



## **Interim Procedures for Policies 339, 339A, and 339B: Sexual Misconduct**

### **I. PURPOSE**

Consistent with Title IX of the Education Amendments of 1972, Utah State University (“the University” or “USU”) is committed to maintaining a living, learning, and working environment free from Sexual Misconduct, including Sexual Harassment, Sexual Assault, Relationship Violence, and Sex-based Stalking.

The Office of Equity’s Grievance Process is used to process allegations of noncompliance with [Policy 339: Sexual Misconduct in an Employment or Education Program or Activity](#); [Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity](#); and/or [Policy 339B: Sexual Misconduct in a Study Abroad Program](#) (collectively referred to hereinafter as the “Sexual Misconduct Policy”) and to ensure equitable access to USU’s Employment or Education Programs or Activities for those who experience Sexual Misconduct. Specifically, the Grievance Process is designed to provide reporting options and appropriate Supportive Measures to Claimants and, when a Formal Investigation is undertaken, to provide appropriate Supportive Measures to both parties, and to gather evidence and information to determine whether a Respondent has violated the Sexual Misconduct Policy. When the University determines that a Respondent has violated the Sexual Misconduct Policy, these procedures are designed to ensure the Sexual Misconduct ceases and does not recur; the Respondent’s behavior is addressed appropriately through a range of possible action (e.g., sanctions, education, etc.); and the Claimant is given appropriate Remedies.

Because the University has an obligation under Title IX to provide all students, including a specific Claimant, with an educational environment free of Sexual Misconduct, the University may, at times, be required to engage in a University-driven Formal Investigation even when a Claimant requests no action be taken by the University.

The Office of Equity’s role in the Grievance Process is as a neutral evidence gatherer, while the Hearing Panel’s role is decision-maker, and the Sanctioning Authority’s role is to decide the appropriate Sanctions when a policy violation is found.

### **II. TITLE IX COORDINATOR**

The University has designated a Title IX Coordinator and has authorized that individual to coordinate its efforts to implement and monitor compliance with the Sexual Misconduct Policy and federal Title IX law and regulations more generally. As set forth in the Sexual Misconduct Policy, the Title IX Coordinator is responsible for promptly responding to Incident Reports of alleged Sexual Misconduct, coordinating effective

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implementation of Supportive Measures, and informing Claimants of their option to file a Formal Complaint.

The University's Title IX Coordinator for all campuses is:

Hilary Renshaw  
[titleix@usu.edu](mailto:titleix@usu.edu)  
1475 Old Main Hill  
Room 161  
Logan, Utah 84322-1475  
435-797-1266

### **III. JURISDICTION**

These procedures apply to allegations of Sexual Misconduct committed against any person by an Employee, Student, or third party over whom the University has control that occurs:

- 1) In an Employment or Education Program or Activity;
- 2) In a Study Aboard program; or
- 3) Outside 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, including that which results in a criminal charge or conviction.

In determining whether alleged Sexual Misconduct that occurred outside an Employment or Education Program or Activity likely has continuing adverse effects or creates a Hostile Environment, the University will consider: 1) the severity of the alleged conduct; 2) the risk of ongoing harm; 3) whether both parties; are members of the University community; 4) the impact to an Employment or Education Program or Activity; and 5) whether the conduct was part of a series of actions that occurred both in and outside of an Employment or Education Program or Activity.

### **IV. REPORTING OPTIONS THAT WILL RESULT IN AN INCIDENT REPORT TO THE TITLE IX COORDINATOR**

#### **A. 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. An Incident Report can be filed online at [equity.usu.edu/report](http://equity.usu.edu/report) or by emailing [titleix@usu.edu](mailto: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.

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**B. 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](#) (“Reporting Employee Policy”). For a list of Employees by title that the University has identified as Reporting Employees, see [Procedures 340: Required Reporting of Sexual Misconduct](#).

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](http://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 [Reporting Employee Policy](#).

A Reporting Employee’s obligations do not apply to circumstances in which the Reporting Employee is the Claimant who experienced Sexual Misconduct. For more information about exceptions to Reporting Employee reporting obligations, see [Reporting Employee Policy](#) section 2.1.1.

**C. 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 or stalking injunction 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 the University coordinates with police when criminal proceedings run concurrent with an investigation under these procedures, see section XVI.

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**Logan**

Incidents of Sexual Misconduct that occur on the Logan campus should be reported to USU Police Logan. A person may:

- Call 435-797-1939 or 911 in an emergency
- Visit the Public Safety Building at 880 East 1250 North, Logan

Incidents of Sexual Misconduct that occur off campus but within the Logan community should be reported to Logan City Police. A person may:

- Call 435-716-9300 or 911 in an emergency
- Visit 62 West 300 North, Logan

**Price**

Incidents of Sexual Misconduct that occur on the USU Eastern campus should be reported to USU Police Eastern. A person may:

- Call 435-637-0890
- Visit the Purchasing/Police Building on the USU Eastern campus at PUR 101B

Incidents of Sexual Misconduct that occur off campus within the Price community should be reported to Price City Police. A person may:

- Call 435-636-3190
- Visit 910 North 700 East, Price, Utah

**Blanding**

Incidents of Sexual Misconduct that occur on the USU Blanding campus should be reported to USU Police Blanding. A person may:

- Call 435-678-2334
- Visit Campus Security at 576 West 200 South, Blanding

Incidents of Sexual Misconduct that occur off campus within the Blanding community should be reported to Blanding City Police. A person may:

- Call 435-678-2334
- Visit 167 East 500 North, Blanding, Utah

As required by the Reporting Employee Policy, USU Police at every campus will notify the Title IX Coordinator of all reported incidents of Sexual Misconduct.

**D. Anonymous Reporting**

With the exception of a Reporting Employee filing a report described in subsection IV.B. above, any person may file an Incident Report anonymously through the University's online reporting system at [equity.usu.edu](http://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 Formal Investigation based on an

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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.

When the University receives an anonymous Incident Report it will evaluate the report to determine whether there is enough information to identify Sexual Misconduct, including what happened, when and where it occurred, the parties and Witnesses to the incident, and whether there may be other sources of information about the incident.

If one or more of the parties are not identified in the Incident Report, the Office of Equity will make a good faith effort to identify the parties involved in the incident.

**V. REPORTING OPTIONS THAT WILL NOT AUTOMATICALLY RESULT IN AN INCIDENT REPORT TO THE TITLE IX COORDINATOR**

**A. 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 are Designated Confidential Resources. These individuals are required to keep all information pertaining to Sexual Misconduct allegations confidential, meaning they cannot share that information with the Title IX Coordinator or law enforcement without the express permission of the Claimant. As such, reports made to Designated Confidential Resources alone will not result in an investigation or further University action beyond the provision of supportive services, medical attention, or other 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 [Reporting Employee Policy](#).

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, including SAAVI advocates;
- [Student Health & Wellness Center](#); and
- USU Eastern Student [Counseling](#) Office.

**B. Reporting to Resource Connection Employees**

A Resource Connection Employee is an employee who is neither a Reporting Employee or a Designated Confidential Resource but whose position is listed in the [Resource Connection Employee list](#). Most Employees are Resource Connection Employees.

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Resource Connection Employees are not required to report disclosures of Sexual Misconduct to the Title IX Coordinator, meaning a disclosure of Sexual Misconduct to this category of employees does not amount to Actual Knowledge and will not trigger an investigation or other related actions by the University. 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 [Reporting Employee Policy](#).

## **VI. 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 otherwise 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.

## **VII. PROMPT REVIEW AND INITIAL ASSESSMENTS**

### **A. Prompt Review**

In order to assess whether an Incident Report indicates there is an immediate threat to physical health or safety or a Clery Reportable Crime necessitating a timely warning review under section XXIII Timely Warnings, the Office of Equity will review Incident Reports made to the Title IX Coordinator or the Office of Equity as urgently as possible when pertinent information becomes available, including outside of business hours.

### **B. Initial Assessment**

After receiving an Incident Report, the Office of Equity will conduct an Initial Assessment of the reported information to determine whether: 1) the Incident Report alleges a Clery Reportable Crime; 2) the Office of Equity has jurisdiction under section III Jurisdiction; 3) the Respondent is a Student, Employee, or third party over whom the University has control; and 4) the allegations necessitate an Initial Safety Risk Assessment.

If the Office of Equity determines the Incident Report alleges a Clery Reportable Crime that occurred within Clery geography, it will share the allegations with USU Police as outlined in section XXVIII, Information Sharing.

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**VIII. RESPONSE TO INCIDENT REPORT**

Following receipt of an Incident Report, the Title IX Coordinator, or their designee, will promptly contact the Claimant to offer Supportive Measures and explain that such measures are free of charge and available with or without the filing of a Formal Complaint, discuss the Claimant's wishes about Supportive Measures, and explain the option to file a Formal Complaint, including the process for doing so.

**IX. SUPPORTIVE MEASURES**

The Office of Equity will provide Supportive Measures to a Claimant who has experienced Sexual Misconduct while at the University, regardless of whether the Claimant chooses to participate in the Grievance Process, in order to restore or preserve the Claimant's equal access to an Employment or Education Program or Activity. The University will aim to provide Supportive Measures that are appropriate for the circumstances, including those requested by a Claimant or Respondent. Supportive Measures may not unreasonably burden a Claimant, a Respondent, or the University.

The Office of Equity may also provide Supportive Measures to: minimize interference with a Respondent's education during the pendency of the Grievance Process (e.g. extensions on assignments or exams or excused absences to allow them to attend the hearing); protect the safety of all parties or an Employment or Education Program or Activity; deter Sexual Misconduct; and/or protect the integrity of the Grievance Process. The University may provide Supportive Measures to a Claimant who has experienced Sexual Misconduct while at the University regardless of whether: 1) they choose to file a Formal Complaint, 2) they choose to participate in the Grievance Process, 3) the incident occurred on campus, or 4) the Respondent is connected to the University.

In any case in which the University does not provide Supportive Measures to a party, the Office of Equity will document why they were not provided, and why the University's decision was not clearly unreasonable in light of the known circumstances.

Supportive Measures may include, but are not limited to: adjustments to academic accommodations, including academic record adjustments, changes to deadlines and course schedules, and alternative course completion options and withdrawals; assistance with preserving eligibility for academic, athletic, or other scholarships, financial aid, internships, study abroad, and/or foreign student visas (where possible and consistent with federal law and regulations); counseling; no-contact orders; on-campus housing or parking reassignments; leaves of absence; work or class schedule changes; campus safety escort services; increased security and monitoring of certain areas of campus and sharing information with relevant Employees in order to ensure appropriate monitoring; notifying a Supervisor about the Formal Complaint; notifying parties and Supervisors about Retaliation prohibitions; temporary removal from certain areas of campus or from participation in an athletic or extracurricular program (when

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done in conjunction with an authorization for Emergency Removal); adding a registration hold on a Respondent's account in order to notify a Claimant when a Respondent returns to the USU community; and conducting a policy review or training with the Respondent.

When the University has jurisdiction to address a Formal Complaint and the parties live near each other in on-campus housing or are in the same class(es), the University may provide Supportive Measures including moving the Respondent from the class(es) or into another on-campus housing unit. When taken to prevent the recurrence of alleged Sexual Misconduct, to address safety, or to prevent interference with the Grievance Process, such Supportive Measures shall not be deemed to unreasonably burden the Respondent.

The Office of Equity will work with other University units, faculty, and administrators, but will share only as much information as is necessary and only with individuals who need to know in order to facilitate the Supportive Measures.

The Office of Equity will evaluate the need for additional Supportive Measures on an ongoing basis and will take action to effectively implement appropriate measures when necessary.

The Office of Equity may refer a party needing further support, including support unrelated to the Office of Equity's jurisdiction, to other University units and resources for assistance.

**A. Mutual No Contact Orders**

As a Supportive Measure, the Office of Equity may enter a mutual no contact order prohibiting parties from contacting each other as either a Supportive Measure at the request of either the Claimant or Respondent, or during the pendency of a Formal Investigation or Earlier Resolution. Absent good cause, no contact orders entered as a Supportive Measure will only last for four months. No contact orders entered during the pendency of a Formal Investigation or Earlier Resolution will be in effect for the duration of the Grievance Process and may be extended for additional time upon good cause. A no contact order issued as a Supportive Measure or prior to a Determination of a policy violation shall be designed not to unreasonably burden either party. A no contact order prohibiting the Respondent from contacting the Claimant that is entered following a Determination that the Respondent has violated the Sexual Misconduct Policy shall not be considered to unreasonably burden the Respondent.

**X. CLAIMANT'S DECISION ON HOW TO PROCEED**

The Office of Equity will respect and recognize a Claimant's desire for confidentiality and/or decision not to file a Formal Complaint consistent with Title IX, the Sexual Misconduct Policy, and these procedures. However, once the University has received



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an Incident Report of Sexual Misconduct, it may need to act to maintain campus safety and must determine (pursuant to the Safety Risk Assessment described below) whether to investigate further, regardless of a Claimant's request for confidentiality. Nevertheless, a Claimant is not required to participate in a Formal Investigation, regardless of whether it is University-driven, or an Earlier Resolution and the Claimant may receive Supportive Measures even if they decide not to participate in the Grievance Process.

If the Safety Risk Panel determines that the University must proceed with a University-driven Formal Investigation, the Title IX Coordinator or their designee will notify the Claimant in writing, and will inform the Claimant that it will use the Claimant's name and any details about the Claimant's experience in the Formal Complaint that the University signs.

## **XI. SAFETY RISK ASSESSMENTS**

The University will conduct a Safety Risk Assessment in order to determine whether a Respondent poses a safety risk that warrants Emergency Removal or Administrative Leave under section XI, and/or whether the University should move forward with a University-driven Formal Investigation.

Safety Risk Assessments will be individualized and will take into account the specific circumstances arising from an Incident Report and/or information received by the University regarding Sexual Misconduct. In assessing safety, both the Office of Equity and the Safety Risk Panel may consider any prior findings that the Respondent has violated the Sexual Misconduct Policy and/or any other University policy.

### **A. Initial Safety Risk Assessment**

The Office of Equity will conduct an Initial Safety Risk Assessment when an Incident Report alleges—or if the University has information suggesting—the occurrence of Sexual Assault, Relationship Violence, Sex-based Stalking, or Quid Pro Quo Sexual Harassment. Additionally, the Office of Equity, will conduct an Initial Safety Risk Assessment if the Incident Report alleges—or if the University has information suggesting—a pattern or ongoing Sexual Misconduct by a Student, Employee, or third party over whom the University has control.

The Office of Equity will complete the Initial Safety Risk Assessment within one business day of receipt of the Incident Report or information that gives rise to the assessment.

In conducting its assessment, the Office of Equity considers a range of factors, including whether:

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- The Claimant expressed a concern for their physical safety that suggests they may be in immediate danger;
- There have been other Sexual Misconduct complaints or Determinations that the Respondent has violated the Sexual Misconduct Policy or other Employee or Student conduct violations at USU indicating that the Respondent has a history of Sexual Misconduct;
- There is information indicating that the Respondent has a history of arrests or records that indicates a history of Sexual Misconduct or other violence related to the alleged incident that is available at the time of this assessment;
- The Respondent has a University or personnel record indicating a history of Sexual Misconduct;
- The Respondent is on legal probation or parole for violence or sexual violence;
- For Students, the USU Admissions Office has records from the Respondent's previous secondary or postsecondary institution that indicate the Respondent has a history of sexual violence;
- The Respondent has threatened further violence, Sexual Misconduct, or Retaliation against the Claimant or others;
- The alleged violation was committed by multiple Respondents;
- The alleged violation was perpetrated with a weapon;
- The Respondent has access to firearms;
- The Respondent used alcohol or drugs to commit the alleged violation;
- The Claimant is a minor;
- There is a power imbalance between the Respondent and the Claimant (e.g., a Claimant alleges Sexual Misconduct by their professor or coach);
- The Claimant's report or other information received about the Respondent reveals a pattern of perpetration at a given location or by a particular group;
- The Respondent's access to campus presents an ongoing threat (e.g., the Respondent lives and/or works on campus); and
- Other relevant factors.

