

**INTERIM PROCEDURES 339A**  
**EFFECTIVE JANUARY 22, 2021 – SUBJECT TO CHANGE AT ANY TIME**



**INTERIM Procedures 339A: Sexual Misconduct outside an Employment or Education Program or Activity.**

**I. PURPOSE**

Consistent with Title IX of the Education Amendments of 1972, the University is committed to maintaining a living, learning, and working environment free from Sexual Misconduct, including Sexual Harassment, Sexual Exploitation, Sexual Assault, Relationship Violence, and Sex-based Stalking. The Office of Equity’s Grievance Process is used to process allegations of noncompliance with Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity 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 individualized and appropriate Supportive Measures to Claimants and, when a Formal Investigation is undertaken, to provide individualized and appropriate Supportive Measures to both parties, and to gather evidence and information to determine whether a Respondent has violated Policy 339A. When the University determines that a Respondent has violated Policy 339A, 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.

**II. TITLE IX COORDINATOR**

The University has designated a Title IX Coordinator and has authorized them to coordinate its efforts to implement and monitor compliance with Policy 339A: Sexual Misconduct in an Employment or Education Program or Activity and federal Title IX law and regulations more generally. As set forth in Policy 339A, the Title IX Coordinator is responsible for promptly responding to Incident Reports of alleged Sexual Misconduct, coordinating effective implementation of Supportive Measures, and informing Claimants of their option to file a Formal Complaint.

The University’s Title IX Coordinator is:

Hilary Renshaw  
[titleix@usu.edu](mailto:titleix@usu.edu)  
1475 Old Main Hill  
Room 161

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Logan, Utah 84322-1475  
435-797-1266

### **III. JURISDICTION**

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

#### **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. 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

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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 Policy 340: Required Reporting of Sexual Misconduct.

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

**C. Reporting to Law Enforcement**

A person experiencing an emergency or who is in immediate danger should call emergency services where they are located. Any person may report Sexual Misconduct to local law enforcement for investigation and potential criminal prosecution. Law enforcement can also assist with preserving evidence, connecting a Claimant with appropriate medical services, and enforcing a protective order entered by a court. USU Police will notify the Title IX Coordinator of all incidents of Sexual Misconduct reported to them. For more information on how to report to law enforcement and how the University coordinates with police when criminal proceedings run concurrent with an investigation under this policy, see [section XVI](#).

**D. Anonymous Reporting**

With the exception of a Reporting Employee filing a report described in subsection V.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 Informal Resolution or Formal Investigation based on an anonymous Incident Report in certain circumstances if the Incident Report contains sufficient details about an incident of Sexual Misconduct and/or the person(s) involved.

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 to the incident, witnesses, 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 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 Policy 340: Required Reporting of Sexual Misconduct.

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

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

**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 designated in Procedures 340: Required Reporting of Sexual Misconduct section III. Most Employees are Resource Connection Employees. A list of Resource Connection Employees is available [here](#).

Resource Connection Employees are not required to report disclosures of Sexual Misconduct to the Title IX Coordinator. However, all Resource Connection Employees must provide an individual who discloses information concerning Sexual Misconduct with information about support services and reporting options. For more information

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about the obligations of Resource Connection Employees, see Policy 340: Required Reporting of Sexual Misconduct.

## **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, the Office of Equity will review Incident Reports made to the Title IX Coordinator or the Office of Equity as promptly as possible, and not later than 60 minutes, within business hours, after receipt.

### **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) Equity has jurisdiction under [section III Jurisdiction](#); 2) Respondent is a Student, Employee, or a third party over whom the University has control; 3) and 3) the allegations necessitate an Initial Safety Risk Assessment.

## **VIII. RESPONSE TO INCIDENT REPORT**

Following 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 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**

On behalf of the University, 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

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restore or preserve the Claimant's equal access to an Employment or Education Program or Activity. The University will not provide Supportive Measures generally, or a specific Supportive Measure, without a request by a party. 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 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 provisions; temporary removal from certain areas of campus or from participation in an athletic or extracurricular program (when 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; conducting a policy review or training with the Respondent; and other appropriate Supportive Measures.

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 Support Measures 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.

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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 appropriate action to effectively implement such measures when necessary.

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

**A. No Contact Orders**

As a Supportive Measure, the Office of Equity may enter a no-contact agreement in which the parties mutually agree not to contact each other or, during the pendency of an Informal Resolution or Formal Investigation, a no-contact order prohibiting one or more party from contacting the other party. Such an order may be entered at the request of the Claimant or Respondent, or to protect the integrity of the Formal Investigation, including to help prevent allegations of retaliation or additional allegations of Sexual Misconduct from arising during the Formal Investigation. A no-contact agreement or order issued as a Supportive Measure shall be designed not to unreasonably burden either party. A no-contact order prohibiting the Respondent from contacting the Claimant entered following a Determination that the Respondent has committed Sexual Misconduct against the Claimant 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, Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity, and these procedures. However, once the University has received 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. Nevertheless, a Claimant is not required to participate in an Informal Resolution or Formal Investigation, regardless of whether it is University-driven, and the Claimant may receive Supportive Measures even if they decide not to participate in the Grievance Process.

If the Office of Equity determines that it must proceed with a University-driven Grievance Process, 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 what the Claimant experienced in the Formal Complaint that the University signs.

**XI. SAFETY RISK ASSESSMENTS**

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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 XII](#), and/or whether the University should move forward with a University-driven Grievance Process.

