



# **Procedures 305 and 339A: Discrimination Based on Protected Characteristics and Non-Title IX Sexual Misconduct**

## **I. PURPOSE**

Utah State University (the “University” or “USU”) is committed to providing an environment free from harassment and other forms of discrimination based on race, color, religion, sex, gender identity or expression, sexual orientation, national origin, age (40 and older), disability, genetic information, or status as a protected veteran (“Protected Characteristics”). Consistent with its prohibition against sex discrimination, the University prohibits and is committed to addressing Sexual Misconduct defined as conduct on the basis of sex that meets the definition of Relationship Violence, Sexual Harassment, Sexual Exploitation, Sexual Assault, and Sex-based Stalking. Collectively, this behavior is defined as Prohibited Conduct in these procedures.

The Office of Equity’s administrative Grievance Process is used to process allegations of noncompliance with Policy [305](#): Discrimination Based on Protected Characteristics and Policy [339A](#): Non-Title IX Sexual Misconduct and to ensure equitable access to USU’s Employment or Education Programs or Activities for those who experience Prohibited Conduct. Specifically, the Formal Investigation is designed to gather evidence to determine whether a Respondent has violated Policy [305](#) or Policy [339A](#). When the University determines that a Respondent has violated those policies, these Prohibited Conduct Procedures implement steps reasonably designed to end the Prohibited Conduct and prevent its recurrence. The Respondent’s behavior is addressed appropriately through a range of possible action (e.g., Sanctions, education, etc.) and the Claimant is provided appropriate Remedies.

All days referenced in these Prohibited Conduct Procedures are calendar days. All deadlines may be extended for Good Cause at the discretion of the Office of Equity Executive Director. The Executive Director and/or Title IX Coordinator may appoint a staff member from the Office of Equity as their designee.

These procedures, along with all accompanying policies and practices, are not intended to and do not create any contractual rights. These policies and procedures are subject to change at any time at the University’s sole discretion.

## **II. DEFINITION OF SEXUAL MISCONDUCT AND PROHIBITED CHARACTERISTICS (COLLECTIVELY “PROHIBITED CONDUCT”)**

- **Protected Characteristics.** Protected characteristics are the identities detailed in University Policy [305](#). Specifically, race, color, religion, sex, gender identity or expression, sexual orientation, national origin, age (40 and older), disability, genetic information, or status as a protected veteran.
- **Sexual Misconduct.** Sexual Misconduct is conduct on the basis of sex including one or more of the following types of conduct:
  - Relationship Violence;
  - Sex-based Stalking;
  - Sexual Exploitation;
  - Sexual Assault; and
  - Sexual Harassment.
- **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 nature of the relationship, and (c) the frequency of interaction between the persons involved in the relationship.
  - **Domestic Violence.** Domestic Violence includes felony or misdemeanor crimes of violence committed against the Claimant 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 the Sexual Misconduct Policy.
- **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.
  - **Course of Conduct.** 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 Incapacitation. Sexual Assault also includes unlawful sexual acts, such as Incest and Statutory Rape.
  - **Rape.** Sexual intercourse with another person without their Consent.
  - **Sodomy.** Oral or anal sexual intercourse with another person without their Consent.
  - **Sexual Assault with An Object.** The use of an object or instrument to unlawfully 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.** Taking non-consensual sexual advantage of another for one's own advantage or benefit, or to the benefit or advantage of anyone other than the Claimant. Examples include, but are not limited to:
  - observing, recording, or photographing nudity or sexual activity of one or more persons without their Consent in a location where there is a reasonable expectation of privacy;
  - allowing another to observe, record, or photograph nudity or sexual activity of one or more persons without their Consent where there is a reasonable expectation of privacy; or
  - distributing recordings, photographs, or other images of the nudity or sexual activity of one or more persons without their Consent.
  
- **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.

### III. JURISDICTION

These procedures may be invoked for alleged violations of University Policies 339A or 305 by current and former students, applicants and prospective applicants, current employees, former employees, and visitors (who have a formal relationship with the University) to the campus.

Whenever possible, the University will reasonably respond to information of which it becomes aware, whether received directly or indirectly. The University may initiate an inquiry or investigation of potential discrimination and/or harassment even if a Formal Complaint has not been filed by the Claimant.