The Office of Equity will gather information related to the above factors and, based on the information gathered and/or included in any Incident Report received, will make an initial determination of whether the Respondent may present an immediate, significant, or ongoing threat to the physical health or safety of a Student, Employee, or other individual(s) in an Employment or Education Program or Activity, which arises from the allegations of Sexual Misconduct.

If the Initial Safety Risk Assessment indicates that the Respondent may present a safety threat or may have engaged in a pattern of Sexual Misconduct, the Office of Equity will convene a Safety Risk Panel, including the Appropriate Administrator.

**B. Panel Safety Risk Assessment**

When convened, the Safety Risk Panel will conduct a Panel Safety Risk Assessment to:

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- 1) Assess the safety threat;
- 2) Evaluate for Emergency Removal or Administrative Leave; and
- 3) Determine whether a University-driven Formal Investigation is required if Claimant does not file a Formal Complaint.

The Panel will consider the same factors listed in subsection XI.A.

The Panel will complete the Panel Safety Risk Assessment within one business day of the Office of Equity's Initial Safety Risk Assessment. If the Panel does not have enough information with regard to whether there is an immediate safety threat, a need for Emergency Removal or Administrative Leave, and/or whether a University-driven Formal Investigation should be authorized, the Panel may hold any outstanding issue(s) without a decision and request that the Office of Equity gather more information with regard to the outstanding issue(s). The Panel shall reconvene and make a decision on the outstanding issue(s) as soon as the necessary information can promptly and reasonably be obtained.

**1. Assess the Safety Threat**

The Safety Risk Panel will determine whether the Respondent presents an immediate threat to the physical health or safety of a Student or other individual(s) on one or more of the University's campuses arising from the allegations of Sexual Misconduct.

**2. Evaluate for Emergency Removal and/or Administrative Leave**

If the Safety Risk Panel determines that the Respondent presents an immediate threat, the Panel will also determine whether the Respondent should be subject to Emergency Removal.

In making its decision, the Safety Risk Panel shall assess whether Supportive Measures will appropriately address the threat and, if so, the Panel will not place the Respondent on Emergency Removal. In such an instance, the Supportive Measures put into place must not unreasonably burden the Claimant or the Respondent, but may include partial exclusion from specific programs or activities. If the Panel places a Respondent on Emergency Removal, it will follow the procedures in section XII.

Even in the absence of an immediate risk to physical health or safety, where the Respondent being assessed is a non-Student Employee, the University has discretion to place a Respondent on Administrative Leave under [Policy 311: Setting Expectations and Managing Performance](#) or [Policy 407: Academic Due Process: Sanctions and Hearing Procedures](#).

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**3. Evaluate Whether to Require University-driven  
Formal Investigation**

Regardless of whether the Respondent presents an immediate threat, the Safety Risk Panel may require a University-driven Formal Investigation in the absence of a Claimant filing a Formal Complaint if the Safety Panel Risk Assessment determines there is a pattern of alleged Sexual Misconduct and/or an immediate, significant, or ongoing threat by a Respondent over whom the University has control.

In determining whether to require a University-driven Formal Complaint if Claimant does not file a Formal Complaint, the Panel shall weigh the desires of a Claimant not to participate and/or to remain confidential against the University's obligation to provide a safe, non-discriminatory environment for all Students, Employees, and the campus community, including the Claimant. If the Panel determines the Claimant's request for confidentiality outweighs the risk to the campus community based on the information it has at the time, the Panel may decline to require a University-driven Formal Investigation.

**C. Assessments Ongoing**

The Office of Equity will assess safety on an ongoing basis. If at any point during the Grievance Process more information becomes available that suggests an immediate threat to the physical health or safety of a Student or other individual(s), the Office of Equity will complete or update an Initial Safety Risk Assessment and take the steps outlined in subsection XI.

When a Panel Safety Risk Assessment has been completed, the Office of Equity will keep the case open for monitoring for 90 days (or until the Grievance Process, if undertaken, is complete). During the monitoring period, the Office of Equity will monitor its incoming Incident Reports, including anonymous reports, to determine whether any may relate to the relevant incident or to the Respondent who was assessed for safety. At the end of 90 days, the Office of Equity will complete an updated Safety Assessment including requesting updated information about the Student or Employee being monitored from Student Conduct, Student Affairs, and Law Enforcement, and from the Student or Employee's Supervisor and/or department, including Human Resources if the individual is an Employee. If the Office of Equity receives any new information relevant to safety at any point during the 90-day period, the Office of Equity will complete an updated Initial Safety Risk Assessment and take the steps outlined in subsection XI.

Absent good cause, Emergency Removal will not extend beyond 90 days. Good cause includes, but is not limited to, a pending Office of Equity Grievance Process involving the allegations of Sexual Misconduct that were underlying the Emergency Removal decision.

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**XII. EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE**

Nothing in these procedures or the Sexual Misconduct Policy, shall be interpreted to prevent the University from placing a Respondent on Emergency Removal or Administrative Leave for violations of other University policies.

**A. Emergency Removal (Students and Employees)**

Following a Panel Safety Risk Assessment, the Safety Risk Panel may temporarily place a Respondent on Emergency Removal during the pendency of the Grievance Process.

In the event of an emergency related to Sexual Misconduct, USU Police may immediately trespass a Respondent to protect the health and safety of the campus. However, when such action is taken, USU Police must notify the Title IX Coordinator as urgently as possible and a Safety Risk Panel must be convened within 24 business hours to evaluate the decision under this section.

If the Panel places the Respondent on Emergency Removal, the Office of Equity will immediately seek to notify the Claimant, if Claimant is known. The Appropriate Administrator shall provide the Respondent a written Notice of Emergency Removal within 24 hours of the Panel Risk Assessment's decision. The notice shall inform the Respondent of their immediate opportunity to challenge the removal in writing. The notice shall also provide information on how to request an accommodation based on disability.

A Respondent who is placed on Emergency Removal is protected by the presumption in subsection XVII.B. A Respondent may be placed on Emergency Removal regardless of whether a Formal Complaint has been filed.

**1. Challenging Emergency Removal**

A Respondent who has been placed on Emergency Removal may challenge such removal in writing to the Appropriate Administrator within five business days of receiving the Notice of Emergency Removal. Such a challenge shall outline why the Respondent does not pose an immediate threat to the physical health or safety of a Student or other individual(s) on one or more of the University's campuses arising from the allegations of Sexual Misconduct.

If a Respondent raises a timely challenge to the Emergency Removal, the Appropriate Administrator will reconvene the Safety Risk Panel within two business days of the challenge. The Panel will reassess Emergency Removal as outlined in subsection XI.B.2., taking into account the challenge and any new information provided by the Respondent.

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Within one business day of the Panel's decision, the Appropriate Administrator will notify the Respondent of the decision to either maintain or terminate the Emergency Removal. If the Emergency Removal is terminated, the Office of Equity will immediately seek to notify the Claimant, if Claimant is known.

**B. Administrative Leave (Non-Student Employees Only)**

Regardless of whether a Respondent presents a safety risk, the Safety Risk Panel, including the Appropriate Administrator, may temporarily place a Non-Student Employee Respondent on Administrative Leave.

The Appropriate Administrator, in collaboration with the Title IX Coordinator, may place a Non-Student Employee Respondent on Administrative Leave during the pendency of the Grievance Process in order to address non-emergency concerns, including present but not immediate safety risks, protecting the integrity of the Office of Equity Grievance Process, or preventing new incidents of Sexual Misconduct from arising during the course of the Grievance Process. Administrative Leave will be paid so as not to unreasonably burden the Respondent.

If either the Panel or Appropriate Administrator places the Respondent on Administrative Leave, the Appropriate Administrator shall provide the Respondent a Notice of Administrative Leave in accordance with [Policy 311: Setting Expectations and Managing Performance](#) or [Policy 407: Academic Due Process: Sanctions and Hearing Procedures](#).

**XIII. PROCESS ADVISORS AND SUPPORT PERSONS**

Process Advisors, Support Persons, and parents participating in the Office of Equity Grievance Process are expected to adhere to the rules for Process Advisors and Support Persons and maintain decorum and respect while participating in this process. Upon warning, a Process Advisor, Support Person, or parent may be removed from any meeting or proceeding if they are being disruptive to the process or using abusive or threatening language.

**A. Process Advisors**

The Claimant and the Respondent may each have one Process Advisor of their choice to advise them throughout the Grievance Process, including during a Formal Investigation or an Earlier Resolution. A Process Advisor may be a parent, legal guardian, University faculty or staff member, USU Student Associate Student Advocate, attorney, or any other person with whom a party wishes to consult during this process, although a party may not select someone who was a Witness to the incident or who has relevant information as a Process Advisor, because the Office of Equity and Hearing Panel is unable to take evidence from them if they are also serving as a Process

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Advisor. Up to the date of the hearing, a party may choose a different Process Advisor at any time.

The Process Advisor may attend interviews and meetings with the Office of Equity, but the Process Advisor may not actively participate and may not serve as a proxy for the party. All written submissions and responses must be authored by the party. However, at the hearing, the Process Advisor will ask questions and may make opening and closing statements on the party's behalf.

If the case proceeds to a hearing, each party *must* use a Process Advisor in the hearing. If a party does not have a Process Advisor for any reason, the University will appoint one to the party for the hearing only. Process Advisors appointed by the University need not be attorneys and the University will take steps to ensure they are free of Conflicts of Interest and/or Bias pertaining to the party they are advising by inquiring of the parties and the proposed Process Advisor. A party is encouraged to raise any concerns they have about a Conflict of Interest and/or Bias as soon as they are aware of a possible issue. See § XVII.H. University-appointed Process Advisors will be appointed under subsection XXIX.B. and trained under subsection XXIX.C.

Communications between University-appointed Process Advisors and the party whom they are advising shall be confidential. However, such communications are not protected by evidentiary privilege, and may be required to be disclosed in any civil or criminal proceedings that may arise, including any that are presently pending.

**B. Support Persons**

The Claimant and the Respondent may each have one Support Person of their choice attend Office of Equity meetings, interviews, and hearings, in order to provide emotional support. The same person can fill the role of both a Process Advisor and a Support Person, but parties may elect two different individuals to fill these roles.

With the exception of a Support Person who is also serving as a Process Advisor, a Support Person may attend but cannot participate in the hearing process. A party may not select a Witness as a Support Person. A party may choose a different Support Person at any time.

The Support Person may attend interviews and meetings with the Office of Equity, but the Support Person may not actively participate and may not serve as a proxy for the party. All written submissions and responses must be authored by the party.

**C. Parental Participation**

If a party or Witness is a minor and a Student or Employee, communications will be made directly to them.

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If a party or Witness is a minor but not a Student or Employee, communications will be made to their parent or legal guardian in lieu of the party or Witness, and the parent or legal guardian may choose to participate on their child's behalf except that the party or Witness must be the one to be interviewed and submit themselves for questioning should a hearing be held.

Except as designated above, the University may not share information or involve a parent in proceedings under the Grievance Process without a release of information signed by the party. If the appropriate releases are signed, a parent may serve as a Process Advisor and/or a Support Person for their child. Unless their child is a minor, the Office of Equity will not share information with a parent who has not been designated by their child to be a Process Advisor or a Support Person.

**D. Releases of Information**

A party seeking to involve a Process Advisor, Support Person, or parent shall sign and complete the necessary "Release of Information" and "Designation of Representative" forms and submit them to the Office of Equity.

**E. Inspection and Review of Records**

When appropriate forms have been signed, Process Advisors and parents may inspect and review evidence. Support Persons (unless they are Process Advisors) will not have access to evidence.

**F. Active Participation**

Although parties are not required to participate in this process, if a party decides to participate, they must do so actively. In other words, the Office of Equity will direct all communications related to the process to the party, not to a Process Advisor or Support Person. If a party chooses to participate in an interview or hearing, the party shall answer questions on their own behalf.

A party seeking a disability-based accommodation from the active participation requirement may submit a request for accommodation under section XXIV.

**XIV. SCHEDULING**

The Office of Equity will make a good faith effort to work with parties' schedules and to involve Process Advisors and Support Persons. However, for all meetings and proceedings under these procedures, the Office of Equity may set a reasonable deadline and move forward with the process regardless of whether a party or a party's Process Advisor or Support Person is able to accommodate those deadlines.



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**XV. INTAKE**

Upon receipt of an Incident Report over which the Office of Equity has jurisdiction, the Office of Equity will attempt to contact the Claimant, if contact information is available, within one business day through an initial email or phone call to offer Supportive Measures. The email or phone call will: explain that Supportive Measures are available free of charge and with or without the filing of a Formal Complaint; invite the Claimant to discuss the Claimant's wishes about such measures; and explain the process for filing a Formal Complaint. In the email or during the phone call, the Office of Equity will offer to hold a meeting with the Claimant within three business days of receipt of the Incident Report.

**A. No Participating Claimant**

If the Office of Equity does not receive a response to the initial email or phone call to the Claimant, the Office of Equity will follow-up with the Claimant by phone and/or email within five business days. Unless a Panel Safety Risk Assessment has been conducted and/or a University-driven Formal Investigation has been authorized, if the Claimant responds and indicates a desire not to communicate with the Office of Equity or if the Claimant does not respond, the Office of Equity will send the Claimant a closing letter with relevant resources stating that the Claimant can contact the Office of Equity at any time if they change their mind about participating.

When the Respondent is an Employee and the Claimant does not wish to participate in the Grievance Process, unless a Panel Safety Risk Assessment has been conducted and/or a University-driven Formal Investigation has been authorized, the Office of Equity will notify the Appropriate Administrator that an Incident Report was filed, that the Claimant is not participating, that the Grievance Process will not be commenced, and the matter will be closed. The Office of Equity will also include the Incident Report and/or a summary of the allegations and will remind the Appropriate Administrator of their obligation to report Sexual Misconduct under the Reporting Employee Policy. The Office of Equity will then close the case.

If a University-driven Formal Investigation has been authorized, the Office of Equity will notify the Claimant of its plans to proceed with a University-driven Formal Investigation including that the Respondent will be notified of the Claimant's name and information about the allegations. The Office of Equity will also remind the Claimant about Supportive Measures that may be available to them. In such case, absent an immediate risk to physical health or safety, the Office of Equity will give the Claimant an opportunity to object to the University-driven Formal Investigation.

A Claimant may decide to participate as a Witness in a University-driven Formal Investigation. Regardless of whether they are external or internal to the University, Claimant-witnesses shall not have party status, and, as such, they may not involve a Process Advisor (University-Appointed or otherwise), question the Respondent, or have

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access to the Record or Investigation Reports. A Claimant-witness may include a Support Person in their meetings and interviews with Equity and the hearing, but only if their Support Person is willing to sign a non-disclosure agreement related to the information they may receive as a result of their participation.

**B. Participating Claimant**

If the Claimant agrees to communicate with the Office of Equity, that office will schedule a meeting with the Claimant. The Office of Equity will request that the Claimant complete the Office of Equity's intake forms and will meet with the Claimant to: discuss Supportive Measures, including that such measures are available free of charge, with or without the filing of a Formal Complaint; hear the Claimant's wishes about such measures; and explain the process for filing a Formal Complaint, including sharing details about the alleged Sexual Misconduct. To help ensure Supportive Measures are tailored to the Claimant's needs, the Office of Equity may seek academic information from the Claimant.

The Office of Equity will also provide information about the University's prohibition against Retaliation and how to report such concerns.

The Office of Equity will work with the Claimant to assess and address safety concerns and connect the Claimant with appropriate resources. The Office of Equity will also provide the Claimant with information about seeking advocacy or counseling, receiving medical care, reporting to police, and preserving evidence.