Safety Risk Assessments will be individualized and will take into account the specific circumstances arising from the Incident Report of 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 Policy 339: Sexual Misconduct in an Education Program or Activity, Policy 339A: Sexual Misconduct outside an Education Program or Activity, or Policy 339B: Sexual Misconduct in a Study Abroad Program, 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, or Sex-based Stalking. 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 of 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:

- The Claimant expressed a concern for their physical safety that suggests they may be in immediate danger;
- There have been other Sexual Misconduct complaints, Determinations that the Respondent has violated Policy 339, 339A, and/or 339B (Sexual Misconduct Policies), 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 sexual 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;



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- 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;
- The Claimant's report reveals a pattern of perpetration at a given location or by a particular group;
- 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 does or does not present an immediate threat to the physical health or safety of a Student, Employee, or other individual(s) on one or more of the University's campuses, which arises from the allegations of Sexual Misconduct.

If the Initial Safety Risk Assessment indicates that the Respondent may present a safety threat or alleges a pattern of Sexual Misconduct by a Respondent, 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:

- 1) Assess the safety threat;
- 2) Evaluate for Emergency Removal or Administrative Leave; and
- 3) Determine whether a University-driven Grievance Process is authorized in the event the Claimant does not wish to proceed with 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, Emergency Removal or Administrative Leave, and/or whether a University-driven Grievance Process 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**

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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 if there is no risk to immediate physical health or safety, where the Respondent being assessed is a non-Student Employee, the Safety Risk Panel has discretion to place a Respondent on Administrative Leave due to safety risks that are present yet not immediate.

**3. Evaluate Whether to Authorize University-driven Grievance Process**

Regardless of whether the Respondent presents an immediate threat, the Safety Risk Panel may authorize a University-driven Grievance Process in the absence of a Claimant who wishes to file a Formal Complaint.

In determining whether a University-driven Grievance Process is authorized if there is no participating Claimant, 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 authorize a University-driven Grievance Process.

Even if the Respondent does not appear to present an immediate threat to the physical health or safety of someone arising from the allegations of Sexual Misconduct, the Panel may authorize a University-driven Grievance Process when the Safety Panel Risk Assessment outlines a pattern of alleged Sexual Misconduct by a Respondent over whom the University has control.

**C. Assessments Ongoing**

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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.A.](#)

When a Panel Safety Risk Assessment has been completed, and the Respondent is someone over whom the University has control, 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 anonymous and other Incident 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 will reconvene a Safety Risk Panel under [subsection XI.B.](#)

## **XII. EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE**

Nothing in these procedures or Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity 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.

If the Panel places the Respondent on Emergency Removal, the Appropriate Administrator shall provide the Respondent a 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 provide information on how to request an accommodation based on a 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**

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An Employee 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 an Employee 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.

Within one business day of the Panel's decision, the Appropriate Administrator will notify the Employee Respondent of the decision to either maintain or terminate the Emergency Removal.

A Student Respondent who has been placed on Emergency Removal may challenge such removal in writing to the Vice President of Student Affairs 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 Student Respondent raises a timely challenge to the Emergency Removal, the Vice President of Student Affairs will review the Safety Panel Risk Assessment and the challenge.

Within five business days of the Student Respondent's challenge, the Vice President of Student Affairs will notify the Student Respondent of the decision to either maintain or terminate the Emergency Removal.

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

In order to address present but not immediate safety risks, 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.

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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: Corrective Action.

### **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 Informal Resolution. A Process Advisor may be a parent, legal guardian, a University faculty or staff member, a USU Student Associate Student Advocate, an attorney, or any other person with whom a party wishes to consult during this process, although a party should not select someone who was a Witness to the incident or who has relevant information as a Process Advisor, as the Office of Equity and Hearing Panel will be unable to take evidence from them if they are also serving as a Process Advisor. Up to the date of the hearing, a party may choose a different Process Advisor at any time.

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 [subsection 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, those communications are not protected by evidentiary privilege, and may be required to be disclosed in civil or criminal proceedings, if any, 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

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support. The same person can fill the role of both a Process Advisor and a Support Person, but parties are entitled to 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.

**C. Parental Participation**

If a party is a minor, or they have a legal guardian, their parent or legal guardian may participate on their behalf.

Except in cases in which the relevant party is a minor and/or their parent has legal guardianship of them, 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.

**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.

**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 XXIII](#).

**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 in this process. 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

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or a party's Process Advisor or Support Person is able to accommodate those deadlines.

**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 offering 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 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 Grievance Process 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.

In instances where 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 Grievance Process 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 no further action will be taken, and the matter will be closed. The Office of Equity will also remind the Appropriate Administrator of their obligation to report Sexual Misconduct under Policy 340: Required Reporting of Sexual Misconduct. The Office of Equity will then close the case.

If a University-driven Grievance Process has been authorized, the Office of Equity will notify the Claimant of its plans to proceed with a University-driven Grievance Process 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.

**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

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without a Formal Complaint; hear the Claimant's wishes about such measures; and explain the process for filing a Formal Complaint. 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 the Claimant's safety, connect the Claimant with appropriate resources, and help address safety concerns. 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 campus Grievance Process.

If law enforcement (including USU Police) is investigating an allegation of Sexual Misconduct over which the University also has jurisdiction, the University 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 University may request reasonable timelines to the law enforcement agency to take the specific investigatory step(s) in question. If the University must take interim actions that involve excluding the accused party from campus or entering a no-contact order, the University 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 other element of investigation, or in cases of unidentified or non-participating Claimants, the University may need to move forward with reasonable speed in order to complete its obligations under Title IX to resolve Formal Complaints in a prompt manner. It 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 may include an Informal Resolution or a Formal Investigation, and may be Claimant or University-driven.