These procedures are intended to be the exclusive procedures used for complaints alleging violations of Policy [339A](#) or Policy [305](#).

If a party is under the age of 18, a parent or legal guardian will receive written notice of a Formal Complaint. When required by law, a parent or guardian may act on behalf of a Claimant, Respondent, or other individual.

For incident reports involving third parties see [section V.B.](#)

#### **IV. MAKING A REPORT OF PROHIBITED CONDUCT**

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 Distance Education Room 404, or via mail at Office of Equity, 5100 Old Main Hill, Logan, Utah 84322-5100. Persons who call after hours may leave a message on the Office's private voicemail that will be received within the next business day.

#### **V. RESPONDING TO INCIDENT REPORTS**

##### **A. Initial Assessment**

After receiving an Incident Report, the Office of Equity will promptly conduct an Initial Assessment to determine whether:

- 1) the Incident Report alleges a Clery Reportable Crime and/or warrants a timely warning review under section [XV](#) Timely Warnings;
- 2) the Office of Equity has jurisdiction under section [III](#) Jurisdiction;
- 3) the Respondent is a Student or Employee; or third party over whom the University has control; and
- 4) the allegations necessitate an Initial Safety Risk Assessment.

If the Incident Report alleges a [Clery Reportable Crime](#) that occurred within Clery geography, the Office of Equity will share the Incident Report with the University's Police Department ("USU Police") and other university employees as outlined in section [XVIII](#), Information Sharing.

Following receipt of an Incident Report, the Office of Equity will promptly contact the Claimant, if known, to:

- 1) offer Supportive Measures and explain that such measures are free of charge and available with or without the filing of a Formal Complaint;
- 2) discuss the Claimant's wishes about Supportive Measures;
- 3) explain the option to file a Formal Complaint, including the process for doing so; and
- 4) provide information about additional reporting options, including law enforcement and other support services such as Designated Confidential Resources.

## **B. Other Inquiry**

When an Incident Report is not closed or referred to another unit after an Initial Assessment and there is not jurisdiction for the Grievance Process, the Office of Equity, when reasonable and appropriate, may:

- conduct an inquiry to try to determine what occurred and/or gather available information about the climate within any program or activity noted in the Incident Report;
- take prompt steps that are reasonably calculated to:
  - end any substantiated Prohibited Conduct, and
  - prevent its recurrence, and
  - as appropriate, remedy its effects; and/or
- monitor barriers to reporting information about conduct that may constitute Prohibited Conduct and/or to filing a Formal Complaint or otherwise participating in a Grievance Process related to such conduct, and take steps reasonably calculated to address such barriers.

Such an inquiry may be appropriate when, for example, the Claimant alleges Prohibited Conduct by an organization, a person whose identity is unknown, or a third party over whom the University does not have control, or alleges Prohibited Conduct by multiple people that rises to the level of Prohibited Conduct only when considered in the aggregate.

The extent of the inquiry and responsive steps will depend on the specific circumstances. This includes, for example:

- the nature and location of the alleged Prohibited Conduct;
- the University's relationship to the Claimant; and
- the University's relationship to and level of control over the organization or person alleged to have engaged in the Prohibited Conduct.

Responsive steps may include, but are not limited to, conducting focus groups, interviewing individuals, conducting a unit-level climate survey, and providing education

and trainings for an individual unit.

## **VI. SUPPORTIVE MEASURES**

The Office of Equity will offer Supportive Measures to a Claimant who has experienced Prohibited Conduct while at the University in order to restore or preserve the Claimant's equal access to an Employment or Education Program or Activity. Supportive Measures may not unreasonably burden a Claimant, Respondent, or the University. The University may provide Supportive Measures to a Claimant who has experienced Prohibited Conduct 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 in an Employment or Education Program or Activity; or
- 4) the Respondent is connected to the University.

The Office of Equity may also provide Supportive Measures to a Respondent to:

- 1) 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);
- 2) protect the safety of all parties or an Employment or Education Program or Activity;
- 3) deter Prohibited Conduct; and/or
- 4) protect the integrity of the Grievance Process.