**XVI. COORDINATION WITH LAW ENFORCEMENT**

The University acknowledges that a law enforcement agency may initiate an investigation and prosecution of an incident of Sexual Misconduct independent of any Grievance Process under the Sexual Misconduct Policy.

If law enforcement (including USU Police) is investigating an allegation of Sexual Misconduct over which the University's Office of Equity also has jurisdiction, the Office of Equity may temporarily delay the fact-finding portion of its Title IX investigation during law enforcement's initial evidence gathering process, if law enforcement requests such a delay. Provided however, that the Office of Equity may suggest reasonable timelines to the law enforcement agency in which to take the specific investigatory step(s) in question. If the Office of Equity must take interim actions that involve excluding the Respondent from campus or entering a no contact order, the Office of Equity will notify the law enforcement agency requesting the delay of such interim action as soon as practicable. Further, in cases of delay on the part of the Claimant or as a result of some other element of the investigation, or in cases of unidentified or non-participating Claimants, the Office of Equity may need to move forward with reasonable speed in order to complete its obligations under Title IX to resolve Formal Complaints in a prompt

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manner. In such cases, the Office of Equity will notify law enforcement before proceeding.

## **XVII. GRIEVANCE PROCESS**

The University will conduct a fair and impartial Grievance Process, free of Conflicts of Interest, Bias, and discrimination, in which both parties are treated as equitably as possible.

The Grievance Process includes all steps from the filing of a Formal Complaint through the Appeal process. The Grievance Process may include a Claimant or University-driven Formal Investigation or an Earlier Resolution.

### **A. Formal Complaint**

The Grievance Process, including a Formal Investigation or an Earlier Resolution, may not proceed without a Formal Complaint signed by the Claimant or the Title IX Coordinator on behalf of the University.

To be eligible to file a Formal Complaint, a Claimant must be a current Student, Employee, or Participant.

A Claimant or the Title IX Coordinator shall complete a Formal Complaint form provided by the Office of Equity. The Formal Complaint shall include:

- 1) The identities of the parties and Witnesses involved in the incident, if known;
- 2) The conduct allegedly constituting Sexual Misconduct under the Sexual Misconduct Policy;
- 3) The date and location of the alleged incident, if known; and
- 4) If alleging Sexual Harassment, a short statement about how the incident has affected the Claimant's Education or Employment. (Examples may include: the Claimant feels uncomfortable going to class, work, or other locations around campus because of the Sexual Harassment; the Claimant's school or work performance has suffered because of the Sexual Harassment; the Claimant stopped attending school or work because of the Sexual Harassment; the Claimant has required treatment for physical or mental health because of the Sexual Harassment.)

If a University-driven Formal Investigation is authorized following a Panel Safety Risk Assessment and there is no participating Claimant, the Title IX Coordinator will complete and sign the Formal Complaint.

Once the Office of Equity has a signed Formal Complaint, whether by Claimant or the Title IX Coordinator, the Office of Equity will proceed as outlined in this section.

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**1. Dismissal**

If the University decides to dismiss an Incident Report or Formal Complaint or any of the allegations therein, the Office of Equity will simultaneously notify the parties whom the office has engaged, in writing, within five business days of the decision. The Office of Equity will only notify the Respondent if they have previously been notified of the Formal Complaint or that the Office of Equity has received an Incident Report. If the dismissal is based on specific circumstances preventing the University from gathering sufficient evidence, the letter will explain those circumstances.

A Claimant may appeal the dismissal decision in writing to the Office of Equity within five business days of the date the notice of dismissal is issued. An appeal shall outline the reasons why the Formal Complaint or allegations therein should not be dismissed in spite of the reason(s) listed for dismissal.

Even if a Formal Complaint is dismissed for the reasons described below, the Office of Equity may still provide appropriate Supportive Measures to a Claimant who allegedly experienced Sexual Misconduct while they were a Student or Employee at the University.

Additionally, the Office of Equity will take appropriate steps to address any Sexual Misconduct that occurs in the context of an Employment or Education Program or Activity, including reporting the incident to law enforcement or other relevant departments so that appropriate action may be taken. The Office of Equity also may evaluate a Formal Complaint under Policy 305: Discrimination Complaints or forward the Incident Report or the Formal Complaint to another department for action under separate University policies.

Nothing in this section shall be read to preclude the University from taking action to address conduct that may violate Policy 305 or another University policy.

**a. Required Dismissal**

The Office of Equity will dismiss a Formal Complaint of Sexual Misconduct if any of the following are true:

- 1) The facts alleged or revealed by the investigation would not constitute Sexual Misconduct even if proven to be true;
- 2) The alleged Sexual Misconduct is not alleged to have been committed by an Employee, Student, or third party over whom the University currently has control as of the date of the Formal Complaint;
- 3) The alleged Sexual Misconduct occurred outside an Employment or Education Program or Activity and the Sexual Misconduct does not likely have continuing adverse effects on, or create a Hostile Environment for, Students, Employees, or third parties in an Employment or Education Program or Activity; and/or,

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- 4) There is no evidence of an admission of a policy violation by a Respondent, external probative evidence, and/or a participating Claimant-witness.

**b. Discretionary Dismissal**

The Office of Equity may, in its discretion, dismiss an Incident Report or Formal Complaint of Sexual Misconduct or any of the allegations therein if, at any time during the Formal Investigation, hearing, or Earlier Resolution:

- 1) The Claimant notifies the Title IX Coordinator in writing that they would like to withdraw their Formal Complaint or any of the allegations therein and a Panel Safety Risk Assessment does not require a University-driven Formal Investigation;
- 2) While the Grievance Process is pending, the Respondent unenrolls as a student or leaves employment with the University;
- 3) No Claimant is identified and/or specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or the allegations therein. Such circumstances may include, but are not limited to, instances in which: there is a significant length of time between the incident and the Incident Report or Formal Complaint; a Claimant is no longer participating in the Grievance Process; or the Office of Equity has no way to gather evidence sufficient for a Determination;
- 4) The Claimant stops participating in the Grievance Process and/or indicates they will not attend the hearing; and,
- 5) The Formal Complaint contains allegations that are the same as allegations the Office of Equity has already investigated and adjudicated.

Absent an admission of a policy violation by the Respondent, external probative evidence, and/or a participating Claimant-witness, the Title IX Coordinator may withdraw a University-driven Formal Complaint following the investigation or at any other appropriate time prior to certification of the case to the Hearing Officer.

In determining whether to dismiss a Formal Complaint based on a Respondent's departure from the University, the Office of Equity will consider whether: 1) the Respondent poses an ongoing risk to the University community; and 2) a Determination regarding responsibility provides a benefit to the Claimant even where the University lacks control over the Respondent and would be unable to issue disciplinary Sanctions.

**c. University-driven Formal Investigation following Dismissal or Withdrawal of a Formal Complaint**

In the case of a discretionary dismissal (including a Claimant's withdrawal of a Formal Complaint), the Title IX Coordinator has discretion to proceed with a University-driven Formal Investigation when: the incident is jurisdictional under Policy 339, Policy 339A, or Policy 339B and these procedures, a University-driven Formal Investigation is

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authorized by the Safety Risk Panel; the allegations suggest that the Respondent presents a significant, ongoing, and/or an immediate threat to the physical health or safety of an individual or campus; and/or the Office of Equity has gathered evidence apart from the Claimant's statements and desires to reach a Determination regarding the Respondent's responsibility.

In such a case, the Title IX Coordinator will file a Formal Complaint. The Claimant will not be a party to the Formal Complaint, but may participate as a Witness; however, Respondent will be entitled to the process afforded by section XVII of these procedures.

The Office of Equity may also instruct a withdrawing Claimant about their obligation to preserve relevant evidence.

For reasons outlined in subsection XVII.A.1. of these procedures, the Title IX Coordinator may withdraw the Formal Complaint filed under this section at any time.

## **2. Consolidation of Formal Complaints**

When there are multiple claims by different Claimants made against the same Respondent, claims made by the same Claimant against multiple Respondents that are pending at the same time, cross-complaints filed by Respondent(s) against a Claimant, and/or allegations that multiple claims relate to the same underlying incident or demonstrate a pattern of conduct by the same or related Respondent(s), the Office of Equity Executive Director will determine whether the claims should be consolidated and investigated and/or heard at the same hearing.

The claims will be evaluated to determine whether the allegations:

- 1) Form part of a single incident (weighs in favor of consolidation);
- 2) Are similar enough to appear to be part of a discernable and concerning pattern (weighs in favor of consolidation); and/or
- 3) Are completely unrelated (weighs in favor of separate proceedings).

If the Office of Equity Executive Director decides to consolidate the claims into one Grievance Process, they will notify all the parties, in writing, of the decision.

If claims are consolidated into one Grievance Process, upon agreement of the relevant parties, some subset of the allegations within the Formal Complaints that make up the consolidated claims may be resolved through an Earlier Resolution. Otherwise, the consolidated claims shall be addressed in the same written Determination, although the Determination may separately address responsibility with respect to each allegation depending on the facts.

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**B. Presumption of No Policy Violation**

The University will presume that the Respondent is not responsible for violating the Sexual Misconduct Policy until either a Determination has been made at the conclusion of a hearing that Respondent has violated the policy or an Earlier Resolution agreement has been reached.

**C. Notice of Allegations**

Within five business days of receipt of the signed Formal Complaint, the Office of Equity will provide all parties a written Notice of Allegations.

The Notice of Allegations shall include the following details:

- 1) The identities of the parties involved in the incident (including the Claimant's name, if known, regardless of whether the Formal Complaint is Claimant or University-driven), if known;
- 2) The conduct allegedly constituting Sexual Misconduct under the Sexual Misconduct Policy; and
- 3) The date and location of the alleged incident, if known.

The Notice of Allegations shall also:

- 1) Include notice of the Grievance Process;
- 2) Outline the Sanction range for the alleged Sexual Misconduct;
- 3) Include a statement that the Respondent is presumed not responsible for the alleged Sexual Misconduct and that a Determination regarding responsibility will be made at the conclusion of the Grievance Process;
- 4) Inform the parties that they may have a Process Advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence; and
- 5) Inform the parties of relevant provisions of University policy that prohibit knowingly making false statements or knowingly submitting false information during the Grievance Process.

**D. Respondent Initial Meeting**

Prior to interviewing the Respondent, the Office of Equity will offer to meet with the Respondent to explain the Formal Investigation process, offer Supportive Measures, and connect the Respondent to appropriate University resources.

**E. Acceptance of Responsibility**

The Respondent may, at any time in the Grievance Process, elect to resolve the case by accepting responsibility for the alleged Sexual Misconduct. In that case, the Title IX

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Coordinator will issue a letter, for Respondent's signature, summarizing the policy violations and stating that the Respondent has accepted responsibility, and that the matter will be referred to the Sanctioning Authority for a Sanction.

A Respondent's acceptance of responsibility cannot be withdrawn and the letter cannot be appealed.

**F. New Allegations Arising During the Course of Investigation**

If, during the course of a Formal Investigation, allegations that were not included in the Formal Complaint or the initial Notice of Allegations come to light, the Office of Equity will issue an amended Notice of Allegations to both parties. When new allegations are added to the Formal Complaint, the Formal Investigation will generally take additional time to complete.

If a Respondent or Witness raises a Sexual Misconduct and/or Retaliation claim against a party to the case during an interview, they will be invited to schedule a separate time to make their report by phone or in person (either at the conclusion of the interview or as soon as possible thereafter) and given the option to file an Incident Report at [equity.usu.edu](http://equity.usu.edu). The investigator will file an Incident Report within 24 hours and the Office of Equity will follow-up with the Witness to request more information.

**G. University-driven Formal Investigation**

If there is no participating Claimant and a University-driven Formal Investigation is required under section subsection XI, Safety Risk Assessments, a University-driven Formal Investigation may proceed as outlined under subsection XVII.J. The Title IX Coordinator shall sign the Formal Complaint including for cases in which there is only testimonial evidence of the alleged Sexual Misconduct.

If a University-driven Formal Investigation is required by the Safety Risk Assessment Panel, the Office of Equity may proceed with a University-driven Formal Investigation to resolve allegations of Sexual Misconduct even in the absence of a Student, Employee, or Participating Claimant.

A University-driven Formal Complaint may be resolved via a Formal Investigation under subsection XVII.J. However, nothing in that section shall be read to preclude a resolution of the case via settlement.

A Formal Complaint in a University-driven Formal Investigation may be withdrawn for the reasons listed under subsection XVII.A.1. Additionally, for cases in which the evidence of Sexual Misconduct is purely testimonial, i.e. based upon conflicting statements of the parties, the Title IX Coordinator will assess for any issues related to confrontation, and may withdraw a University-driven Formal Complaint if there are confrontation issues at the end of the investigation and before the hearing, e.g. there is



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no external evidence and no admissions and a party has stated they will not attend the hearing.

If a Formal Investigation was undertaken, prior to closing the case, the investigator will document all of the steps they took to investigate, including the individuals they interviewed and the evidence they gathered.

**H. Conflicts of Interest and Bias**

Individuals with roles in the Grievance Process, including the Office of Equity Executive Director, Title IX Coordinator, investigators, University-appointed Process Advisors (as it relates to the party they are advising), Hearing Officer, Hearing Panel members, Sanctioning Authorities, Appellate Panel members, and Earlier Resolution facilitators, shall be free from Conflicts of Interest in the case and Bias for or against Claimants and Respondents generally or against a specific Claimant or Respondent and shall remain impartial throughout their involvement in the Grievance Process.

A party alleging a Conflict of Interest or Bias shall raise that concern immediately when they become aware of it. A party who fails to raise a Conflict of Interest or Bias at the time it is known may waive the opportunity to resolve it later.

A party who is concerned about a possible Conflict of Interest or Bias may request that an individual who is not a party (or an opposing party's Process Advisor or Support Person) be removed from participation in the process by notifying the Office of Equity Executive Director, in writing, of the alleged Conflict of Interest or Bias including any evidence or information supporting that concern. Such a request must include facts sufficient to show there is a Conflict of Interest or Bias including supporting evidence and information, if any.

During the hearing, a party may make such a request to the Hearing Officer (or Hearing Panel chair if the conflict relates to the Hearing Officer). The Hearing Officer may postpone the hearing if a Conflict of Interest or Bias is raised during the hearing.

Within five business days, the Office of Equity Executive Director or Hearing Officer will issue a decision outlining whether, based on the evidence and information submitted, a reasonable person would believe a Conflict of Interest or Bias exists.

Once an allegation of Conflict of Interest or Bias is raised, the Executive Director or Hearing Officer has discretion to remove someone from their role in the process on the basis of a perceived or actual Conflict of Interest or Bias.

Additionally, a person (not a party) participating in the Grievance Process may recuse themselves from the case at any time due to concerns about a Conflict of Interest or Bias by notifying the Executive Director (prior to a hearing) or the Hearing Officer (during a hearing) in writing or on the Record. Persons with concerns about their own

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possible Conflicts of Interest or Bias must raise these concerns as soon as they become aware of them.

If the Office of Equity Executive Director or Hearing Officer determines that a Conflict of Interest or Bias exists or in the event of a recusal, they will notify the individual and parties and will take appropriate steps to appoint an appropriate replacement to serve in place of the person with the Conflict of Interest or Bias within five business days of the decision.

If a Conflict of Interest or Bias exists with regard to a Sanctioning Authority or Appropriate Administrator, the Sanctioning Authority's or Appropriate Administrator's direct superior or another Sanctioning Authority or Appropriate Administrator at the same level (e.g. director, department head, etc.) may be appointed to act in that role under these procedures. If there is a Conflict of Interest with everyone at that level, an administrator at the next level above or below may be appointed to act in that role under these procedures.

## **I. Earlier Resolutions**

With the exception of Formal Complaints signed by the Title IX Coordinator and Formal Complaints involving an Employee Respondent and a Student Claimant, none of which are eligible for an Earlier Resolution, Formal Complaints may be resolved via Earlier Resolution. The University may implement Sanctions or proceed with Sanctions as outlined in section XVII.J.21, consistent with terms reached as part of an Earlier Resolution.

