339.pdf>) –whether it is more likely than not that a policy violation occurred. This is the standard of evidence used in investigations of discrimination and harassment at Utah State University.

### **305.4 PROVISIONS**

#### **4.1 Complaints**

**4.1.1** A Complaint is an allegation of discrimination/harassment. Any Utah State University employee, job applicant, or student who feels he or she may have been the victim of discrimination in employment and/or academic-related practices and decisions, unfair employment practice, or sexual harassment may file a Complaint with the Equity Office within 180 calendar days of the last alleged occurrence.

**4.1.2** Utah State University employees, students, and third parties may report sexual misconduct to the Equity Office or Utah State University faculty or staff. In order to ensure that Utah State University can do everything possible to provide assistance to students and stop sexual harassment, University employees are required to report information they receive about allegations of sexual misconduct to the Title IX Coordinator.

**4.1.3** Alleged incidences of harassment or discrimination occurring outside the complaint timeline also should be brought to the attention of the AA/EO Office for review.

**4.1.4** Complaints may also be filed with the Utah Anti-Discrimination Labor Division (UALD) in Salt Lake City, or the Equal Employment Opportunity Commission (EEOC) with regional offices in Phoenix, Arizona. Statutory time limitations will be provided by these organizations.

**4.1.5** The Complaint is discussed by the Complainant (employee, student, job applicant) and an employee of the Equity Office. If the information provided by the Complainant is sufficient to establish that a potential violation of the law has occurred, the Equity Office will explain what options are available to address the alleged violation. The Complainant will then fill out, sign, and date a written complaint form outlining the issues, facts, and circumstances surrounding the alleged discrimination/harassment.

## **4.2 Investigations.**

**4.2.1** Complaints of discrimination are investigated by the Equity Office. Complaints alleging sex or gender-based discrimination are investigated by the Title IX Coordinator or their designee in the Equity Office.

**4.2.2** If a Complainant or Respondent believes that any individual(s) involved in the process has a potential or actual conflict of interest, he or she may make a request to the Equity Office Director that the individual(s) not participate. A Complainant or Respondent must submit a written request to the AA/EO Office within two (2) days after notification of the investigation. Any request should include a description of the conflict. If the Equity Office determines that a conflict of interest exists, Utah State University will take steps to address the conflict in order to ensure an impartial process.

**4.2.3** The purpose of investigating is to determine if discrimination/harassment has occurred. The Equity Office is committed to objectivity, reasoned thoughtfulness, and common sense in collecting and analyzing all available facts pertinent to each investigation. It is understood that no two sets of facts or situations are the same, and each investigation is conducted in an atmosphere of open-mindedness and is equitable to all parties.

If information is brought to the Equity Office and the person alleging discrimination/harassment chooses not to file a Complaint, the Equity Office may file a Complaint if there is sufficient reason to believe that discrimination/harassment has occurred.

**4.2.4** The investigator will work in good faith to complete the investigation in a prompt and equitable manner. In most cases, the investigation will be completed within sixty (60) calendar days of filing the complaint; however, the Equity Director and/or the Title IX Coordinator may adjust deadlines upon good cause. The purpose of the inquiry/investigation is to gather the facts, and to determine by a preponderance of the evidence whether a violation of this policy and/or related University harassment policies and/or codes occurred. The inquiry/investigation may include some or all of the following: collecting documents related to the case, interviewing persons having knowledge of the incident(s), or documenting the findings. Both the Complainant and the Respondent will be provided an opportunity to submit information and identify and direct the investigator to witnesses and evidence.

- 4.2.5** Due to the damage that could result to the career and reputation of any person falsely accused of discrimination/harassment, all inquiries/investigations and hearings surrounding such matters will be designed, to the maximum extent possible, to protect the privacy of and minimize suspicion toward the Respondent, as well as the Complainant.

### **4.3 Investigation Report**

- 4.3.1** At the conclusion of the investigation, the investigator will prepare a Draft Investigation Report. that summarizes the investigator's factual findings and sets forth the investigator's conclusion(s). The findings shall indicate whether by a preponderance of the evidence a violation of Utah State University's anti-discrimination and/or harassment policies occurred.
- 4.3.2** The Complainant and the Respondent will have ten (10) working days to provide to the Equity Director and/or Title IX Coordinator their written responses to the investigative report. At the end of that ten-day period, the Equity Director and/or Title IX Coordinator shall file the report and any written responses received from the parties with the appropriate Administrator. In the absence of good cause, information discoverable through the exercise of due diligence that is not provided to the Investigator during the designated review and response period will not be considered in the determination of responsibility for a violation of the Policy and will not be considered by the Review Panel.

Once the Investigation Report is finalized, the Equity Office will notify both the Complainant and the Respondent and provide them with an opportunity to receive a copy of the final Investigation Report. The Investigation Report is also sent to the Respondent's appropriate Administrator. The appropriate Administrator will follow the disciplinary policy and procedures applicable to the individual in violation of this policy. The applicable policies and procedures are as follows:

- 1) For faculty, the Provost, applicable dean or vice president, department head and/or director will follow the procedures for imposing sanctions (refer to USU policy 407).
- 2) For employees, the applicable vice president and/or supervisor/manager will follow the procedures for imposing corrective action (refer to USU Policy 311).
- 3) For students, the Vice President for Student Affairs and/or his/her designee, who will impose sanctions, if warranted, following the procedures set forth in the Student Code of Conduct.

#### **4.4 Appealing a Decision**

- 4.4.1** Both the Complainant and Respondent has the right to file a written appeal, outlining the specific issues, facts, or circumstances being appealed, to the Equity Office within ten (10) calendar days of the announcement of the outcome of the AA/EO inquiry/investigation. The Equity Director or Title IX Coordinator will forward the written appeal and the finding to the President. The President will select a review panel from the Affirmative Action Advisory Council (AAAC).
- 4.4.2** The AAAC may conduct a closed hearing limited to Complainant, Respondent, witnesses, and appropriate Utah State University personnel (e.g., staff from the AA/EO Office, the Office of Human Resources and the University General Counsel) to examine the specific issues being appealed. In most cases, the AAAC will present a written report of its findings, conclusions, and recommendations to the President of the University within forty-five (45) calendar days of filing the appeal. However, the AAAC may adjust the deadlines upon good cause.
- 4.4.3** The President will review the recommendations of the AAAC and may accept or modify them. The decision of the President is final.

#### **4.5 Use of Informal Methods**

Nothing in this procedure should preclude using informal methods of compromise or settlement of disputes that are mutually agreeable to the interested parties. However, sexual misconduct complaints may not be resolved using informal method of compromise or settlement.

### **305.5 RETALIATION**

Retaliation against an individual who has made a Complaint or has in any way participated in an inquiry/investigation is prohibited.

### **305.6 RESPONSIBILITY**

#### **6.1 Affirmative Action/Equal Opportunity Office and Director**

The Equity Office and Director is responsible to provide advice and assistance in implementing this policy and for responding to complaints in the time frame outlined in this policy. All complaints will be investigated by the Equity Director.

#### **6.2 Affirmative Action Appeals Committee**

The Affirmative Action Appeals Committee is responsible to respond to any written

discrimination/harassment complaint appeal in a timely manner and to examine the issues being appealed. Within 45 days of a written appeal, the AAAC will provide the President of the University with a written report of its findings and any recommendation.

### **6.3 Employees**

All University employees are responsible to support the University's affirmative action/equal opportunity philosophy by treating each employee and student as an individual and by developing and maintaining a climate of mutual respect.