Supportive Measures may include, but are not limited to:

- adjustments to academic accommodations, including academic record adjustments, changes to deadlines and course schedules, and alternative course completion options and withdrawals;
- assistance with preserving eligibility for academic, athletic, or other scholarships, financial aid, internships, study abroad, and/or foreign Student visas (where possible and consistent with federal law and regulations);
- counseling;
- no-contact orders;
- on-campus housing or parking reassignments;
- leaves of absence;
- work or class schedule changes;
- campus safety escort services;
- increased security and monitoring of certain areas of campus and sharing information with relevant Employees in order to ensure appropriate monitoring;
- notifying a Supervisor about the Formal Complaint; and/or
- notifying parties and Supervisors about Retaliation prohibitions.

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

### **A. Mutual No-Contact Orders and One-way No-Contact Orders**

The Office of Equity may issue either a mutual no-contact order or a one-way no-contact order, as described below.

*Mutual No-Contact Order.* The Office of Equity may issue a mutual no-contact order that prohibits communication and other contact between the parties as a Supportive Measure. Such an order may be entered at the request of either party or when determined to be appropriate by the Title IX Coordinator. A mutual no-contact order issued as a Supportive Measure applies to both parties and is designed not to unreasonably burden either party.

*One-Way No-Contact Order.* The Title IX Coordinator may issue a one-way no-contact order that only applies to one party as an interim measure (see section VII). A one-way no-contact order may be appropriate to help enforce a restraining order, preliminary injunction, or other court-ordered protection, or where a one-way order would not unreasonably burden the other party.

As part of an Alternative Resolution process, both parties may agree to a mutual no-contact order or a one-way no-contact order, as part of the terms of any agreed-upon resolution.

If there is an alleged violation of a No Contact Order, then Human Resources, for Employees, or Student Conduct, for Students, will proceed under [Policy 311: Setting Expectations and Managing Performance](#), [Policy 407: Academic Due Process: Sanctions and Hearing Procedures](#), or [Student Code section V-3](#).

## **VII. INTERIM MEASURES**

The University may, in certain circumstances, enact interim measures that may include an immediate removal of a Respondent from campus or from certain areas or programs. Temporary removal from an education program or activity requires an authorization for Emergency Removal as outlined in section [VIII.B.2](#). Other interim measures may include adding a registration hold on a Respondent's account to notify a Claimant when a Respondent returns to the University community, changing office space, and conducting a policy review or training with the Respondent. The Office of Equity, if possible, will ask the Claimant if they have safety or Retaliation concerns with the office proceeding with a policy review and/or training.

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 enact interim measures including moving the Claimant or Respondent from the

class(es) or into another on-campus housing unit. These actions will be taken to prevent the recurrence of alleged Prohibited Conduct, to address safety, to prevent interference with the Grievance Process, or other similar reasons.

## **VIII. SAFETY RISK ASSESSMENTS**

The University will conduct a Safety Risk Assessment to determine whether a Respondent poses a safety risk that warrants Emergency Removal or Administrative Leave under section [VIII.B.2](#).

Safety Risk Assessments will be individualized and will consider the specific circumstances arising from an Incident Report and/or information the University receives about Prohibited Conduct. 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: Title IX Sexual Misconduct in an Employment or Education Program or Activity](#), [Policy 339A: Non-Title IX Sexual Misconduct](#), or [Policy 305: Discrimination Based on Protected Characteristics](#).

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

The Office of Equity will promptly conduct an Initial Safety Risk Assessment when an Incident Report alleges (or the University has information about) Sexual Assault, Relationship Violence, Sex-based Stalking, or Quid Pro Quo Sexual Harassment. Additionally, the Office of Equity may conduct an Initial Safety Risk Assessment if the Incident Report alleges a hate crime or if the University has information about a pattern of Prohibited Conduct by a Student or Employee.