Any time after a Formal Complaint has been filed and up to three business days before a hearing, any party may request an Earlier Resolution. Within three business days of the request, the Office of Equity investigator will communicate such request to the other party to determine whether they agree to participate in an Earlier Resolution as required by subsection XVII.I.3. However, requests for Earlier Resolution that are abusive, unreasonably repetitive, or designed to intimidate, pressure, or coerce will not be considered or forwarded to the other party.

### **1. Timeframes**

Earlier Resolutions must be completed within 40 business days of the date of the agreement of the parties to proceed with the Earlier Resolution process. If there is no Earlier Resolution agreement reached within that timeframe, unless the Claimant or the University has withdrawn their Formal Complaint, the case will proceed to a Formal Investigation.

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**2. Notice of Rights and Requirements**

Within five business days of a request for an Earlier Resolution, the Office of Equity shall issue to the parties information outlining the rights of the participants, requirements of the Earlier Resolution process, and any consequences that could result from participation in the process (e.g., Sanctions, records that will be maintained or may be shared, etc.). This information may be shared with the Notice of Allegations if an Earlier Resolution is requested by the Claimant or Title IX Coordinator at the time the Formal Complaint is filed.

**3. Participation**

Participation in the Earlier Resolution process by any party is completely voluntary and no party shall be pressured, coerced, or unduly influenced into participating. The University will not require a party to participate in or to pursue an Earlier Resolution, including as a term of enrollment or employment. Just as with the Grievance Process, the parties are entitled to a Process Advisor and/or Support Person throughout the Earlier Resolution process.

For the Earlier Resolution process to proceed, both parties must agree, in writing, to participating. If both parties do not agree within five business days of the notice of rights and requirements, the Formal Investigation will resume or, if the investigation is complete, the hearing will be scheduled.

An Earlier Resolution may be facilitated via written communication, telephone, videoconferencing, and/or in-person meetings. Parties may, but will not be required to, confront each other or be in the same room during the Earlier Resolution process.

**4. Retaliation Prohibited**

The Office of Equity will remind the parties that Retaliation is prohibited under the Sexual Misconduct Policy, and that the University will respond to reports that a party or Witness has experienced Retaliation, including Retaliation for choosing to engage, or not to engage, in the Grievance Process, including the Earlier Resolution process.

**5. Withdrawal**

Any party may withdraw from the Earlier Resolution process at any time before an agreement has been signed by both parties, after which time a party may no longer withdraw. If a party withdraws from the Earlier Resolution process, the Formal Investigation will resume or, if the investigation is complete, the hearing will be scheduled.

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**6. Facilitators**

The Office of Equity will appoint a facilitator to assist the parties in trying to reach an Earlier Resolution. An Earlier Resolution may be facilitated by an Employee (including the Title IX Coordinator or an Office of Equity investigator who has not been assigned to investigate the case) or by an outside facilitator assigned by the University, so long as they have received the mandatory Title IX training. Facilitators will be trained under section XXXI.

In order to facilitate an Earlier Resolution, the facilitator shall be free from Conflicts of Interest and/or Bias and shall remain impartial throughout the process.

A facilitator may not serve as a witness if the Formal Complaint results in a hearing.

**7. Agreement**

The decision to enter into an Earlier Resolution agreement between parties shall be completely voluntary. Parties shall make informed decisions and shall not be pressured, coerced, or unduly influenced into reaching such an agreement. If a party feels they may have been pressured, coerced, or unduly influenced into reaching an agreement, that person may file an Incident Report with the Appropriate Administrator under [Policy 311: Setting Expectations and Managing Performance](#), [Policy 407: Academic Due Process: Sanctions and Hearing Procedures](#), or [Student Code Article V-3](#).

Once signed by both parties, an Earlier Resolution agreement is binding. Absent good cause, including but not limited to an Earlier Resolution agreement that would be unreasonably burdensome to the University or result in safety issues, the Title IX Coordinator will approve an agreement signed by the parties.

As part of an Earlier Resolution agreement, parties have a panoply of options. Parties may reach an agreement on a number of things including, but not limited to:

- An apology by the Respondent, in-person or in writing;
- That the Respondent complete additional Sexual Misconduct training or other related education;
- That the Respondent complete a therapeutic assessment to evaluate for therapy or complete a certain number of therapeutic sessions;
- That the Respondent complete community service;
- That the Respondent leave the University and not reenroll until the Claimant has graduated;
- An admission that the Respondent violated the Sexual Misconduct Policy; and/or
- Punitive or disciplinary measures, from probation up to expulsion with or without a notation on Respondent's transcript for a Student Respondent, and a warning up to termination for an Employee Respondent, including a Student Employee.

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Following an Earlier Resolution agreement, the facilitator shall notify the Sanctioning Authority (if the Earlier Resolution agreement includes an admission to a policy violation) and the Title IX Coordinator within three business days of the agreement. If the parties reach an agreement that the Respondent has violated the Sexual Misconduct Policy but do not agree on disciplinary or punitive measures, the Title IX Coordinator or their designee shall notify the Sanctioning Authority to proceed with Sanctions.

The facilitator or another designated employee within the Office of Equity shall be responsible for monitoring and ensuring compliance with the terms of the agreement.

If a Respondent fails to follow through with terms that were reached in the agreement, the Office of Equity may file a report against the Respondent for failure to follow a directive by a University official.

**8. Remedies**

Following an Earlier Resolution agreement by the parties, the Title IX Coordinator and the Claimant may work towards and reach an agreement about the Remedies the University will provide to the Claimant. Such negotiations and any ultimate agreement between the Claimant and the Title IX Coordinator regarding Remedies need not involve the Respondent. Remedies shall be designed to restore or preserve the Claimant's equal access to the Employment or Education Program or Activity.

**9. Confidentiality and Access to the Agreement and the Record**

Once parties have agreed to participate in the Earlier Resolution process, the facilitator shall notify them of confidentiality and privacy requirements.

With the exception of an Earlier Resolution agreement signed by both parties, which are private but may be shared with the Title IX Coordinator and other Employees in order to help ensure relevant Sanctions and Remedies are implemented, any statements made or documents generated during the Earlier Resolution process shall remain confidential and will not be used in a formal Grievance Process.

If an Earlier Resolution agreement is reached, the Office of Equity will electronically share the agreement with each party and their Process Advisor, if any, within five business days for inspection and review. The Office of Equity will not share the agreement with Support Persons; however, parties are permitted to share the agreement with their Support Persons, if any. The agreement and information therein are of a very sensitive nature and parties are discouraged from disseminating them with individuals not given access under these procedures. As such, to ensure confidentiality, the Office of Equity will take steps to share the agreement with the parties in a manner that does not allow the parties to copy, save, or disseminate the information underlying the agreement. Parties are not precluded under this section from discussing their

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experiences or from gathering or presenting relevant evidence, and the Office of Equity cannot guarantee that parties will not share the information with individuals who are not part of the Grievance Process.

If the case is proceeding only to Sanctions following an Earlier Resolution agreement, the Office of Equity facilitator will electronically share the Record with the Sanctioning Authority and the Title IX Coordinator no later than five business days after the Earlier Resolution agreement is signed by both parties.

When the terms of the agreement have been met, the parties' access to the agreement will be removed. Access to the Record will be removed when the Sanction process is complete and appeals have been exhausted.

## **J. Formal Investigations**

A Formal Investigation will typically be conducted by an Office of Equity investigator; however, the Office of Equity may elect to use an outside investigator of the University's choosing. All investigators working with the University will receive Title IX training under section XXXI of these procedures.

### **1. Notice of Allegations**

The Office of Equity will issue a Notice of Allegations to the parties within three business days of the filing of the Formal Complaint and/or the agreement of the parties to proceed with an Earlier Resolution. The investigator will allow sufficient time for a Respondent to prepare a response in between the Notice of Allegations and scheduling the Respondent's initial interview.

### **2. Party Participation**

Neither party is required to participate in a Formal Investigation. However, if a Claimant declines to participate, the Office of Equity may be limited in the action it can take to address the allegations raised in the Incident Report and, absent authorization for a University-driven Formal Investigation resulting from a Safety Risk Assessment, the Office of Equity may be unable to investigate. A Claimant may later change their mind about participating; however, the University's jurisdiction to address the matter will be reevaluated at the time of such change.

If a Respondent declines to participate, the Office of Equity will proceed with its investigation on the information provided by the Claimant without the benefit of the Respondent's response or perspective pertaining to the alleged Sexual Misconduct. The Hearing Panel may find that the Respondent violated the Sexual Misconduct Policy even without the Respondent's participation. A Respondent may change their mind about participating at any point during the pendency of the investigation and associated proceedings but may not provide an interview, statement, or new evidence after access

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to the Record is provided to the parties. This limitation does not restrict a Respondent from responding to the Record or presenting a defense during a live hearing.

If a participating party fails to respond or causes unreasonable delays in the process, the Office of Equity, the Hearing Panel, and/or the Appellate Panel may proceed as otherwise outlined, without the party's participation.

**3. Notice of Office of Equity Meetings and Proceedings**

The investigator will provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

**4. Standard of Proof**

The University, through an investigator, has the burden to gather sufficient evidence for the Hearing Panel to determine whether or not, by a Preponderance of the Evidence, the Respondent violated the Sexual Misconduct Policy.

**5. Right to Present Evidence and Witnesses**

During the Investigation, all parties shall have an equal opportunity to present Witnesses, including fact and Expert Witnesses, and evidence, both inculpatory and exculpatory.

The Office of Equity investigator, or any outside investigator appointed by the University, will request the evidence they believe to be relevant to the allegations, and will invite the parties to submit any and all evidence and Witnesses the parties believe to be relevant. The investigator will give each party a reasonable amount of time to respond to and fulfill requests for evidence. If the deadline is not met, the investigator will follow up within one business day. If the request is not met and there is no other way for the investigator to obtain the evidence, the investigator will proceed without the information. The investigator will document all requests for evidence and related responses.

**6. Evidence Gathering**

The investigator's role when investigating a Formal Complaint of Sexual Misconduct is fact-gatherer. Their role is not to decide whether the policy was violated (this is the Hearing Panel's role) or to Sanction or discipline the Respondent (this is the Sanctioning Authority's role), but to gather and share evidence and information so that the Hearing Panel can make a Determination and, when there is a policy violation, proportionate Sanctions can be applied.

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The investigator will conduct a thorough search for relevant facts and evidence, including statements by the parties, related to the allegations in the Formal Complaint.

The investigator will give both the Claimant and the Respondent an opportunity to be interviewed, to submit evidence and information, and to identify relevant Witnesses. Depending on the allegations raised, as part of a Formal Investigation an investigator may do some or all of the following: interview both the Claimant and the Respondent; collect and review documents, files, records, and other information related to the case; visit relevant sites or locations; interview persons who may have relevant knowledge about the incident(s); request and review law enforcement reports or medical records; if the Respondent is a Student, request information from Student Conduct related to the Respondent's history, including whether Student Conduct has any relevant cases related to the Respondent; gather evidence from Residence Life or other relevant unit(s) (e.g., witness names, security footage); interview professors and students as appropriate; in cases involving alleged Sexual Misconduct in the workplace, request relevant personnel files from and/or interview Employees, the Supervisor, the department, and/or Human Resources; consult with relevant experts; and take other appropriate steps to investigate the allegations.

Evidence may include, but is not limited to, the investigator's interviews, statements made by the parties and Witnesses including those made in interviews in a Formal Investigation, emails or text messages, video footage, photographs, recordings, information and records from applicable University departments, medical and/or counseling records obtained with the written consent of the relevant party, social media postings, photographs, audio recordings, police reports, Sexual Assault Nurse Exam ("SANE") reports obtained with permission from the Claimant, physical evidence, receipts, and other relevant evidence.

In conducting their investigation, the investigator will respect the presumption that the Respondent did not violate the Sexual Misconduct Policy and will not make a determination as to whether the Respondent violated the policy, but will instead work to gather and provide all relevant information to the parties and the Hearing Panel through the Record and investigation report.

The investigator may seek information on the Respondent's prior or subsequent conduct if relevant to establish a pattern, knowledge, intent, motive, or absence of mistake or to confirm or refute the statement of a party or Witness. The investigator is not required to interview Witnesses who only have information related to a party's character, nor Witnesses who do not appear to have relevant information, or to review evidence that, on its face, appears to be irrelevant.

The investigator shall audio record party and Witness interviews and participating parties shall have access to the recordings when they are given access to the Record.



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**7. The Record**

Within 40 business days of the filing of the Formal Complaint, the Office of Equity will electronically share the Record with each party and their Process Advisor, if any, for inspection and review. The Office of Equity will not share the Record with Support Persons, although the parties are permitted to do so. The evidence and information therein are of a very sensitive nature and parties are discouraged from disseminating them with individuals not given access under these procedures. As such, to ensure confidentiality, the Office of Equity will take steps to share the Record with the parties in a manner that does not allow the parties to copy, save, or disseminate the underlying evidence. Parties are not precluded under this section from discussing their experiences or from gathering and presenting relevant evidence and the Office of Equity cannot guarantee that parties will not share the information with individuals who are not part of the Grievance Process.

The Record will include all evidence that relates to the allegations under investigation including, but not limited to, SANE exams and police reports, regardless of whether the investigator considers the evidence to be relevant or whether or not a party or Witness attends the hearing or chooses to submit to cross-examination. However, absent voluntary, written consent from the subject of the record, the investigator will not add medical, psychological, or similar treatment records or intimate images to the Record or share them with anyone. If such consent is provided, they will only be shared as necessary to complete the Grievance Process.

After the Record has been shared, the investigator will add all responses to the Record, responses to the investigation report, and additional evidence to the Record within one business day of receipt so that the parties may review them. The investigator will simultaneously notify all the parties and relevant University officials whenever new information has been added to the Record.

No later than two business days after the due date for party responses to the Investigation Report the Office of Equity will electronically share the Record with the Hearing Officer, the Sanctioning Authority, and the Title IX Coordinator. The Hearing Officer will share the Record with the Hearing Panel following their pre-hearing review.

At the conclusion of the process, the investigator or their designee will remove access to the Record from all parties, Process Advisors, and Employees or officials involved in the case with the exception of the Office of Equity, who will retain the Record as required by Title IX and other applicable federal and state laws.

**8. Responses to the Record**

Within 10 business days of being given access to the evidence in the Record, the parties may file with the investigator a written response to the Record outlining any new or additional evidence, including any evidence that may weigh against or disprove

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relevant evidence in the Record. Responses to the Record shall be limited to five pages, excluding attachments which may include any new or additional relevant evidence. Responses shall be made in double-spaced 12-point font, Arial, with one-inch margins on all sides.

Responses that do not meet the above requirements may be rejected and only the pages that meet the requirements may be considered.

The investigator will add responses to the Record, including attachments, and will share them with the parties and their Process Advisors, if any, simultaneously.

All responses to the Record and/or additional evidence shall be submitted to the investigator in the manner most suitable to the submitting party. The investigator will add any responses or additional evidence to the Record within one business day of receipt, and will notify the parties that the new information has been added.

## **9. Preliminary Investigation Report**

The investigator will issue a preliminary investigation report within 10 business days of the end of the response to the Record period and at least 10 business days prior to the hearing, to both parties and their Process Advisors, if any, simultaneously.

The preliminary investigation report will outline the procedural history of the case from the Formal Complaint to the preliminary investigation report, including the Formal Complaint, Notice of Allegations, interviews, site visits, methods used to gather evidence, and Responses or other submissions made by the parties. The preliminary investigation report will also fairly summarize the investigation and outline all the relevant evidence gathered during the investigation, both inculpatory and exculpatory, including a summary of the narratives provided by both parties and any Witnesses interviewed during the course of the investigation. It will also include descriptions of relevant evidence submitted and received. The preliminary investigation report will include the alleged policy violation(s), the procedural elements to be applied, and a range of possible Sanctions for each alleged violation. However, the preliminary investigation report shall not reach a decision as to whether the Respondent violated the policy.