### **A. Formal Complaint**



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The Grievance Process, including an Informal Resolution or Formal Investigation, 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 University. The Formal Complaint shall include:

- 1) The identities of the parties and witnesses involved in the incident, including their connection to the University, if known;
- 2) The conduct allegedly constituting Sexual Misconduct under Policy 392.1 Sexual Misconduct outside an Employment or Education Program or Activity;
- 3) The date(s) and location(s) of the alleged incident(s), if known; and
- 4) A statement about how the incident presents a risk of ongoing harm and/or impact an Employment or Education Program or Activity.

If a University-driven Grievance Process is authorized following a Panel Safety Risk Assessment, the Title IX Coordinator will complete and sign the Formal Complaint.

Once the Office of Equity has a signed Formal Complaint, whether Claimant or University-driven, the Office of Equity will proceed as outlined in this section.

### **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, in writing, within five business days of the decision. The Office of Equity will only notify the Respondent if they have previously notified them 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 parties received notice of the dismissal decision. The appeal shall outline the reasons why the Formal Complaint or allegations within it should not be dismissed in spite of the reason(s) listed for dismissal.

Even if a Formal Complaint is dismissed, 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, including reporting the incident to law enforcement or relevant University departments so that appropriate action may be taken. Additionally, the Office of Equity

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may evaluate a Formal Complaint under Policy 305: Discrimination Complaints, Policy 339: Sexual Misconduct in an Employment or Education Program or Activity, Policy 339B Sexual Misconduct in a Study Abroad Program, or forward the Incident Report or the Formal Complaint to another department for action under separate University policies.

**a. Required Dismissal**

The Office of Equity will dismiss a Formal Complaint of Sexual Misconduct outside an Employment or Education Program or Activity if any of the following are true:

- 1) The facts alleged would not constitute Sexual Misconduct even if proven to be true; and/or
- 2) The alleged Sexual Misconduct is not alleged to have been committed by a current Employee, Student, or third party over whom the University currently has control.

**b. Discretionary Dismissal**

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

- 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 warrant a University-driven Grievance Process;
- 2) The Respondent is no longer enrolled or employed by 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 where: 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 Formal Complaint contains allegations that are the same as allegations the Office of Equity has already investigated and adjudicated; and/or
- 5) The conduct does not have continuing adverse effects or create a Hostile Environment in an Employment or Education Program or Activity.

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

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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.

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

In the case of a discretionary dismissal or a Claimant's withdrawal of a Formal Complaint, the Office of Equity has discretion to proceed with a University-driven Grievance Process when: a University-driven Grievance Process has been authorized; the incident is alleged to have occurred in an Employment or Education Program or Activity or in a Study Abroad Program; 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 sections XII through XXIII 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 Office of Equity may dismiss the Formal Complaint filed under this section at any time.

Upon agreement of the Respondent, the Formal Complaint may be resolved through an Informal Resolution agreement.

**2. Consolidation of Formal Complaints**

When there are (1) multiple claims by different Claimants made against the same Respondent; (2) claims made by the same Claimant against multiple Respondents that are pending at the same time; (3) cross-complaints filed by Respondent(s) against a Claimant; or (4) 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).

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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 Informal 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.

**B. Presumption of No Policy Violation**

The University will presume that the Respondent is not responsible for violating Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity until either an Informal Resolution agreement has been reached or a Determination has been made at the conclusion of a hearing that Respondent has violated the policy.

**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, if known;
- 2) The conduct allegedly constituting Sexual Misconduct under Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity; 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**

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

**E. Acceptance of Responsibility**

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 Coordinator will issue a letter summarizing the policy violations and stating that 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 an 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.

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 (at the conclusion of the interview or as soon as possible thereafter) and given the option to file an Incident Report at [www.equity.usu.edu](http://www.equity.usu.edu).

**G. University-driven Grievance Process**

If there is no participating Claimant and a University-driven Grievance Process is authorized under section [section XI, Safety Risk Assessments](#), a University-driven Grievance Process may proceed as outlined under subsections [XVII.I.](#) and [XVII.J.](#) The Title IX Coordinator shall sign the Formal Complaint.

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

A University-driven Formal Complaint may be resolved either through a Formal Investigation under subsection [XVII.J.](#) or through an Informal Resolution under subsection [XVII.I](#) if the Title IX Coordinator (acting on behalf of the University) and the Respondent agree.

A Formal Complaint in a University-driven Grievance Process may be withdrawn for the reasons listed under [subsection XVII.A.1. Dismissal](#). If a Formal Investigation was

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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, Informal Resolution facilitators, University-appointed Process Advisors (as it relates to the party they are advising), Hearing Officer, Hearing Panel members, Sanctioning Authorities, and Appellate Panel members shall be free from Conflicts of Interest in the case and Bias for or against Claimants and Respondents generally or toward a specific Claimant or Respondent and shall remain impartial throughout their involvement in the Grievance Process.

At any point prior to a Hearing, 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 and any evidence or information supporting that concern.

Within five business days, the Office of Equity Executive Director 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.

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 will consider the information available and will make an immediate decision about whether a Conflict of Interest or Bias exists.

If the Office of Equity Executive Director or Hearing Officer determines that a Conflict of Interest or Bias exists, they will notify the individual and parties within two business days and will take appropriate steps to appoint an appropriate replacement to serve in place of the person with the Conflict of Interest or Bias. 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. If a Hearing Officer finds a Conflict of Interest or Bias during a hearing, they will immediately notify the parties and postpone the hearing to appoint an appropriate replacement to serve in place of the person with the 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 possible Conflicts of Interest or Bias must raise these concerns as soon as they become aware of them.