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 Prohibited Conduct complaints, Determinations that the Respondent has violated [Policy 339](#), [Policy 399A](#), [Policy 305](#), or other Employee or Student conduct violations at USU indicating that the Respondent has a history of Prohibited Conduct;
- there is information available at the time of the assessment that indicates the Respondent has a history of arrests or records that indicates a history of Prohibited Conduct or other violence related to the alleged incident;
- the Respondent has a University or personnel record showing a history of Prohibited Conduct;
- 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 showing a history of sexual violence;

- the Respondent has threatened further violence, Prohibited Conduct, or Retaliation against the Claimant or others;
- the alleged violation was committed by multiple Respondents;
- the alleged violation was perpetrated with a weapon;
- the Respondent has access to firearms;
- the Respondent used alcohol or drugs to commit the alleged violation;
- the Claimant is a minor;
- there is a power imbalance between the Respondent and the Claimant (e.g., a Claimant alleges Prohibited Conduct by their professor or coach);
- the Claimant's report or other information received about the Respondent reveals a pattern of perpetration at a given location or by a particular group;
- the Respondent's access to campus presents an ongoing threat (e.g., the Respondent lives and/or works on campus); and
- other relevant factors.

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

## **B. Safety Risk Panel Assessment**

When convened, the Safety Risk Panel will aid the Title IX Coordinator or Executive Director in conducting a Safety Risk Panel Assessment to:

- 1) assess the threat to health or safety;
- 2) evaluate for Emergency Removal or Administrative Leave; and/or
- 3) determine interim measures.

The Panel will consider the same factors listed in subsection [VIII.A.](#)

### **1. Assess the Safety Threat**

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

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

Whether or not the Grievance Process is underway, the University may remove an individual from an Education Program or Activity on an emergency basis, after undertaking an individualized safety assessment, and based on the Safety Risk Panel's Determination that the individual poses an immediate threat to the physical health or safety of an individual or the campus community. In these situations, the Appropriate Administrator will provide the individual with notice and an opportunity to challenge the

decision immediately following the Emergency Removal. The Claimant, if known, will also be notified about this action.

In the event of an emergency, USU Police may immediately trespass a Respondent to protect the health and safety of the campus. However, when such action is taken, USU Police must promptly notify the Title IX Coordinator, and a Safety Risk Panel will be convened to evaluate Emergency Removal and/or Administrative Leave.

Even in the absence of an immediate risk to physical health or safety, where the Respondent being assessed is a Non-Student Employee, the University may place the Respondent on Administrative Leave or take other interim steps such as adjustments to work assignments.

The Appropriate Administrator, in consultation with the Title IX Coordinator and a member of Human Resources, may place a Non-Student Employee Respondent on Administrative Leave (also referred to as suspension with pay under Policy 407) during the pendency of the Grievance Process to address non-emergency concerns (including present but not immediate safety risks), protect the integrity of the Office of Equity Grievance Process, prevent Retaliation, or prevent new incidents of Sexual Misconduct or Prohibited Conduct from arising during the course of the Grievance Process. Administrative Leave will be paid so as not to unreasonably burden the Respondent.

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

A Respondent who is placed on Emergency Removal or Administrative Leave pursuant to these procedures is protected by the presumption that the Respondent is not responsible for violating Policy [339A](#) or Policy [305](#) until either a Determination has been made at the conclusion of a hearing or an Alternative Resolution agreement has been reached in which the Respondent admits a violation of policy.

### **3. Evaluate Interim Measures**

The Safety Risk Panel will determine appropriate interim measures.

#### **C. Evaluate Whether to Require University-driven Formal Investigation**

The Office of Equity will respect and recognize a Claimant's desire for privacy and/or decision not to file a Formal Complaint, except in instances where such a request is inconsistent with the requirements of University policy and/or these procedures. The Title IX Coordinator (for Policy 339/339A) or Executive Director (for Policy 305) may require a University-driven Formal Investigation in the absence of a Claimant who wishes to file a Formal Complaint.

In determining whether to require a University-driven Formal Investigation if there is no participating Claimant, the Title IX Coordinator or Executive Director will weigh the Claimant's desires to not participate and/or to remain private against the University's obligation to provide a safe, non-discriminatory environment for all Students, Employees, and the campus community, including the Claimant. The Title IX Coordinator or Executive Director may make this determination in consultation with the Office of Equity Executive Director; the Director of Student Conduct (for a Student Respondent); the Provost, Dean, or Human Resources (for a faculty Respondent); and Human Resources (for a staff Respondent).