In determining what evidence to summarize in the preliminary investigation report, the investigator will consider the parties' responses to the Record including their responses about what evidence in the Record is relevant.

## **10. Responses to the Preliminary Investigation Report**

Within 10 business days of the date the investigator issues the preliminary investigation report (hereinafter referred to as the "end of the investigation report response period"), each participating party may submit:

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- 1) A list of the numbered paragraphs in the preliminary investigation report that the party disputes;
- 2) A written list of questions they propose to ask the other party (if there is another party participating), Witnesses, and the investigator in the hearing;
- 3) Whether they are planning to appear for the hearing;
- 4) A notice of intent to include a Process Advisor of their choosing in the hearing (and the name of that person) or a request for the University to appoint a Process Advisor on their behalf; and
- 5) A written response to the preliminary investigation report including Witnesses and exhibits in the Record they want the Hearing Panel to consider.

For each paragraph a party disputes, they may outline why they dispute the paragraph and cite all evidence and Witnesses that support their position with regard to the paragraph.

Responses to the preliminary investigation report shall be limited to 10 pages, excluding attachments, and may not include any new or additional evidence. Any response shall be printed in double-spaced 12-point font, Arial, with one-inch margins on all sides. All responses to the investigation report shall be submitted to the investigator in the manner most suitable to the submitting party.

### **11. Final Investigation Report**

The investigator will review any responses to the preliminary investigation report and will consider them when completing the final investigation report.

Within 10 business days of the deadline for responses to the investigation report, the investigator will issue the final investigation report to the parties and notify them that the new information has been added.

The investigator will also add the final investigation report to the Record, along with any responses to the preliminary investigation report, including attachments, and will notify the parties and their Process Advisors that the information has been added to the Record.

Within one business day of issuing the final investigation report, the investigator shall notify the Hearing Officer that the investigation is complete and that a hearing is needed.

### **12. Deadline for Admission of Evidence and Witnesses**

Within five business days after issuing the preliminary investigation report, the investigator will issue to both parties a final Witness list. The final Witness list will include the name of the Witness(es) and a short explanation of their connection to the case.

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Parties will have five business days to object to the list and/or to name additional relevant Witnesses who have already been interviewed for inclusion on the list. A party objecting or seeking to add a Witness to the list must include the following in their objection: 1) the reason the Witness should be added or removed as a Witness; and a summary of the evidence that the Witness may provide, or a summary of why the Witness does not have relevant evidence.

Following objections, the Witness list will be amended to reflect any changes and updated in the Record. The investigator will also give the parties the reason why any individuals who have been proposed are not being interviewed.

Absent good cause, evidence and Witnesses discoverable through reasonable due diligence by a party and not provided to the investigator by the close of the response to the Record period shall be inadmissible and will not be considered in the preliminary or final investigation report or allowed in the hearing, shall not be included on the final Witness list, and shall not be considered by the Hearing Panel in making its Determination as to whether the Respondent violated the Sexual Misconduct Policy.

**13. Certification for Appointment of a Process Advisor and Hearing Panel and Hearing**

Within two business days of issuing the final investigation report, the investigator will certify the case to the Hearing Officer for a pre-hearing case review, and to assign a Hearing Panel and Process Advisor(s) (if needed).

If a party does not file a notice of intent to include a Process Advisor, the Hearing Officer will appoint a Process Advisor on the party's behalf and will give the Process Advisor access to the Record and information about the case within 10 business days of the certification in order to assist the party in the hearing.

The Hearing Officer will conduct a prehearing review and appoint a Hearing Panel within 10 business days of the certification.

**14. Hearing**

The Office of Equity shall schedule a live hearing to take place within 25 business days of the date the final investigation report is issued. No party may waive the right to a hearing, and while neither party is required to participate in the hearing, a hearing may be held in the absence of either or both parties and the Hearing Panel may make a Determination with or without a party's participation. If there is a Preponderance of the Evidence that the Respondent violated the Sexual Misconduct Policy, Sanctions may be entered with or without the parties' participation.

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The Hearing Officer shall be responsible for ensuring that three Hearing Panel members are appointed, with one being appointed to serve as the Hearing Panel chair. The Hearing Officer shall ensure that Hearing Panel members do not have a Conflict of Interest and/or Bias for or against Claimants or Respondents generally or an individual Claimant or Respondent.

**a. Notice of Hearing**

The investigator shall issue a Notice of Hearing within 15 business days of the end of the response to the investigation report period simultaneously to both parties, their Process Advisor(s) and Support Person(s), if any. The Notice of Hearing shall include the names of the Hearing Officer and Hearing Panel members, as well as the final Witness list.

The investigator shall also issue a Notice of Hearing to the Witnesses on the final Witness list.

**b. Weapons Prohibited**

Under Utah Code section 76-8-311.1, firearms and other weapons may be prohibited in higher education hearing rooms. For hearings that are held in person, a USU Police officer will be present to store any firearms or weapons until the hearing is over.

**c. Recording Devices Prohibited**

With the exception of the official audio or audiovisual recording made by the Hearing Officer, recordings of the hearing are not permitted.

**d. Attendance at the Hearing**

The hearing shall be closed to the general public and only the following individuals will be allowed into the hearing room:

- Hearing Panel Members;
- Hearing Officer;
- University Legal Counsel;
- Claimant;
- Claimant's Process Advisor;
- Claimant's Support Person;
- Respondent;
- Respondent's Process Advisor;
- Respondent's Support Person;
- A USU Police officer;
- The Title IX Coordinator or their designee;
- The investigator;
- The Sanctioning Authority or their designee; and

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- Witnesses, including Expert Witnesses. With the exception of the investigator, who serves as a Witness and will be present for the duration of the hearing, Witnesses will be present only at the time of their testimony and will not be permitted to hear the testimony of other Witnesses.

Hearings will generally be held via videoconferencing as long as all participants are able to simultaneously see and hear each other for the entire proceeding with the exception of recesses. However, any party, Witness, or other participant, including the Hearing Officer or a member of the Hearing Panel may request that the hearing be conducted with all parties physically present in the same location.

A party or Witness shall make such a request, in writing, to the Hearing Officer no later than five business days before the hearing. The request shall include a phone number at which the party can be contacted at the time of the hearing. Absent good cause, such a request shall be granted.

Although the University will be responsible for providing the meeting platform (e.g., Zoom) and maintaining a proper internet connection on the University's end for hearings conducted via videoconference, parties and Witnesses are responsible to ensure they have a proper internet connection and equipment to maintain intelligible and uninterrupted visual and audio contact for the duration of the hearing.

The Sanctioning Authority or their designee may attend and observe the hearing.

**e. Hearing Officer**

With the authority of the Hearing Panel, the Hearing Officer may preside over the hearing and shall serve in an advisory role to the Hearing Panel regarding administrative procedures.

The Hearing Officer is not a member of the Hearing Panel and shall not vote on the Determination.

**f. Process Advisors**

Each party must have a Process Advisor, either of their choosing or University-appointed, at the hearing. Even if a party chooses not to attend the hearing, their Process Advisor may appear and conduct cross-examination on the party's behalf. All cross-examination must be done through a Process Advisor rather than by the party directly.

The role of the Process Advisor at the hearing is to ask questions on behalf of a party, not to represent them. They may also make an opening and/or closing statement on the

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party's behalf. All questions and statements made by a University-appointed Process Advisor should come from the party they represent.

Process Advisors may not raise objections or make statements or arguments during the hearing. Process Advisors are also prohibited from questioning parties or witnesses in an abusive, intimidating or disrespectful manner, and the University may require a party to use a different Process Advisor if the party's Process Advisor does not follow these rules of decorum.

**g. Statements, Evidence, and Witnesses**

During the hearing, all parties will have an equal opportunity to present a 10-minute opening statement and/or closing statement. Such statements may be made by the party directly or through their Process Advisor. A party who declines to make an opening statement waives the opportunity to do so.

The investigator may also present a 10-minute opening statement outlining their investigation.

All parties will have an equal opportunity to present relevant evidence and Witnesses, including both fact and Expert Witnesses.

Parties may waive the opportunity to provide an opening statement and/or to present evidence and/or Witnesses. A party's decision to make or waive an opening statement will not be considered by the Hearing Panel when evaluating the merits of the case.

The Hearing Panel has the discretion to exclude irrelevant Witnesses from testifying in the hearing.

Parties are expected to focus their questions on disputed facts and non-duplicative evidence. Parties and Witnesses are expected not to answer questions in an abusive, intimidating, or disrespectful manner.

**h. Questioning and Consideration of Statements**

At the hearing, members of the Hearing Panel and each party shall be permitted to ask relevant questions and follow-up questions, including those that challenge credibility, of the parties and Witnesses.

Questioning of the parties and/or Witnesses shall be conducted directly, orally, and in real time by the Hearing Panel and/or a party's Process Advisor, but never by a party personally.

Parties and Witnesses are not required to submit to questioning by either the Hearing Panel or a party's Process Advisor, and the Hearing Panel cannot draw an inference

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about whether the Respondent violated these procedures based solely on a party's or Witness's absence from the live hearing or their refusal to answer questions. However, in determining whether the Respondent violated the Sexual Misconduct Policy, the Hearing Panel will consider statements made by parties or Witnesses that are otherwise permitted under these procedures, even if those parties or Witnesses do not attend the hearing and/or participate in cross-examination at the live hearing.

The ability to confront the opposing party may be necessary when the only evidence in a Claimant or University-driven Formal Investigation is testimonial statements from the Claimant and/or Respondent. Both the Office of Equity investigator and the Hearing Panel will apply confrontation considerations equitably to both parties.

The Hearing Panel and any party may ask the investigator questions relevant to the evidence gathered during the investigation, including information provided by Witnesses.

**i. Relevance Determinations**

After each question is asked and before the party or Witness answers it, the Hearing Panel will determine and state on the record whether the question is relevant or not. If the Hearing Panel determines the question is relevant, the party may answer the question. If the Hearing Panel determines the question is not relevant, the Hearing Panel shall explain why the question is not relevant. The Hearing Panel may also ask the questioning party to reframe the question. A Hearing Panel's decision to require a party to reframe the question or to exclude an irrelevant question is final.

The Hearing Panel may consider relevant evidence, including but not limited to: statements made by the parties and Witnesses during the investigation, emails or text exchanges between the parties or between a party and Witness about the alleged Sexual Misconduct, and statements about the alleged Sexual Misconduct, regardless of whether the parties or Witnesses who made the statements submit to cross-examination at the live hearing. The Hearing Panel may also consider police reports, Sexual Assault Nurse Examiner documents, medical reports, and other documents even if they contain statements of a party or Witness who is not cross-examined at the live hearing.

Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence, and it is of consequence in proving or disproving the allegations.

Questions and evidence about the Claimant's sexual predisposition or prior sexual behavior, i.e. sexual behavior that is unrelated to the alleged conduct, are not relevant unless the Hearing Panel finds the question and evidence: 1) are offered to prove that someone other than the Respondent committed the alleged conduct; or 2) concern specific incidents of the Claimant's prior sexual behavior with the Respondent and are



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offered to prove that the Claimant gave their Consent for the alleged conduct (e.g., the parties' past use of specific "safe words").

Evidence offered to prove only that the Claimant has had sexual relations with someone other than the Respondent is not relevant to prove that someone other than the Respondent committed the alleged conduct.

Without the party's voluntary, written consent, a party's medical, psychological, or other similar records are not relevant and cannot be used in the Grievance Process, including in a hearing. Additionally, information protected by a legally recognized privilege is not relevant.

Although the Hearing Panel cannot exclude relevant evidence simply because it is unduly prejudicial, concerns prior bad acts, or constitutes character evidence, the Hearing Panel can determine what weight to give such evidence.

The Hearing Panel may exclude duplicative or repetitive questions as irrelevant.

The Hearing Panel may consider information on the Respondent's prior or subsequent conduct to be relevant to establish a pattern, knowledge, intent, motive, or absence of mistake. Whether a pattern of evidence is relevant will be evaluated based on whether previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar discrimination or Sexual Misconduct and whether there was a prior Office of Equity or Human Resources finding or criminal conviction related to that behavior.

**j. Weight and Credibility Determinations**

With the exceptions noted in subsection XVII.J.14.i, the Hearing Panel will generally consider all evidence that is relevant. In so doing, the Hearing Panel may make determinations about the credibility of the evidence before them.

When evaluating a party's or Witness's statement whether written or oral (including one given in an interview with the Office of Equity), the Hearing Panel may assess the credibility of the statement utilizing the framework below. In matters whose records are principally, materially, or solely composed of the testimonial evidence of the parties, the Hearing Panel must take special care to consider the standard of proof and presumption of no policy violation applicable under these procedures. In all Sexual Misconduct matters, when the evidence provided by both parties is mainly testimonial and of equal weight, the Hearing Panel may be unable to find a Preponderance of the Evidence absent additional evidence supporting the allegations.

Although the Hearing Panel cannot draw an inference based on failure to appear as noted in subsection XVII.14.h., a party's or Witness's absence may make it more

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difficult for the Hearing Panel to assess the credibility of that party's or Witness's statements, which may impact the outcome.

Regardless of which party or Witness presents it, statements that are inconsistent and evidence that is indefinite, vague, or improbable may be given less weight than evidence that is direct and not refuted.

In making weight and credibility determinations, the panel may consider whether: 1) the evidence is corroborated; 2) there is a reason the source of the evidence may or may not be reliable; and/or 3) whether the evidence is logical given the other established facts.

Credibility may not be determined by a "sense" or "feeling" that someone is dishonest. Credibility cannot be determined subjectively but instead must be assessed by reference to logic and specific evidence contained in the Record. The credibility of a Witness (or party) may be assessed by:

- Questioning whether the Witness, party, or other source of information is impartial;
- Questioning the Witness or party's statements in light of other specific Record evidence; and/or,
- Questioning the Witness or party's statements in light of common sense and logic.

Credibility must be determined on an issue-by-issue basis, and a party (or witness) may be credible on one or more issues and less credible on others. Credibility determinations will be made as they related to the allegations. Additionally, credibility issues may be addressed and/or mitigated by other credible evidence, such as credible evidence concerning impartiality of the Witness, party, or other source of information, explanations relating why a statement (once properly explained) is consistent with specific Record material, and/or explanations as to why a party or Witness' statements or positions have changed over time.

## **15. Panel Determination**

Immediately following the hearing, the Hearing Panel will meet without the parties and will objectively evaluate all relevant evidence and will determine whether, by a Preponderance of the Evidence, the Respondent violated the Sexual Misconduct Policy as alleged.

The Hearing Panel cannot draw an inference about whether the Respondent violated the policy based solely on a party's or Witness's absence from the live hearing or their refusal to answer questions.

The Panel shall make a Determination, which shall outline:

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- Each alleged incident of Sexual Misconduct;
- A description of the procedural history taken by the University from the receipt of the Formal Complaint through the Determination, including notices to the parties, interviews, site visits, methods used to gather evidence, and hearings held;
- Findings of fact supporting the Determination;
- Conclusions regarding the application of the Sexual Misconduct Policy to the facts;
- A statement of, and rationale for, its decision with regard to each allegation;
- Any Sanction(s) the University plans to impose on the Respondent; and
- Whether the University will provide Remedies to the Claimant.

The Panel shall issue the Determination as outlined in subsection XVII.J.19.

**16. Preliminary Findings Letter**

Within five business days of the hearing, the Hearing Panel shall issue a Preliminary Findings Letter simultaneously to the parties and their Process Advisors, the Sanctioning Authority, and the Title IX Coordinator, outlining the policy violations the Hearing Panel has found the Respondent to have committed, if any.