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The Executive Director or Hearing Officer shall appoint a replacement within three business days of the decision or recusal and shall simultaneously notify both parties and their Process Advisors, if any of the name of the replacement.

A party alleging a Conflict of Interest or Bias shall raise that concern immediately when they become aware of it. A party alleging a Conflict of Interest or Bias at the hearing may raise that issue in the hearing or in an Appeal as outlined in this policy. A party who fails to raise Conflict of Interest or Bias at the time they are known may waive the opportunity to resolve it later.

### **I. Informal Resolutions**

With the exception of Claimant-driven Formal Complaints involving an Employee Respondent and a Student Claimant, which are not eligible for an Informal Resolution, all Formal Complaints may be resolved through an Informal Resolution. Additionally, even with regard to a Claimant-driven Formal Complaint involving an Employee Respondent and a Student Claimant, the University and/or Sanctioning Authority may negotiate or enter into settlement regarding Sanctions following a Determination or acceptance of responsibility.

Any time after a Formal Complaint has been filed and up to three business days before a hearing is set, any party may request an Informal Resolution. Within three business days, the Office of Equity investigator will communicate such a request to the other party in order to determine whether they agree to participate in an Informal Resolution as required by [subsection XVII.1.3.](#)

#### **1. Timeframes**

Informal Resolutions will be completed within 40 business days of the date of the agreement of the parties to proceed with the Informal Resolution process. If there is no Informal 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.

#### **2. Notice of Rights and Requirements**

Within five business days of a request for an Informal Resolution, the Office of Equity shall issue to the parties information outlining the rights of the participants, requirements of the Informal 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 may be shared with the Notice of Allegations if an Informal Resolution is requested by the Claimant or Title IX Coordinator at the time they file their Formal Complaint.

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**3. Participation**

Participation in the Informal 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 Informal 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 Informal Resolution process.

For the Informal 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 or hearing will resume.

An Informal 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 Informal Resolution process.

**4. Retaliation Prohibited**

The Office of Equity will remind the parties that retaliation is prohibited under Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity, 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 Informal Resolution process.

**5. Withdrawal**

Any party may withdraw from the Informal 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 Informal Resolution process, the Formal investigation will resume.

**6. Facilitators**

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

An Informal 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 Title IX training.

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

Facilitators will be trained under [section XXX](#).



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**7. Agreement**

The Office of Equity will appoint a facilitator to help facilitate the Informal Resolution. The decision to enter into an Informal 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 Office of Equity or the Appropriate Administrator.

Once signed by both parties, an Informal Resolution agreement is binding. Absent good cause, including but not limited to an Informal 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 Informal 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 Policy 339: Sexual Misconduct in an Employment or Education Program or Activity; 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.

Following an Informal Resolution agreement, the facilitator shall notify the Sanctioning Authority (if the Informal 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 Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity 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 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 agreed upon in the agreement, the Office of Equity may file a report against Respondent for failure to follow a University directive.

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**8. Remedies**

Following an Informal 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 Informal Resolution process, the facilitator shall notify them of confidentiality and privacy requirements.

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

If an Informal 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 evidence underlying the agreement. Parties are not precluded under this section from discussing their 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 Informal Resolution agreement, the Office of Equity will electronically share the Record with the Sanctioning Authority and the Title IX Coordinator no later than five business days after the Informal 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.

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**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 XXX](#) 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 Informal Resolution.

**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 Investigation, 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 Claimant without the benefit of Respondent's response or perspective pertaining to the alleged Sexual Misconduct. The Hearing Panel may find that the Respondent violated Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity 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 to the Record is provided to the parties.

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,

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the Respondent violated Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity.

**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 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.

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

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Evidence may include, but is not limited to, the investigator's interviews and statements made by the parties and witnesses, emails or text messages, video footage, photographs, recordings, statements made by the parties outside of the Office of Equity investigation, information and records from applicable University departments, medical and/or counseling records, social media postings, photographs, video or audio recordings, police reports, Sexual Assault Nurse Exam ("SANE") exam reports, physical evidence, receipts, and other relevant evidence.

In conducting their investigation, the investigator will respect the presumption that the Respondent did not violate Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity 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 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. 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 the parties shall have access to the recordings when they are given access to the Record.

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.

**7. Access to the Record**

Within 20 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 agreement with the parties in a manner that does not allow the parties to copy, save, or disseminate the evidence underlying the agreement. 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 investigator will add any responses to the Record and responses to the investigation report or 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.

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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 within one business day of the Hearing Panel being appointed.

At the conclusion of the process, access to the Record will be removed 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 relevant evidence in the Record. Responses to the Record shall be limited to 5 pages, excluding attachments and 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.

Evidence and Witnesses discoverable through reasonable due diligence and not provided to the investigator prior to the close of the response to the Record period will be inadmissible.

The investigator will add responses, including attachments, to the Record 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,

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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 drafting the preliminary investigation report, the investigator will consider responses to the Record filed by the parties, if any.

**10. Responses to the 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 party:

- 1) Shall file a written statement listing the numbered paragraphs in the preliminary investigation report that the party agrees are true, and the numbered paragraphs that the party disputes;
- 2) Shall file a written list of witnesses and exhibits in the Record they want the Hearing Panel to consider;
- 3) Shall file a written list of questions they propose to ask the other party, Witnesses, and the investigator in the hearing;
- 4) Shall file 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) May file a written response to the investigation report.

For any paragraphs a party disputes, they shall outline why they dispute those paragraphs and cite any evidence or witness that supports their position with regard to those paragraphs.

Responses to the 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 investigation report and will consider them when completing the final investigation report.