The Title IX Coordinator or Executive Director may require a University-driven Formal Investigation where the identity of the Claimant is known, but the Claimant chooses not to file a Formal Complaint or later elects not to participate, and there is (1) a pattern of alleged Prohibited Conduct and/or (2) an immediate, significant, or ongoing threat by a Respondent over whom the University has control. In making its decision, the Title IX Coordinator or Executive Director will assess whether Supportive Measures will appropriately address the safety threat and/or pattern of behavior.

If the Title IX Coordinator or Executive Director determines that the University will proceed with a University-driven Formal Investigation, the Title IX Coordinator or Executive Director will notify the Claimant in writing, and will inform the Claimant that they must use the Claimant's name and any details about the Claimant's experience in the Formal Complaint. A Claimant may receive Supportive Measures even if they decide not to participate in the Grievance Process.

A Claimant in a University-driven Formal Investigation will receive the Notice of Allegations and the written Determination.

Subject to jurisdictional limits in section [III](#), a Claimant can file a Formal Complaint at any time.

The Title IX Coordinator or Executive Director may require a University-driven Formal Investigation based on an anonymous Incident Report in more limited circumstances if the Incident Report contains sufficient details about an incident of Prohibited Conduct and/or the person(s) involved. The University may proceed, for example, when the Incident Report includes an indication of threats, serial predation, violence, or weapons.

#### **D. Assessments Ongoing**

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

## **IX. PROCESS ADVISORS AND SUPPORT PERSONS**

Process Advisors or Support Persons 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 the Grievance Process. Upon warning, a Process Advisor or Support Person may be removed from any meeting or proceeding if they are being disruptive to the Grievance Process or using abusive or threatening language.

### **A. Process Advisors**

The Claimant and Respondent may each have one Process Advisor of their choice to attend Office of Equity meetings, interviews, and hearings. A Process Advisor may be a parent, legal guardian, University faculty or staff member, USU Student Associate Student Advocate, attorney, or any other person the party wishes to appoint.

The Process Advisor may not actively participate in interviews and meetings with the Office of Equity and may not serve as a proxy for the party. All written submissions and responses under the Grievance Process must be submitted by the party.

Up to the date of the hearing, both parties may choose a Process Advisor at any time. Process Advisors who are Reporting Employees are not required to report disclosures of Prohibited Conduct received within the context of their role as a Process Advisor.

If the case proceeds to a hearing, each party *must* use a Process Advisor for the hearing. If a party does not have a Process Advisor, the University will appoint one. Process Advisors appointed by the University must be free of Actual Conflicts of Interest and/or Demonstrated Bias. University-appointed Process Advisors will be appointed under section [XII.I.11](#) and trained under section [XX](#).

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

A party seeking to involve a Process Advisor must sign and complete the necessary Process Advisor "[Release of Information](#)" form and submit it to the Office of Equity. A Release of Information is not required for University-appointed Process Advisors because under the Family Education Rights and Privacy Act ("FERPA") they are treated as school officials with a legitimate educational interest in the education records at issue.

### **B. Support Persons**

The Claimant and the Respondent also may each have one Support Person of their choice to attend Office of Equity meetings, interviews, and hearings to provide

emotional support. The same person can fill the role of both a Process Advisor and a Support Person, but parties may elect two different individuals to fill these roles.

The Support Person may not actively participate in interviews and meetings with the Office of Equity and may not serve as a proxy for the party. All written submissions and responses under the Grievance Process must be submitted by the party.

Except for 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, individual involved in the hearing process, or Sanctioning Authority as a Support Person. A party may choose a different Support Person at any time.

The party seeking to involve a Support Person must sign and complete the necessary Support Person "[Release of Information](#)" form and submit it to the Office of Equity.

## **X. INTAKE**

Upon receipt of an Incident Report over which the Office of Equity has jurisdiction, the Office of Equity will promptly attempt to contact the Claimant, if contact information is available, through an initial email or phone call. The Office of Equity will offer to conduct an intake with the Claimant within a reasonable time of receipt of the Incident Report.