If the Preliminary Findings Letter states that the Hearing Panel has found the Respondent to have violated the Sexual Misconduct Policy, the following provisions regarding Sanctions and Remedies will apply.

**17. Sanctions**

The submission of an Appeal stays any sanctions for the pendency of the Appeal.

**a. Statements on Sanctions**

Each party may submit a five-page statement regarding Sanctions to the Sanctioning Authority within five business days of the date the Preliminary Findings Letter is issued. Statements submitted later than five business days after the Preliminary Findings Letter will not be considered. Statements should address Mitigating, Aggravating, and Compounding Factors with regard to each violation found.

**i. Claimant's Sanction Statement**

The Claimant's Sanction statement may describe the impact the Sexual Misconduct has had on the Claimant and/or their education or employment and may express a preference about the Sanction(s) to be imposed on the Respondent, including any facts that they believe support their desired Sanction.

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**ii. Respondent's Sanction Statement**

The Respondent's Sanction statement may explain the factors the Respondent believes should mitigate or otherwise be considered in determining the Sanction(s) imposed. A Respondent's Sanction statement will not be considered an admission of violating the policy.

**b. Sanction Letter**

Within seven business days of the end of the Sanction statement period, the Sanctioning Authority or their designee shall issue a Sanction letter to the Hearing Panel, outlining the Sanction that should be ordered for each of the policy violations the Hearing Panel has found the Respondent to have committed.

The Sanction shall be proportionate to the policy violation(s), taking into account the parties' statements on Sanctions, if any, and Mitigating, Aggravating, and Compounding Factors (including whether there are previous Determinations that the Respondent has violated the Sexual Misconduct Policy). A finding that the Respondent violated the Sexual Misconduct Policy may result in no Sanction, a minimal Sanction, or the maximum possible Sanction, depending on the violation and the range. However, regardless of the Sanction that is entered, appropriate Remedies are available under the next section.

**18. Remedies Letter**

The Title IX Coordinator or their designee will meet with the Claimant to gather evidence related to Remedies.

Within 10 business days of receiving the Preliminary Findings Letter from the Hearing Panel, the Title IX Coordinator or their designee shall issue a Remedies letter to the Hearing Panel, outlining whether the University will provide Remedies to the Claimant for each of the policy violations the Hearing Panel has found the Respondent to have committed.

In the absence of a Determination that the Respondent has violated the Sexual Misconduct Policy, the Title IX Coordinator has discretion to provide appropriate Remedies to Claimant and Supportive Measures to both parties.

**19. Determination Issued**

Within 20 business days of the hearing, the Hearing Officer shall issue a written Determination to the parties, Process Advisors, the investigator, the Sanctioning Authority, and the Title IX Coordinator, simultaneously. If the Hearing Panel finds the

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Respondent to have violated the policy, the Hearing Panel will attach the Sanction and Remedies letters to its Determination.

The Determination becomes final either on the date the parties receive the written Appeal Decision, or if no appeal is filed, the date on which the time to Appeal has expired.

**20. Recording of Hearing**

The Hearing Officer shall create an audio or audiovisual recording, or transcript, of the live hearing and shall make it available to the parties for inspection and review upon issuance of the Determination.

**21. Sanctions-Only Process**

If the parties reach an Earlier Resolution agreement that includes an admission that the Respondent violated the Sexual Misconduct Policy, but do not reach an agreement regarding Sanctions, the case will proceed under subsection XVII.J.17, except that a Hearing Panel will not be appointed.

In the Sanctions-only process, within 10 business days of the parties issuing their statements on Sanctions, the Sanctioning Authority or their designee shall issue a Sanction letter simultaneously to the parties and their Process Advisors.

The Sanction may be appealed as outlined in subsection XVII.J.22 Appeals.

**22. Appeals**

Within 10 business days of the date the Determination and/or the Sanction are issued, any party may file a written Appeal of the Hearing Panel's Determination and/or the Sanction with the Hearing Officer.

**23. Standard for Appeal of Determination**

An Appeal on the Determination shall be limited to one or more of the following alleged procedural errors:

- 1) Procedural irregularity that affected the outcome of the matter;
- 2) New evidence, including Witnesses, that was not reasonably available by the close of the response to the Record period, that could affect the outcome of the matter; and/or
- 3) The Title IX Coordinator, investigator(s), or Hearing Panel member(s) had a Conflict of Interest or Bias for or against Claimants or Respondents generally or the specific Claimant or Respondent that affected the outcome of the matter.

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Appeals shall be limited to 15 pages, including all headings and attachments. New evidence exceeding the page limits shall be allowed, but only if it relates to 2) above . Any Appeal shall be printed in double-spaced 12-point font, Arial, with one-inch margins on all sides.

An Appeal challenging the Determination of whether the Respondent violated the Sexual Misconduct Policy shall outline the procedural error(s) on which the party is appealing the Determination, the evidence and information supporting the alleged procedural error(s), and how the appealing party was substantially prejudiced by the alleged procedural error(s). The Appeal shall reference relevant parts of the Record, if any. A party appealing based on the second procedural error, detailed above, shall attach the new evidence to the Appeal.

**24. Standard for Appeal of Sanction**

An Appeal of the Sanction shall be limited to one or more of the following alleged grounds:

- 1) The Sanctioning Authority had a Conflict of Interest or Bias for or against Claimants or respondents generally or the specific Claimant or Respondent that affected the Sanction; or
- 2) The Sanction is not proportionate to the violation.

Appeals of Sanctions shall be limited to 10 pages, including all headings and attachments. Any Appeal shall be printed in double-spaced 12-point font, Arial, with one-inch margins on all sides.

An Appeal alleging that the Sanctioning Authority had a Conflict of Interest or Bias shall outline the evidence and information supporting that allegation and how the Conflict of Interest or Bias affected the Sanction. An Appeal alleging that the Sanction is not proportionate to the violation shall outline which Mitigating, Aggravating, and Compounding Factors were not properly considered. The Appeal shall reference relevant parts of the Record, if any.

Within two business days of an Appeal of the Sanction being filed, the Hearing Officer will assign an Appeal Panel to oversee the Appeal.

Within five business days of an Appeal being filed, the Hearing Officer will notify the non-appealing party of the Appeal and will notify both parties of the Appeal Panel assigned to the Appeal.

The Appeal Panel shall not include any members of the Hearing Panel that issued a Determination in the case.

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**25. Response to Appeal**

Within 10 business days of being notified of the Appeal, the non-appealing party may file a written response to the Appeal with the Hearing Officer.

Responses to Appeal shall be limited to 10 pages, including all headings and attachments, and printed in double-spaced 12-point font, Arial, with one-inch margins on all sides. Responses to Appeal shall outline the reasons why the party thinks the Appeal on the Determination and/or the Sanction should or should not be granted, and should include references to relevant parts of the Record.

**26. Appeal Decision**

Upon the close of the response to Appeal period, the Hearing Officer shall file the Appeal and any response to Appeal with the Appeal Panel and shall provide them with access to the Record within two business days.

The scope of the Appeal and the Appeal Panel's jurisdiction is limited to the grounds specifically identified in the party's Appeal. In making its Appeal Decision, the Appeal Panel will review the parts of the Record that are relevant to the grounds appealed.

At any point after being assigned to the Appeal, the Appeal Panel may review the Appeal and issue an Appeal Decision dismissing the Appeal if the Appeal was not timely filed or if it does not meet the standard for Appeal of a Determination and/or Sanction. Additionally, if a party Appeals both a Determination and a Sanction, the Appeal Panel may dismiss the Appeal with regard to either the Determination or the Sanction if the standard is met for one but not both.

Within 25 business days of the date the last Appeal is filed, the Appeal Panel shall issue a written Appeal Decision simultaneously to the Hearing Officer and to both parties, including the rationale for the Appeal Decision. The Appeal Decision shall outline the ground(s) on which the Determination and/or Sanction was appealed. The Appeal Decision shall state whether there were actionable procedural error(s) that occurred and whether any such errors resulted in substantial prejudice to the appealing party and/or whether the Sanction was proportionate based on Mitigating, Aggravating, and Compounding Factors.

The Appeal Panel shall deny the Appeal with regard to the Determination if, on a procedural claim, it determines that no actionable procedural error(s) occurred or that such errors did not result in substantial prejudice to the appealing party. The Appeal Panel will deny the Appeal with regard to a Sanction if it determines that there was no Conflict of Interest or Bias resulting in substantial prejudice and/or the Sanction was not disproportionate to the policy violation.

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The Appeal Panel may affirm the Hearing Panel's Determination or remand the Determination to the Hearing Panel if it finds that the Determination was based on one or more of the outlined procedural errors and that the error(s) resulted in substantial prejudice to the appealing party.

The Appeal Panel may modify or affirm the Sanction or remand the Sanction to one of the other Sanctioning Authorities or the Respondent's Appropriate Administrator if it finds that the Sanctioning Authority had a Conflict of Interest or Bias that affected the Sanction and/or the Sanction is not proportionate to address the policy violations the Respondent is found to have committed.

The Appeal Decision is final and may not be further appealed.

If the Appeal Panel remands the Determination, it may also remand the Sanction back to the Sanctioning Authority for reconsideration.

A Determination or Sanction that follows a remand may be appealed, but an Appeal shall only be taken on one or more of the above-listed grounds and shall be limited to the evidence and information that was presented on remand.

**a. Remands to the Hearing Panel**

If the Appeal Panel concludes that procedural error(s) so significantly impacted the investigation as to substantially prejudice the outcome, the Appeal Panel shall remand the affected issues, or the case in its entirety, to the Hearing Panel for reconsideration via a remand order.

An Appeal Panel's remand order shall include: the nature of the error(s), the impact of the error(s) on the Determination, the affected issues, and instructions for remedy.

The Hearing Panel shall address the error(s) enumerated in the remand order and shall issue an amended Determination within 20 business days of the date of the remand order.

In reconsidering its remanded Determination, the Hearing Panel may not collect or consider additional evidence or testimony beyond the scope of the issue(s) identified for examination in the remand order.

Upon completion, the Hearing Panel shall submit an amended Determination to the Appeal Panel, with copies provided simultaneously to the parties and their Process Advisors. Within five business days from the date of the amended Determination, either party may submit a written response to the amended Determination to the Appeal Panel. Any such response shall be limited in its scope to the issue(s) specified in the remand order. The parties may not request a new hearing on the amended Determination, though the Hearing Panel has discretion to convene such a hearing.



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Upon review of the amended Determination, the Appeal Panel may enter the amended Determination, or it may order a new hearing on the issues addressed in the remand order/amended Determination.

**b. New Hearing**

If the Appeal Panel concludes that there was a Conflict of Interest or Bias or procedural error(s) that impacted the outcome of the original hearing and necessitates remand of the entire case, the Appeal Panel will remand the case to a new Hearing Panel for a new hearing. The new hearing is subject to the same standard of review, procedures, and Appellate procedures as the original hearing, and all relevant time frames are reset.

**c. New Investigation**

If the Appeal Panel concludes that there was a Conflict of Interest or Bias by the investigator that impacted the outcome of the original hearing and necessitates remand of the entire case, the Appeal Panel shall remand the case to the Office of Equity for a new investigation. A new investigation may be based upon the original Formal Complaint, but all subsequent investigative processes (interviews, collection of evidence, investigation report, and hearing) must be conducted anew. An investigation and subsequent new investigation report shall be considered and catalogued as a new case. The new investigation is subject to the same standard of review and hearing procedures as the original investigation and investigation report, and the Office of Equity's investigation time frames shall be reset, except that the Office of Equity shall prioritize the investigation so that it may be completed as quickly as possible.

**d. Remands to the Sanctioning Authority**

If the Appeal Panel concludes that there was a Conflict of Interest or Bias that impacted the Sanction or that the Sanction is disproportionate to the violation, the Appeal Panel shall remand the affected issues, or the Sanction in its entirety, via a remand order to the Sanctioning Authority.

A remand order shall include: the nature of the error(s), the impact of the error(s) on the Sanction, the affected issues, and instructions for remedy.

Unless the Appeal Panel has found a Conflict of Interest or Bias with regard to the Sanctioning Authority in which case a conflict Sanctioning Authority will be appointed, the Sanctioning Authority shall address the error(s) enumerated in the remand order and shall issue an amended Sanction letter within 20 business days of the date of the remand order.

The Sanctioning Authority may not collect or consider additional evidence or testimony beyond the scope of the issue(s) identified for examination in the remand order.

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Upon completion, the Sanctioning Authority shall submit an amended Sanction letter to the Appeal Panel, with copies provided concurrently to the parties and their Process Advisors. Within five business days from the date of the amended Sanction letter, either party may submit a written response to the amended Sanction letter to the Appeal Panel. Any such response shall be limited in its scope to the issue(s) specified in the remand order. The parties may not request a new hearing on the amended Sanction letter, though the Sanctioning Authority may convene such a hearing at its option.

Upon review of the amended Sanction letter, the Appeal Panel may enter the amended Sanction, overturn the Sanction on the issues addressed in the remand order/amended Sanction letter, or send the case back to the Sanctioning Authority for reconsideration of Sanctions.

## **27. Implementation of Sanctions**

Upon entry of an Earlier Resolution agreement or at the conclusion of the Appeals process as it pertains to the Determination (or when the time to Appeal has expired if no Appeal is filed) in which the Respondent has been found to have violated the Sexual Misconduct Policy, the Sanctioning Authority will work with relevant University departments to ensure that Sanctions are implemented effectively and promptly. No Sanction shall be applied until either a Determination by the Hearing Panel or Earlier Resolution agreement results in a Determination that the Respondent violated the Sexual Misconduct Policy. If a Safety Risk Panel determines there is an immediate risk to physical health or safety under section XI, the University may take immediate action to place the Respondent on Emergency Removal or Administrative Leave following a Determination that Respondent has violated the Sexual Misconduct Policy. If taken, such action is not considered a Sanction.

The Sanction may be of greater or lesser severity depending on the circumstances of the case and whether the Respondent has previously been found to have violated the Sexual Misconduct Policy. A finding that the Respondent has violated the Sexual Misconduct Policy may result in a variety of potential Sanctions including a warning, probation, or suspension until the Claimant finishes their studies to the most severe being termination of employment for an Employee Respondent or expulsion of a Student Respondent with a permanent notation on their transcript. Along with the Sanction, the University may also order Remedies that require the Respondent's participation, such as completing Sexual Misconduct education, a therapeutic assessment and therapy, community service, or course or housing reassignment. The University might also enter a no contact order to limit the Respondent's future interactions with the Claimant.

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**a. Employees (Including Student Employees)**

If an Employee Respondent is found to have violated the Sexual Misconduct Policy, then Human Resources, as well as the Respondent's Supervisor, Department Head, and/or Dean will document the finding in the Respondent's personnel file.

An Employee Respondent who is found to have violated the Sexual Misconduct Policy may be subject to Sanctions from a warning up to and including termination of employment. If the violation resulted in termination of employment, the Respondent will not be eligible for rehire.

A Student Employee Respondent will be subject to the Sanctions set forth in this section if the violation(s) were made in the course of their employment. Otherwise, the Sanctions applicable to Student Respondents will apply.

**b. Students**

If a Student Respondent is found to have violated the Sexual Misconduct Policy, the Office of Student Conduct will document the finding in the Respondent's education file. Student Conduct is responsible for adding relevant notations to the Respondent's transcript.

If a violation results in expulsion, the Respondent will not be eligible for readmission at the University as a Student.

A Student who is found to have violated the Sexual Misconduct Policy with regard to Sexual Harassment may be subject to Sanctions from a warning up to and including suspension. With compounding factors, expulsion may be ordered. The sanction may include a permanent notation on the Student's transcript.

A Student who is found to have violated the Sexual Misconduct Policy with regard to Relationship Violence may be subject to Sanctions from a warning up to and including suspension. With compounding factors, expulsion may be ordered. The Sanction may include a permanent notation on the Student's transcript.