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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 to the Record, the final investigation report and 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**

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, and shall not be considered by the Hearing Panel in making its Determination as to whether the Respondent violated Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity.

**13. Appointment of a Process Advisor for Hearing**

If a party does not file a notice of intent to include a Process Advisor, the Hearing Officer will ensure a Process Advisor is appointed and given access to the Record and information about the case at least 15 days prior to the hearing in order to assist the party in the hearing.

**14. Hearing**

The Hearing Officer shall schedule a live hearing to take place within 20 business days of the date the final investigation report is issued. No party may waive the right to a hearing, but neither party is required to participate in the hearing. However, a hearing will be held in the absence of either or both parties and the Hearing Panel will make a Determination with or without a party's participation. A party who chooses not to participate may not have their statements about the allegations considered by the Hearing Panel. If there is a Preponderance of Evidence that the Respondent violated this policy, Sanctions may be entered with or without the parties' participation.

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.



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**a. Notice of Hearing**

The Hearing Officer shall issue a Notice of Hearing at least 15 business days before the hearing 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.

**b. Weapons Prohibited**

Under Utah Code section 76-8-311.1, firearms and other weapons may be prohibited in higher education hearing rooms. An officer with USU Police 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 University law enforcement officer;
- The Title IX Coordinator or their designee;
- The investigator;
- The Sanctioning Authority or their designee; and
- Witnesses, including Expert Witnesses. With the exception of the investigator, who serves as a witness, but who 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 may be conducted with all parties physically present in the same location, or any party, Witness, or other participant, including the Hearing Officer or a member of the Hearing Panel, may appear for the hearing via videoconferencing, as long as all

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participants are able to simultaneously see and hear each other for the entire proceeding with the exception of recesses.

A party or Witness who would like to appear via videoconferencing shall make the request, in writing, to the investigator 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 to provide the meeting platform, e.g. Zoom, and will be responsible for maintaining a proper internet connection on the University's end, it is the requesting party's responsibility 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 shall 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.

**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 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.

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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.

**h. Questioning**

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

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 about whether the Respondent violated this policy 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 this Policy, the Hearing Panel cannot rely on any previous or subsequent statement of a party or Witness, e.g. to an a law enforcement or Office of Equity investigator, in an opening or closing statement, in an affidavit, etc. who refuses to submit to questioning at the hearing.

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 and not subject to objection in the hearing.

Questions and evidence about the Claimant's sexual predisposition or prior sexual behavior 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

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respect to the Respondent and are offered to prove that the Claimant gave their Consent for the alleged conduct.

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.

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.

### **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 Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity 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:

- 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 Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity 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 5 business days of the hearing, the Hearing Panel shall issue a Preliminary Findings Letter simultaneously to the parties and their Process Advisors, to the

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Sanctioning Authority, and to 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 Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity, the following provisions regarding Sanctions and Remedies will apply.

**17. Sanctions**

**a. Statements on Sanctions**

Each party may submit a 5-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 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.

**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 Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity). A finding that the Respondent violated Policy 339A may result in no Sanction, a minimal Sanction, or the maximum possible Sanction, depending on the

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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 Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity, the Title IX Coordinator has discretion to provide appropriate Remedies and Supportive Measures to either party.

**19. Determination Issued**

Within 20 business days of the hearing, the Hearing Officer shall electronically 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 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 Informal Resolution agreement that includes an admission that the Respondent violated Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity, but do not reach an agreement regarding Sanctions, the case will proceed under [subsection XVII.H.17](#), except that there will not be a Hearing Panel appointed.

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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 decision-maker(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.

Appeals shall be limited to 15 pages, including all headings and attachments. New evidence exceeding the page limits shall be allowed. 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 Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity 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

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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.

**25. Dismissal of Appeal**

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 Appellate Panel may dismiss the Appeal with regard to either the Determination or the Sanction if the standard is met for one but not both.

**26. Response to Appeal**

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

Responses to Appeal shall be limited to 10 pages, including all headings and attachments, 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.

**27. Appeal Decision**



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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.

Within 25 business days of the date the 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.

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 the Sanctioning Authority 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.

**i. Remands to the Hearing Panel**

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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 to the Hearing Panel, or the case in its entirety, 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 concurrently to the parties and their Process Advisors. Within five calendar 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 may convene such a hearing in its discretion.

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.

### **1. New Hearing**

Where 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 Appellate Panel may at its discretion remand the case to a new Hearing Panel for a new hearing. The new hearing is subject to the same standard of review and Appellate procedures as the original hearing, and all relevant time frames are reset.

### **2. New Investigation**

Where 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 may at its discretion 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, Investigative Report, and hearing) must be conducted anew. An investigation and subsequent new investigation report shall be considered and catalogued as a new

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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.

**3. 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.

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.

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 calendar 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 letter, or it may order a new hearing on the issues addressed in the remand order/amended Sanction letter.

**28. Sanctions**

Upon entry of an Informal 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 Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity, 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 an Informal Resolution agreement or Determination by the Hearing Panel results in a Determination that the Respondent violated Policy 339A. The University may take immediate action to place the Respondent on Emergency Removal or Administrative

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Leave following a Determination that Respondent has violated Policy 339A, and such action is not considered a Sanction.

The Sanction may be of greater or lesser severity depending on the circumstances of the case, whether the Respondent has previously been found to have violated Policy 339. A finding that the Respondent has violated Policy 339 may result in a variety of potential Sanctions including a warning, probation, suspension until the Claimant finishes their studies to the most severe being termination of an Employee or expulsion of a Student with a permanent notation on their transcript. As part of the Sanction, the University might also order conditions upon which a Respondent may continue or return as an Employee or Student, including that Respondent complete education, a therapeutic assessment and therapy, community service, or that Respondent be subject to course or housing reassignment, etc. The University might also enter a no-contact order to limit Respondent's future interactions with Claimant.