A Student who is found to have violated the Sexual Misconduct Policy with regard to Stalking may be subject to Sanctions from a warning up to and including suspension. With compounding factors, expulsion may be ordered. The Sanction may include a permanent notation on the Student's transcript.

A Student who is found to have violated the Sexual Misconduct Policy with regard to Sexual Assault specifically Fondling may be subject to Sanctions from probation up to and including suspension. With compounding factors, expulsion may be ordered. The Sanction may include a permanent notation on the Student's transcript.

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A Student who is found to have violated the Sexual Misconduct Policy with regard to Sexual Assault including Rape, Sodomy or Sexual Assault with an Object, Incest, or Statutory Rape may be subject to Sanctions from suspension up to and including expulsion, and the Sanction may include a permanent notation on the Student's transcript.

**28. Implementation of Remedies**

Upon entry of an Earlier Resolution agreement or at the conclusion of the Appeals process (or when the time to Appeal has expired if no Appeal is filed), the Title IX Coordinator will work with the Claimant and relevant University departments to ensure that Remedies are implemented effectively and promptly. Where a finding of responsibility has been made against the Respondent (either through the Earlier Resolution or Formal Complaint process), Remedies may include the same individualized services as Supportive Measures, except that they need not be non-disciplinary, non-punitive, or avoid burdening the Respondent. Remedies might include, but are not limited to: a no contact order; reassignment of the Respondent's office, class, housing, or job duties; limiting the Respondent's access to certain Student services; and/or requiring the Respondent to complete online rather than in-person courses.

**29. Abuse of the Grievance Process**

Abuse of the Grievance Process is strictly prohibited. Abuse of the Grievance Process, includes, but is not limited to the following behavior by anyone involved with the process or by anyone at the direction of a person involved in the process:

- 1) Failure to comply with the directions of the Provost, the Vice President for Student Affairs, a Hearing Panel, or Hearing Officer;
- 2) Falsification, distortion, or misrepresentation of information before a Hearing Panel or Hearing Officer;
- 3) Disruption or interference with the orderly conduct of a disciplinary/grievance proceeding
- 4) Institution of a disciplinary/grievance proceeding knowingly without cause;
- 5) Attempting to discourage an individual's proper participation in, or use of, the Grievance Process;
- 6) Attempting to influence the impartiality of a member of a Hearing Panel or a Hearing Officer prior to, or during the course of, the discipline/grievance process;
- 7) Harassment (verbal or physical) or intimidation of a member of a Hearing Panel or a Hearing Officer prior to, during, or after a disciplinary/grievance proceeding;
- 8) Failure to comply with the penalty imposed, or other action taken, under the Student Code;
- 9) Influencing or attempting to influence another person to commit an abuse of

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- the disciplinary/grievance process; and/or
- 10) Tampering with, influencing, or attempting to influence any witness or potential witness in a disciplinary/grievance proceeding.

Any member of the Hearing Panel may raise a claim of abuse of the disciplinary process; however, the Hearing Officer shall be responsible for elevating the claim to the Appropriate Administrator.

### **30. 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 the Sexual Misconduct Policy, or because the individual has made a report or complaint, testified, assisted, participated or refused to participate in any manner in an investigation, formal or informal proceeding, or hearing under these procedures.

A Respondent or Claimant Employee who engages in Retaliation may be subject to Corrective Action or Sanctions from probation up to and including termination.

A Respondent or Claimant Student who engages in Retaliation may be subject to Sanctions from probation up to and including expulsion, and the Sanction may include a permanent notation on the Student's transcript. Student Conduct is responsible for adding relevant notations to the Respondent's transcript.

The Office of Equity will process allegations of Retaliation related to Sexual Misconduct under these procedures.

### **XVIII. Good Cause Exceptions and Extensions**

A Claimant or Respondent, the Office of Equity, and/or the Hearing Panel, may seek an extension to the deadlines, timeframes, and page limitations outlined in these procedures and the Sexual Misconduct Policy based on good cause by filing a request, in writing, with the Office of Equity Executive Director, outlining the reasons for the request. Absent emergency, such requests must be filed before the deadline/conclusion of the timeframe or they will not be considered.

Reasonable extensions shall typically be granted and, in any given case, there may be good cause for multiple extensions, depending on the nature of the case and the needs of the parties. However, the Executive Director is not required to find good cause if the delay is unreasonable, and there is no guarantee that an extension will be granted.

Within five business days of the request for extension, the Executive Director or their designee shall simultaneously notify both parties of the decision. If good cause is found,

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the Executive Director or their designee shall also outline the expected resolution timeframe.

Good cause for delay may include, but is not limited to, the following circumstances: a Claimant needing more time to decide whether they wish to proceed formally or informally; a Respondent needing time to consult with an attorney in order to decide if they wish to participate in an investigation; a deadline extension needed to reasonably accommodate a Support Person's or Process Advisor's schedule or to allow law enforcement to preserve necessary evidence; a party needing more time due to illness or emergency; the investigator waiting for follow-up from a Witness with relevant information. When new evidence is admitted, the investigator or Hearing Panel has discretion to extend additional review time to the parties.

**XIX. Party Decorum**

Parties shall maintain decorum and respect while participating in this process and may be removed from any meeting or proceeding upon warning if they are being disruptive or using abusive or threatening language.

**XX. Communication with Parties**

Once a Formal Complaint has been signed, the investigator will make a good faith effort to contact all Claimants and Respondents once every two weeks to provide status updates on their case.

The investigator (or their designee) will also notify all parties of any delay, and the reason for and estimated length of the delay.

**XXI. False Reports**

The University prohibits submitting a false Incident Report or providing false or misleading information in a Sexual Misconduct proceeding under [Policy 311: Setting Expectations and Managing Performance](#), [Policy 407: Academic Due Process: Sanctions and Hearing Procedures](#), or and the [Student Code Article V-3](#). A person who has knowingly provided a materially false statement or information in bad faith related to allegations of Sexual Misconduct will be referred to the Appropriate Administrator for appropriate action, including possible Corrective Action or Sanctions. The sole fact that an allegation was investigated by the Office of Equity, but was not found by a Hearing Panel to constitute a violation of the Sexual Misconduct Policy, is not enough for an Incident Report to be deemed false or provided in bad faith.

**XXII. Documentation of No Deliberate Indifference**

Prior to closing each Sexual Misconduct case, the Office of Equity shall document in its case management system all the actions taken on the case and why the actions taken

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on the case were not deliberately indifferent (i.e., why the actions the University took were not clearly unreasonable in light of the known circumstances).

### **XXIII. Timely Warnings**

An Incident Report of Sexual Misconduct alleging a crime or emergency may give rise to a timely warning notice. See [Policy 533: Public Safety, Response, and Reporting](#).

If an Incident Report or Formal Complaint alleges a Clery Reportable Crime taking place on one of the University's campuses (or within other Clery geography) within the prior 30 days, the Office of Equity will file a Campus Security Authority ("CSA") Report and will notify USU Police so that the report can be evaluated for a timely warning notice.

### **XXIV. Accommodations**

A party seeking an accommodation to any part of this Grievance Process based on a disability or other reasonable ground, may call or visit the Office of Equity or may submit a written request to the Office of Equity Executive Director at any time during the process, except that such a request must be made within seven calendar days of an interview, required response, or hearing if the party is seeking an accommodation with regard to that part of the Grievance Process.

Accommodations must be requested reasonably in advance, so that they can be assessed and instituted where reasonable. Retroactive accommodations may not be granted.

Disability accommodations sought by Students will be referred to the Disability Resource Center and those sought by Employees will be referred to the ADA Coordinator in Human Resources.

If the accommodation is not based on a disability, the Office of Equity Executive Director shall issue a written decision on the accommodation within five business days to the party seeking the accommodation and will only notify the non-requesting party if the accommodation impacts the proceeding.

No accommodations will be made for either party to remove the live questioning requirements of a hearing. However, reasonable accommodations may be made to ensure full access to the hearing. For example, though the Process Advisor is responsible for asking cross-examination questions, the University may appoint a sign-language or other language interpreter to interpret questions and responses to ensure that all participants understand the questions and can respond in a language they understand.

### **XXV. Amnesty for Drugs and Alcohol**

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To ensure the safety and well-being of all University Students, Students are encouraged to seek immediate medical attention and law enforcement assistance for themselves or others when someone's health and/or safety is at risk. Students may be reluctant to seek assistance for fear of facing disciplinary action from the Office of Student Conduct for violations of the Student Code. To remove barriers that prevent Students from seeking necessary medical attention for themselves or others or from reporting Sexual Misconduct, the University offers [amnesty](#) for drug and alcohol policy violations of the Student Code when a student reports an incident of Sexual Misconduct, whether they experienced or witnessed it. Those Students who cooperate in a Formal Investigation of Sexual Misconduct are also granted amnesty, though they may be encouraged to participate in health education interventions. [See Student Code Art. II-4: Amnesty for Seeking Medical Attention and Reporting Sexual Misconduct](#) for more information.

#### **XXVI. Electronic Notice and Filing**

For purposes of the Sexual Misconduct Policy and these procedures, the Record and any notice, report, or letter required may be issued to the relevant parties, Process Advisors, or administrators electronically. Email submissions made by the parties are typical and will satisfy the "in writing" requirement of any of the above procedures.

#### **XXVII. Deadlines**

All documents outlined in these procedures shall be considered timely if they are sent by email to the relevant recipient by 11:59 p.m. on the date they are due. The day the Record, investigation report, or Determination is issued does not count toward any applicable deadline.

#### **XXVIII. Information Sharing**

The Office of Equity, and any other Reporting Employee(s) with whom a Claimant has shared information about an incident of Sexual Misconduct, will respect and safeguard the privacy of the individual(s) involved. The Office of Equity will only disclose information as necessary to meet its responsibilities under Title IX, the Sexual Misconduct Policy, and these procedures, including when: updating or reporting to relevant administrators and Supervisors; assessing and helping to ensure safety; investigating allegations of Sexual Misconduct; facilitating Supportive Measures; sharing relevant information related to a disciplinary process; and taking other necessary steps to effectuate the Sexual Misconduct Policy and these procedures.

The Office of Equity will keep private the identity of any individuals who report Sexual Misconduct, including any [Claimant, Respondent, Witness](#) except as allowed and/or required by law; to carry out the purposes of Title IX, including conducting a Claimant or University-driven investigation or hearing arising thereunder; or as outlined in subsections XXVIII.A. and B. of these procedures.



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**A. Sharing Information with Law Enforcement**

When there is a significant and articulable threat to a Claimant, under Utah Code section 53B-28-303, the Office of Equity may share information about the case with local police in the state of Utah.

Additionally, when the Office of Equity receives an Incident Report alleging a Clery Reportable Crime, the Office of Equity will share information with USU Police so they can evaluate the information for a Timely Warning. In order to preserve the privacy of the report and/or Claimant, a Timely Warning will not include any personally identifying information.

The Office of Equity may also share information with USU Police as outlined in subsection XXVII.B. below.

**B. Sharing Information with University Officials**

The Office of Equity is subject to USU Policy, including without limitation [Policy 319: Employee Privacy and Confidentiality](#), [Policy 504: Student Records](#), and to applicable law, including without limitation, the Family Educational Rights and Privacy Act of 1974 (FERPA).

The Office of Equity may share information about a Claimant or Respondent's Student record information with other University officials, including appropriate officials in the Office of Student Conduct, USU Police, Athletics, Housing and Residence Life, the Student Involvement and Leadership Center, the Behavioral Intervention Team, and other departments and colleges at the University when the receiving official has a legitimate educational interest in receiving that information. (For additional information, see [Utah State University Catalog](#)). Solely by way of example, the University maintains teams dedicated to assisting students in distress and Equity may report information from a party in their process to one of these teams details about a student who is exhibiting signs of distress (see [Assisting Students in Distress](#)).

The Office of Equity may also share information concerning a Claimant or Respondent's employment records or other employment information with other University officials, including appropriate officials in the Office of Student Conduct, USU Police, Athletics, Housing and Residence Life, the Student Involvement and Leadership Center, the Behavioral Intervention Team, Human Resources, relevant supervisors and other departments and colleges at the University who have a legitimate need to know this information. Solely by way of example, the University maintains various benefits, as well as an Employee Assistance Program, administered through Human Resources, and it may be appropriate to share information with Human Resources concerning details about an employee who is exhibiting signs of distress (for additional information, see [Benefits](#) and [Employee Assistance Program](#)).

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Equity may share information with any of the officials list above, according to the above limitations, in the following situations creating a need for that official to know the information:

- 1) When an incident report or information indicates there is a safety risk involving a student or employee;
- 2) To provide a general case status update regarding a case that is in an Earlier Resolution, Formal Investigation, or University-driven Formal Investigation; and/or,
- 3) To provide a memo outlining the allegations and requesting the unit take appropriate action related to reports received by Equity.

**C. Annual Report**

The Office of Equity collects and shares statistics about its cases in an annual report, which is made available to the campus community and the public each fall semester. Statistics are shared in an anonymized manner that does not include any identifying information about persons involved.

**D. Clery Act Reporting**

As required by the Clery Act, the University collects and shares statistics about certain offenses in its annual security report and provides this information to the campus community and the U.S. Department of Education. Statistics are shared in an anonymized manner that does not include any identifying information about persons involved. See [Policy 533: Public Safety, Response, and Reporting](#).

**E. Medical, Psychiatric, and Therapeutic Records**

A party's medical, psychiatric, and/or therapeutic records may not be relied on in either a Formal Investigation, a Hearing, or an Appeal unless the party whose personal records are at issue provides voluntary, written permission allowing them to be shared as part of the Record.

**XXIX. Records Access**

**1. Sharing of the Record in a Pending Case**

For cases in which a Formal Complaint has been filed and a case is pending, records will be shared with parties and their Process Advisors. Non-participating parties and Witnesses will not have access to information under that section, nor will the general public, except where required by law.

When sharing the Record, the Office of Equity may withhold documents or redact information that would raise a legal privilege, or in certain circumstances, redact

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sensitive information that is not directly related to the allegations in a Formal Complaint. However, the Office of Equity will maintain a privilege and redaction log in the case of any of redaction of this information and will provide the opposing parties an opportunity to challenge the decision not to share the information.

**2. Sharing of Employment and Education Records Outside  
a Pending Case**

For cases in which a Formal Complaint has not been filed or a case has concluded, a party or Witness may request and be given access to their own education or personnel records.

Records requests may be made to the Records Management Department by filling out the request form at <https://www.usu.edu/legal/grama>. Records requests will be assessed under personnel records laws and policies, state and federal records laws (including FERPA), and/or relevant University policies.

**XXX. Hearing and Appellate Panel and Process Advisor Pool Membership**

**A. Function**

The Equity Hearing Council (hereinafter referred to as “EHC”) serves as the hearing body for matters arising under the Sexual Misconduct Policy and these procedures. Such hearings include a Hearing Panel of three EHC members, one of whom serves as chair. Other members of the EHC may also be appointed to serve as University-appointed Process Advisors for parties who do not have a Process Advisor for the hearing.

**B. Membership and Terms of Service**

Each Dean shall be responsible to ensure a minimum of three tenured faculty members are always available to serve on the EHC. Each Vice President shall be responsible to ensure a minimum of three staff members are always available to serve on the EHC. Membership shall consist of tenured faculty and staff from across the University system including the faculty members appointed by the Deans and the staff members appointed by the Vice Presidents. The EHC may also include specially appointed standing members including staff members in the Inclusion Center and Disability Resource Center. The EHC may not include the Title IX Coordinator or Office of Equity Executive Director.

With the exception of the standing members, EHC members will serve for a term of up to three years. Each year, no more than one-third of the EHC members will be replaced.

90 days before an EHC member’s term is expiring, the Office of Equity Executive Director or designee will notify the appointing Dean or Vice President. The Dean or Vice President shall appoint a new EHC member no later than July 1 of each year.

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**C. Annual Training**

All members of the EHC pool will be trained annually in-person during summer or fall semester on the Sexual Misconduct Policy including the definitions and relevant procedures herein, Conflicts of Interest and Bias, impartiality, credibility, Relevance determinations including how to apply procedures regarding Claimant's sexual history, hearing procedures, technology for the hearing, and best practices for conducting trauma-informed hearings and evaluating the evidence and information presented in hearings.

No EHC member shall serve on a Hearing Panel for the upcoming academic year until their annual training has been completed.

**D. Panel Service**

For cases in which the Respondent is a faculty member, the Hearing Panel shall be composed of at least two faculty members, one of whom will serve as the chair of the Hearing Panel. Each EHC member will be assigned a number at random and serve on Panels in numerical order, except where ineligible due to a Conflict of Interest or Bias or unavailability. There will be separate pools consisting of faculty and non-faculty for the purposes of this selection. Where an EHC member is ineligible to serve, the next available, non-conflicted member in numerical order will serve, and the non-serving member will be placed for service on the next Panel for which the member is available and no Conflict of Interest or Bias exists. Panel service will be discharged in a manner consistent with the training provided by the University.

**E. Responsibilities of the Chair**

The chair of the Hearing Panel is responsible for ensuring that hearing rules are followed, that a diligent and complete Determination is issued in a timely basis, and that decisions are delivered in accordance with the timeframes outlined in section XVII.J.14-27.

**XXXI. Annual Training for All Participants in the Title IX Process**

The Title IX Coordinator, Office of Equity staff who participate in the Grievance Process, Hearing Officers, Hearing and Appeal Panel Pool, Sanctioning Authorities, Safety Risk Panel Members, Appropriate Administrators, and Earlier Resolution facilitators, shall be trained annually in-person in accordance with the Sexual Misconduct Policy and these procedures.

As relevant to their role, participants will be trained on the Sexual Misconduct Policy including the definitions and relevant procedures herein, Conflicts of Interest and Bias, impartiality, credibility, Relevance determinations including how to apply procedures regarding Claimant's sexual history, hearing procedures, technology for the hearing,

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Earlier Resolution facilitation including restorative justice, and best practices for conducting trauma-informed hearings and evaluating the evidence and information presented in hearings.

**XXXII. Prevention and Education for Employees and Students**

The University employs a multi-pronged approach to provide comprehensive ongoing education to students, faculty, and staff about Sexual Misconduct, Consent, the University's processes for responding to Sexual Misconduct, bystander intervention, risk reduction, the availability of University and community resources for those who experience Sexual Misconduct, and other related topics. See [Policy 533 Public Safety, Response and Reporting](#) section 4.11. This educational programming includes mandatory online and in-person training for Employees, mandatory in-person training for all incoming Students, mandatory online training for all current Students, information provided through the University's orientation program, in-person bystander intervention training, online and print media information, and education and awareness events and campaigns. The University follows evidence-based best practices for education and prevention programs and, where possible, evaluates the effectiveness of these programs.

The University considers supplementary education about Sexual Misconduct to be a resource and a tool for its Students and Employees. As such, the University reserves the right to require a Respondent to complete such education after an Incident Report has been filed alleging they have violated the Sexual Misconduct Policy regardless of whether there is a Determination that they did so.

**XXXIII. Record Retention**

The Office of Equity shall create or obtain and maintain records of any reports made or actions taken under the Sexual Misconduct Policy, including Supportive Measures, for at least seven years from the date of the action, consistent with the appropriate University retention schedule developed in accordance with state law.

The Office of Equity shall retain all Formal Complaints, Earlier Resolution agreements, and all final Determinations and Sanctions for 20 years from the date of the action or longer, consistent with the appropriate University retention schedule developed in accordance with state law.

All records shall be maintained by the Office of Equity in the University's case and document management systems.

**XXXIV. First Amendment Protections**

These procedures and the Sexual Misconduct Policy shall not be interpreted to infringe on a party's First Amendment rights.

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**XXXV. DEFINITIONS**

**Actual Knowledge.** When the University's Title IX Coordinator, or a Reporting Employee under Policy 340: Required Reporting of Sexual Misconduct, has notice of Sexual Misconduct or allegations of Sexual Misconduct. If a Respondent is the only person with notice of the Sexual Misconduct or allegations of Sexual Misconduct, the University does not have Actual Knowledge, even if the Respondent is a Reporting Employee.

**Administrative Leave.** Temporary removal of an Employee from USU employment during the pendency of a Grievance Process. It may be used in non-emergency situations.

**Advocate.** An individual who is employed by or volunteers for the University, acts under the supervision of SAAVI's director, and has completed at least 40 hours of training in counseling and assisting victims who have experienced Sexual Misconduct.

**Appeal.** A request by a party to have a Determination and/or a Sanction overturned or modified.

**Appeal Decision.** A written decision of an Appeal Panel granting or denying an Appeal of a Determination and/or Sanction.

**Appeal Panel.** A three-person panel, made up of different members than the Hearing Panel, assigned to review and decide an Appeal of a Determination and/or a Sanction.

**Appropriate Administrator.** A University Employee or office that has the authority to take Corrective Action. For a Student Respondent, the Appropriate Administrator is the Director of Student Conduct and Community Standards. For a faculty Respondent, the Appropriate Administrator is the Provost. For a staff Respondent, the Appropriate Administrator is the Respondent's supervisor.

**Bias.** 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 Bias.

**Campus Security Authority.** As defined by Policy 533: Public Safety, Response, and Reporting, any employee of the University's Public Safety Department; any individual who has responsibility for campus security but who is not an employee of the Public Safety Department, such as an individual who is responsible for monitoring entrance into University property; any individual or organization specified in Policy 533 as those

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individuals to which students and employees should report criminal offenses; and any official of the University who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. If such an official is a Pastoral Counselor, as defined below, or professional counselor, the official is not considered a Campus Security Authority when acting as a Pastoral or professional counselor.

**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).

**Clery Reportable Crime.** Certain crimes, including some sex-based offenses, required to be reported in the University’s “Annual Security Report” under the Clery Act. See Policy 533: Public Safety, Response, and Reporting.

**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.** 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. 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.

**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

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receive express permission to do so from the Claimant.

**Determination.** The Hearing Panel's written decision following a hearing outlining whether there is a Preponderance of the Evidence that the Respondent violated USU policy.

**Earlier Resolution.** Also referred to as an Informal Resolution. A process in which parties agree to resolve a Formal Complaint without completing an investigation and/or hearing. An Earlier Resolution may be facilitated through arbitration, mediation, restorative justice, or another appropriate method. Such an agreement may include Sanctions or other disciplinary measures.

**Emergency Removal.** Temporary removal of a Student Respondent or an Employee Respondent from USU employment or enrollment following an Incident Report of Sexual Misconduct. Emergency Removal is reserved for emergency situations in which a Safety Risk Assessment performed by a Safety Risk Panel determines there is an immediate threat to the physical health or safety of a Student or other individual(s) arising from the allegations of Sexual Misconduct.

**Employee.** A full-time or part-time University faculty, staff, professional research staff, or post-doctoral fellow. For purposes of these procedures, 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.

**Expert Witness.** A person who is permitted to testify at the hearing because they have special knowledge or proficiency in a particular field that is relevant to the allegations.

**Force.** Includes the use of physical force or threats of force that affects a person's ability to give Consent to sexual contact.

**Formal Complaint.** A signed document that indicates the University will proceed with a Formal Investigation of Sexual Misconduct or an Earlier Resolution. A Formal Complaint may be signed by the Claimant or, for University-driven Formal Investigations, 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 or an investigator appointed by the University, include interviewing parties and Witnesses,



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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 Formal or an Earlier Resolution Investigation.

**Hearing Officer.** A person authorized by the Hearing Panel to preside over the hearing. The Hearing Officer also serves as an advisor to the Hearing Panel on administrative procedures.

**Hearing Panel.** A three-person panel selected from the Equity Hearing Council and assigned by the University to review a Formal Complaint of Sexual Misconduct in a hearing and to determine whether the Respondent violated the Sexual Misconduct Policy.

**Incapacitation.** A state in which a person lacks the ability, temporarily or permanently, to give 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.

**Mitigating, Aggravating, and Compounding Factors.** Factors considered by the Sanctioning Authority when determining the appropriate Sanction for a violation of the Sexual Misconduct Policy. Aggravating Factors are those that increase the severity or culpability of the policy violation. Mitigating Factors are those that provide reasons as to why the Respondent's punishment for a violation ought to be lessened. Compounding Factors include evidence that the Respondent has previously been found to have violated the Sexual Misconduct Policy or other, similar policies.

**Notice of Allegations.** A written instrument notifying both parties that a Formal Complaint of Sexual Misconduct has been filed and outlining the allegations.

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**Notice of Emergency Removal or Administrative Leave.** A written instrument notifying the Respondent that they are being placed on Emergency Removal or Administrative Leave.

**Notice of Hearing.** A written instrument notifying both parties of the location, date, and time of the scheduled hearing.

**Participant.** A person who is not yet an Employee or Student but who is seeking employment or enrollment, has been offered employment or enrollment, or is otherwise attempting to participate in an Employment or Education Program or Activity.

**Pastoral Counselor.** A person who is associated with a religious order or denomination, recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a Pastoral Counselor.

**Preliminary Findings Letter.** A letter issued by the Hearing Panel to the Sanctioning Authority and the Title IX Coordinator outlining the policy violations the Hearing Panel has found the Respondent to have committed. The Preliminary Findings Letter is limited to the policy violations found, while the Determination reviews the relevant evidence and provides the Hearing Panel's rationale.

**Preponderance of the Evidence.** The standard of proof that is used to determine whether a Student or Employee Respondent violated the Sexual Misconduct Policy. Preponderance of the Evidence means that, based on the evidence, it is more likely than not that the Respondent committed a policy violation.

**Process Advisor.** Any person, including an attorney, chosen by a party to the hearing or by the University, to advise and assist the selecting party in the Formal Investigation and/or hearing, including in conducting questioning of another party and Witnesses on behalf of the party. A Process Advisor may be a parent, legal guardian, a USU faculty or staff member, a USU Student Association ("USUSA") Student Advocate, an attorney, or any other person with whom a Claimant or a Respondent wishes to consult during a disciplinary proceeding; however, a Process Advisor may not also serve as a Witness. A Process Advisor may accompany a student in a disciplinary proceeding and must adhere to the rules of the proceeding.

**Record.** Consists of all relevant inculpatory and exculpatory evidence gathered by the University, including that which is gathered during the course of a Formal Investigation that is directly related to the Formal Complaint, whether obtained from a party or other source. The Record includes audio recordings of the Office of Equity investigator's interviews with the parties and Witnesses.

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**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 these procedures.

**Relevance/Relevant.** Evidence is relevant if it tends to make the allegations at issue more or less likely to be true. Relevant evidence can include both exculpatory and inculpatory evidence.

**Remedies.** Measures taken by the University that are designed to restore or preserve the Claimant's equal access to the Employment or Education Program or Activity, to end the Sexual Misconduct at issue, and/or to prevent its recurrence. Remedies may include the same individualized services as Supportive Measures, except that they need not be non-disciplinary, non-punitive, or avoid burdening the Respondent.

**Reporting Employee.** An employee that is required to report all information they receive concerning incidents of Sexual Misconduct to the Title IX Coordinator. See [Policy 340: Required Reporting of Sexual Misconduct](#).

**Resource Connection Employee.** An employee to whom a disclosure of Sexual Misconduct 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](#).

**Respondent.** An individual who is alleged to have committed Sexual Misconduct.

**Retaliation.** Intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege under the Sexual Misconduct Policy or because the individual has made a report or complaint, testified, assisted, participated, or refused to participate in any manner in a Formal Investigation, Earlier Resolution, or hearing under this part.

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**Safety Risk Assessment.** An individualized risk assessment based on the specific facts of one or more Incident Reports that is conducted to determine whether there is a pattern of Sexual Misconduct or an immediate, significant, or ongoing threat to the physical health or safety of a Student, Employee, or other individual(s) arising from allegations of Sexual Misconduct by a Respondent over whom the University has control.

**Safety Risk Panel.** A Panel including the Title IX Coordinator, Office of Equity Executive Director, the Appropriate Administrator, a representative from USU Police, and other necessary individuals convened to complete a Panel Safety Risk Assessment.

**Sanction.** Disciplinary or punitive action taken against a Respondent after they are found by the Hearing Panel to have violated the Sexual Misconduct Policy.

**Sanctioning Authority.** A University Employee or office that has the authority to determine appropriate Sanctions. For Student Respondents, the Sanctioning Authority is the Director of Student Conduct and Community Standards. For faculty Respondents, the Sanctioning Authority is the Provost. For staff Respondents, the Sanctioning Authority is the Respondent's Supervisor.

**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, the safety of others, or to suffer substantial emotional distress. Stalking may occur in person, by telephone, mail, electronic communication, social media, or by 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 by 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 Incapacitation. 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

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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 Harassment.** Includes Hostile Environment Sexual Harassment and Quid Pro Quo Sexual Harassment.

- **Hostile Environment Sexual Harassment.** 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 Sexual Harassment.** 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;
- Sex-based Stalking;
- Sexual Assault; and
- Sexual Harassment.

**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 can complete coursework outside the United States in order to obtain University course credit.

**Supervisor.** A person who has the power to take tangible employment actions against an employee, *i.e.*, to effect a significant change of employment status, such as to hire, fire, promote, reassign with significantly different responsibilities, or make a decision causing a significant change in benefits.

**Support Person.** Claimants and Respondents may each have one Support Person of their choice attend Office of Equity meetings, interviews, and hearings, in order to provide emotional support. A Support Person may be a parent, legal guardian, friend, faculty member, USUSA Student Advocate, attorney, or any other person that the Claimant or Respondent would like to be present for emotional support. However, a Support Person may not also serve as a witness at either the investigation or hearing

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stage. The Support Person must follow all rules of the process, and may not formally participate in the process beyond providing support for the party.

**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 Policy, including [Policy 339: Sexual Misconduct in an Employment or Education Program or Activity](#); [Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity](#); [Policy 339B: Sexual Misconduct in a Study Abroad Program](#) and with federal Title IX law and regulations more generally. The Title IX Coordinator is responsible for promptly responding to Incident Reports of alleged Sexual Misconduct, coordinating effective implementation of Supportive Measures, informing Claimants of their option to file a Formal Complaint, and informing the parties of their rights and obligations under the Grievance Process. The Title IX Coordinator works within the Office of Equity.

**University-driven Formal 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.

**Witness.** An individual who has Relevant information about the Sexual Misconduct allegations.

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## **RESOURCES**

### **Notice of Non-Discrimination**

In its programs and activities, including in admissions and employment, Utah State University does not discriminate or tolerate discrimination, including harassment, based

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on race, color, religion, sex, national origin, age, genetic information, sexual orientation, gender identity or expression, disability, status as a protected veteran, or any other status protected by University policy, Title IX, or any other federal, state, or local law. The following individuals have been designated to handle inquiries regarding the application of Title IX and its implementing regulations and/or USU's non-discrimination policies:

**Executive Director of the Office of Equity**

Alison Adams-Perlac  
[alison.adams-perlac@usu.edu](mailto:alison.adams-perlac@usu.edu)  
1475 Old Main Hill  
Room 161  
435-797-1266

**Title IX Coordinator**

Hilary Renshaw  
[hilary.renshaw@usu.edu](mailto:hilary.renshaw@usu.edu)  
1475 Old Main Hill  
Room 161  
435-797-1266

For further information regarding non-discrimination, please visit <https://equity.usu.edu/>, or contact:

U.S. Department of Education  
Office of Assistant Secretary for Civil Rights  
800-421-3481  
[OCR@ed.gov](mailto:OCR@ed.gov)

U.S. Department of Education  
Denver Regional Office  
303-844-5695  
[OCR.Denver@ed.gov](mailto:OCR.Denver@ed.gov)