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

If an Employee Respondent was found to have violated Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity, 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 and, if the violation resulted in termination, the Respondent will not be eligible for rehire.

An Employee Respondent who is found to have violated Policy 339A may be subject to Sanctions from a warning up to and including termination.

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 would apply.

**b. Students**

If a Student Respondent was found to have violated Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity, the Office of Student Conduct and Community Standards will document the finding in the Respondent's education file and, if the violation resulted in expulsion, the Respondent will not be eligible for readmission. Student Conduct is responsible for adding relevant notations to the Respondent's transcript.

A Student who is found to have violated Policy 339A with regard to Sexual Harassment may be subject to Sanctions from a warning up to and including probation.

A Student who is found to have violated Policy 339A with regard to Relationship Violence, Sexual Exploitation, or Stalking 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.

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A Student who is found to have violated Policy 339A with regard to Sexual Assault 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.

**29. Remedies**

Upon entry of an Informal 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 Informal 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 a no-contact order; reassignment of Respondent office, class, housing, or job duties; limiting Respondent's access to certain Student services; requiring the Respondent to complete online rather than in-person courses, etc.

**30. Abuse of the Disciplinary Process**

Abuse of the disciplinary process is strictly prohibited. Abuse of the disciplinary 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:

- a. Failure to comply with the directions of the Provost, the Vice President for Student Affairs, a hearing body, or hearing officer.
- b. Falsification, distortion, or misrepresentation of information before a hearing body or hearing officer.
- c. Disruption or interference with the orderly conduct of a disciplinary/grievance proceeding.
- d. Institution of a disciplinary/grievance proceeding knowingly without cause.
- e. Attempting to discourage an individual's proper participation in, or use of, the disciplinary/grievance process.
- f. Attempting to influence the impartiality of a member of a hearing body or a hearing officer prior to, or during the course of, the discipline/grievance process.
- g. Harassment (verbal or physical) or intimidation of a member of a hearing body or a hearing officer prior to, during, or after a disciplinary/grievance proceeding.
- h. Failure to comply with the penalty imposed, or other action taken, under the Student Code.
- i. Influencing or attempting to influence another person to commit an abuse of the disciplinary/grievance process.
- j. Tampering with, influencing, or attempting to influence any witness or potential witness in a disciplinary/grievance proceeding.

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

**31. 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 Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity, 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—whether a Student or Employee—who engages in retaliation may be subject to Corrective Action or Sanctions from probation up to and including expulsion, and the Sanction may include a permanent notation on the Student’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 Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity based on good cause by filing a request, in writing, with the Office of Equity Executive Director, outlining the reasons for the request.

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 shall simultaneously notify both parties of the decision. If good cause is found, the Executive Director 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

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or emergency. 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 relevant parties, their Process Advisors and/or Support Persons once every two weeks to provide status updates on their case.

**XXI. False Reports**

The University prohibits submitting a false Incident Report or providing false or misleading information in a Sexual Misconduct proceeding. A person who has knowingly provided false information relating 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 Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity, is not enough for an Incident Report to be deemed false.

**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 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. 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.

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Where the accommodation sought is due to disability, the Office of Equity will refer the request to the Disability Resource Center in instances where the requesting person is a Student, and the ADA Coordinator when the person requesting the accommodation is an Employee).

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.

No accommodations will be made for either party to remove the live questioning requirements of a hearing.

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

To ensure the safety and well-being of all University Students, Students must 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 and Community for violations of the USU Student Code. To remove barriers that prevent Students from seeking necessary medical attention for themselves or others or from reporting Sexual Misconduct, USU 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.

### **XXIV. Electronic Notice and Filing**

For purposes of Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity 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 shall satisfy the "in writing" requirement of any of the above procedures.

### **XXV. 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.

### **XXVI. Information Sharing**



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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, Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity, other relevant policies, 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 Policy 339A and these procedures.

**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 University 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.

**B. 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.

**C. 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 written permission allowing them to be shared as part of the Record.

**XXVIII. Records Access**

**A. 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.

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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 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.

**B. 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 the, personnel records laws and policies, state public records laws, and/or relevant University policies.

**XXIX. 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 Policy 339: Sexual Misconduct in an Employment or Education Program or Activity 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**

The EHC shall be made up of at a minimum three tenured faculty members appointed by each of the Deans of the following University colleges: Caine College of the Arts; College of Agriculture and Applied Science; Extension; Libraries; College of Humanities and Social Sciences; College of Science; Emma Eccles Jones College of Education & Human Services; and S.J. & Jessie E. Quinney College of Natural Resources, and by staff members appointed by the Vice Presidents of the University. Members shall come from all of the University’s campuses. The EHC may also include specially appointed standing members including staff members in the Inclusion Center, the Disability Resource Center, and the Staff Employee Association. The EHC may not include the Title IX Coordinator.

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

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90 days before an EHC member's term is expiring, the Office of Equity Executive Director 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.

**C. Annual Training**

All members of the EHC pool will be trained annually in-person during fall semester on Policy 339: Sexual Misconduct in an Employment or Education Program or Activity 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 related to potential violations by 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 written report is completed on a timely basis, and that decisions are delivered in accordance with the timeframes outlined in subsections [XVII.J.14](#) through 27.

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

The Title IX Coordinator, Office of Equity staff who participate in the Grievance Process, Informal Resolution facilitators, Hearing Officers, Hearing and Appeal Panel Pool, Sanctioning Authorities, Safety Risk Panel Members, Appropriate Administrators, and shall be trained annually in-person in accordance with Policy 339A: Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity and these procedures.

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As relevant, participants will be trained on Policy 339 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, Informal Resolution facilitation including restorative justice, and best practices for conducting trauma-informed hearings and evaluating the evidence and information presented in hearings.

**XXXI. 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 533.4.11](#). 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.

Registration holds are placed on the accounts of Students who do not complete the required training by the deadline. Employees who do not complete the required training may be subject to discipline.

The University considers Sexual Misconduct education 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 education after an Incident Report has been filed alleging they have violated Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity regardless of whether there is a Determination that they did so.

**XXXII. Record Retention**

The Office of Equity shall create or obtain and maintain records of any reports made or actions taken under Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity, including Supportive Measures, for seven years from the date of the action, or longer, consistent with the appropriate University retention schedule.

The Office of Equity shall retain all Formal Complaints, Informal Resolution agreements, and all final Determinations and Sanctions for twenty years from the date of the action or longer, consistent with the appropriate retention schedule.

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

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**XXXIII. First Amendment Protections**

These procedures and Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity, shall not be interpreted to infringe on a party's First Amendment rights.

**XXVII. 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.

**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 individuals to which students and employees should report criminal offenses; and any official of the University who has significant responsibility for student and campus

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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 and/or Bias.** A *Conflict of Interest* exists when a non-party individual with a role in the Grievance Process is in a position to gain a personal or self-serving benefit from an action or decision made in their role under this policy, or where a person is otherwise unable to participate with objectivity because of personal or professional relationships with other individuals involved in the process or associated with those involved. *Bias* is unfair prejudice in favor of or against one group compared with another and may include bias against a particular class of parties, (e.g., Respondents in the Grievance Process). Individuals with roles in the Grievance Process are prohibited from considering a party’s status as a Claimant or Respondent as a negative factor during consideration of the Formal Complaint. That an individual with a role in the process works for the University alone is not enough, without more, to establish a Conflict of Interest and/or Bias.

**Consent.** An understandable exchange of words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity. Consent is an agreement to do the same thing at the same time in the same way. Consent can be withdrawn or modified at any time, as long as it is clearly communicated. Consent cannot be assumed based on silence, the absence of “no” or “stop,” the existence of a prior or current relationship, or prior sexual activity.

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

**Corrective Action.** Employment-related action (including imposition of Sanctions) undertaken to correct or modify unacceptable job performance or behavior to acceptable standards. Corrective Action measures authorized to be imposed upon Employees include an oral reprimand, written warning, Administrative Leave with or without pay, and dismissal from employment.

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**Designated Confidential Resources.** The University’s professional counselors, non-professional counselors, and advocates. They provide critical support services to campus community members in a confidential setting and do not share disclosures of Sexual Misconduct with the Title IX Coordinator or with law enforcement unless they receive express permission to do so from the Claimant.

**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.

**Emergency Removal.** Temporary removal of a Student Respondent or an Employee Respondent from USU employment or enrollment during the pendency of a Grievance Process. Emergency Removal is reserved for emergency situations in which 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 over 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 Consent to sexual contact.

**Formal Complaint.** A signed document that indicates the University will proceed with a Formal Investigation of Sexual Misconduct. A Formal Complaint may be signed by the Claimant or by the Title IX Coordinator.

**Formal Investigation.** The information and evidence-gathering process that begins with the filing of the Formal Complaint and ends when the Investigation Report is issued. Formal Investigations, conducted by the Office of Equity Investigator, include interviewing parties and witnesses, and gathering other relevant evidence, exculpatory and inculpatory. The Formal Investigation may be University or Claimant-driven.

**Grievance Process.** The process undertaken by the Office of Equity following the filing of a Formal Complaint, which may include a Claimant or University-driven Informal Resolution or Formal Investigation.

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**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 assigned by the University to review a Formal Complaint of Sexual Misconduct in a hearing and to determine whether the Respondent violated this policy by a Preponderance of the Evidence.

**Incapacitation.** A state in which a person lacks the ability, temporarily or permanently, to Consent to sexual activity including because of a disability, drug or alcohol consumption (whether voluntary or involuntary), or because the person is unconscious, asleep, immobilized, or otherwise unaware that the sexual activity is occurring. A person is not necessarily Incapacitated solely as a result of drinking or using drugs; the level of impairment must be significant enough to render the person unable to give Consent.

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

**Incident Report.** A report of alleged Sexual Misconduct filed online, via email, by phone, by mail, or in-person to the Office of Equity, Title IX Coordinator, or a Reporting Employee.

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

**Mitigating, Aggravating, and Compounding Factors.** Factors considered by the Sanctioning Authority when determining the appropriate Sanction for a violation of this 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 this 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.

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



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**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.

**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.

**Preponderance of the Evidence.** The standard of proof that is used to determine whether a Student or Employee Respondent violated Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity. Preponderance of the Evidence means that, based on the evidence, it is more likely than not that the Respondent committed a policy violation.

**Record.** Consists of all relevant inculpatory and exculpatory evidence gathered during an investigation 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.

**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.

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- **Domestic Violence.** Domestic Violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the Claimant, by a person with whom the Claimant shares a child in common, by a person who is cohabitating with or has cohabitated with the Claimant as a spouse or intimate partner, by a person similarly situated to a spouse of the Claimant under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or by any other person against an adult or youth Claimant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. A criminal charge or conviction is not a predicate for an allegation of Domestic Violence to be brought under this policy.

**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.** Any Employee designated as such by Policy 340: Required Reporting of Sexual Misconduct. Employees identified as Reporting Employees are required to report all information they receive concerning incidents of Sexual Misconduct to the Title IX Coordinator.

**Resource Connection Employee.** An employee who is neither a Reporting Employee or a Designated Confidential Resource. Sexual Misconduct disclosures made to a Resource Connection Employee will not automatically result in an Incident Report to the Title IX Coordinator or a further University response. However, a Resource Connection Employee will provide information about [support services and reporting options](#). Most employees are Resource Connection Employees.

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

**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 an immediate threat to the physical health or safety of a Student, Employee, or other individual(s) arising from the allegations.

**Safety Risk Panel.** A Panel including the Title IX Coordinator, Office of Equity Executive Director, the Appropriate Administrator, 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 Policy 339: Sexual Misconduct in an Education

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Program of Activity.

**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.** USU considers actions based on someone's sex assigned at birth, gender identity, gender expression, and/or sexual orientation to be sex-based.

**Sex-based Stalking.** Engaging in a course of conduct directed at a specific person or persons based on sex, that would cause a reasonable person to fear for their safety or for the safety of others or to suffer substantial emotional distress. Stalking may occur in person, by telephone, mail, electronic communication, social media, or any other action, device, or method.

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

**Sexual Assault.** Includes any sexual act or attempted sexual act, including Rape, Sodomy, Sexual Assault with An Object, or Fondling, directed against another person without their Consent. This includes instances where the person is incapable of giving Consent because of their age or because of a temporary or permanent mental or physical incapacity. Sexual Assault also includes unlawful sexual acts, such as Incest and Statutory Rape.

- **Rape.** Sexual intercourse with another person without their Consent.
- **Sodomy.** Oral or anal sexual intercourse with another person without their Consent.
- **Sexual Assault with An Object.** The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person without their Consent.
- **Fondling.** The touching of the private body parts of another person for the purpose of sexual gratification without their Consent.
- **Incest.** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law (e.g., a sibling or parent/child relationship).
- **Statutory Rape.** Sexual intercourse with a person who is under Utah's statutory age of Consent.

**Sexual Exploitation.** Sexual Exploitation is intentional or knowing conduct by an individual in which they take or attempt to take non-consensual sexual advantage of

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another for the individual's own benefit, or to benefit anyone other than the one being exploited. Sexual Exploitation includes intentionally or knowingly:

- Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give Consent to sexual activity;
- Engaging in voyeurism, including observing or allowing another to observe private sexual or intimate activity, for example disrobing, bathing, toileting, without the Consent of the individual(s) being observed, whether from a hidden location or through electronic means, e.g. via video streaming;
- Recording, photographing, disseminating and/or posting images of private sexual or intimate activity and/or a person's intimate parts (including genitalia, groin, breasts and/or buttocks) without the person's Consent;
- Engaging in the recruitment, transportation, harboring, or receipt of a person for the purposes of a commercial sex act(s) without the person's Consent;
- Demanding financial compensation, sexual contact, or some other benefit under threat of disseminating or posting an image, video or other recording, of private sexual or intimate activity and/or a person's genitalia, groin, breasts, and/or buttocks;
- Exposing another person to a sexually transmitted infection without the other's knowledge; and/or
- Through one's actions, aiding or assisting another person in committing an act of Sexual Misconduct.

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

- **Hostile Environment.** Unwelcome sex-based conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an Employment or Education Program or Activity.
- **Quid Pro Quo.** An Employee's conditioning the provision of a University aid, benefit, or service on a person's participation in unwelcome sexual conduct.

**Sexual Misconduct.** Referred to as "sexual harassment" in 34 C.F.R. § 106.30 (2020). Sexual Misconduct is conduct on the basis of sex including one or more of the following types of conduct:

- Relationship Violence;
- Sexual Exploitation;
- Sexual Harassment;
- Sexual Assault; and,
- Sex-based Stalking.

**Student.** A person who is currently registered or enrolled at the University for credit or non-credit-bearing course work.

**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,

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fire, promote, reassign with significantly different responsibilities, or make a decision causing a significant change in benefits.

**Support Person:** Students or employees working with the Office of Equity or participating in the Grievance Process may bring one person for emotional support. A Support Person may be a parent, legal guardian, friend, faculty member, USUSA Student Advocate, attorney, or any other person that the student 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 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 policies, 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 works within the Office of Equity. As set forth in Policy 339A: Sexual Misconduct outside an Employment or Education Program or Activity, the Title IX Coordinator is responsible for promptly responding to Incident Reports of alleged Sexual Misconduct, coordinating effective implementation of Supportive Measures, and informing Claimants of their option to file a Formal Complaint. The Title IX Coordinator works within the Office of Equity.

**University-driven Investigation.** An investigation of allegations of Sexual Misconduct undertaken by the University when, as determined by the Safety Risk Panel, there is an immediate threat to the physical health or safety of a Student or other individual(s) arising from the allegations and/or there are allegations that suggest a pattern of Sexual Misconduct by a Student, Employee, or third party over whom the University has control and there is no participating Claimant.

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

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## **RESOURCES**

### **Non-Discrimination Statement**

In its programs and activities, including in admissions and employment, Utah State University does not discriminate or tolerate discrimination, including harassment, based 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  
Logan, Utah 84322-1475  
435-797-1266

#### **Title IX Coordinator**

Hilary Renshaw  
[hilary.renshaw@usu.edu](mailto:hilary.renshaw@usu.edu)  
1475 Old Main Hill  
Room 161  
Logan, Utah 84322-1475  
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)

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