## **XI. COORDINATION WITH LAW ENFORCEMENT**

The University acknowledges that a law enforcement agency – whether the USU Police or an outside law enforcement entity – may initiate an investigation and prosecution of an incident of Prohibited Conduct independent of the University's Grievance Process.

If law enforcement (including USU Police) is investigating an allegation of Prohibited Conduct over which the University's Office of Equity also has jurisdiction, the Office of Equity may temporarily delay the fact-finding portion of the investigation at the request of the law enforcement agency during its initial evidence gathering process. If the Office of Equity must take interim actions that involve excluding the Respondent from campus or entering a no-contact order, the Office of Equity will notify the law enforcement agency requesting the delay of such interim action as soon as practicable. Further, the Office of Equity may need to move forward with reasonable speed to complete its obligations under these Prohibited Conduct Procedures to resolve Formal Complaints in a prompt manner. In any such instances, the University will notify law enforcement before proceeding.

## **XII. GRIEVANCE PROCESS**

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

The Grievance Process includes all steps from the filing of a Formal Complaint through the Appeal process. The Grievance Process may include a Claimant- or University-driven Formal Investigation or an Alternative Resolution. Retaliation complaints are processed under USU Policy [305](#) and these Prohibited Conduct Procedures.

### **A. Formal Complaint**

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

The Formal Complaint will include:

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

In addition to the requirements of a Formal Complaint listed above, a Formal Complaint completed by the Claimant must:

- 1) not be anonymous;
- 2) request either an Alternative Resolution (when available) or Formal Investigation;
- 3) be signed by the Claimant or indicate that the Claimant is the person filing out the Formal Complaint.

The Title IX Coordinator or Executive Director will sign the Formal Complaint in a University-driven Formal Investigation.

#### **1. Dismissal**

If the University decides to dismiss a Formal Complaint or any of the allegations therein, the Office of Equity will promptly notify the Claimant of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the University will notify the Respondent of the dismissal and the basis for the dismissal promptly following notification to the Claimant, or simultaneously if notification is in writing. The Office of Equity will notify all relevant parties that a dismissal may be appealed and provide any party with an opportunity to appeal its dismissal of a Formal Complaint.

A Claimant and/or a Respondent (if they have received the Notice of Allegations prior to dismissal) may appeal the dismissal decision in writing to the Office of Equity within 10 Days of the issuance of the notice of the dismissal decision. The Appeal of the dismissal will outline the reasons why the Formal Complaint or allegations therein should not be dismissed. The Appeal will be conducted under section [XII.I.21](#).

Additionally, the Office of Equity will take appropriate steps to address any Prohibited Conduct, including reporting the incident to law enforcement or other relevant departments, when allowed by policy or state or federal law, so that appropriate action may be taken. The Office of Equity also may refer the Incident Report or Formal Complaint to another department for action under separate University policies.

Nothing in this section shall be read to preclude the University from taking action to address conduct that may violate other relevant University policies.

#### **a. Required Dismissal**

The Office of Equity must dismiss a Formal Complaint of Prohibited Conduct if any of the following are true:

- The facts alleged would not constitute Prohibited Conduct even if proven to be true.

#### **b. Discretionary Dismissal**

The Office of Equity may dismiss a Formal Complaint of Prohibited Conduct or any of the allegations therein if, at any time during the Grievance Process:

- 1) the Claimant is no longer connected to the University;
- 2) the alleged Prohibited Conduct is not alleged to have been committed by a Respondent who is an Employee or Student when the Formal Complaint is signed, or, while the Grievance Process is pending, the Respondent unenrolls as a Student or leaves employment with the University;
- 3) the Claimant notifies the Title IX Coordinator (for Policy [339A](#)) or Executive Director (for Policy [305](#)) in writing that they would like to withdraw their Formal Complaint or any of the allegations therein and a University-driven Formal Investigation is not required;
- 4) 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 and no records or Witnesses remain; 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; or

- 5) the Formal Complaint contains allegations against the Respondent that are the same as allegations the Office of Equity has already investigated and adjudicated to a final Determination.

In determining whether to dismiss a Formal Complaint based on a Respondent's departure from the University, the Office of Equity will consider whether the Respondent poses an ongoing risk to the University community.

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

The University may consolidate Formal Complaints alleging Prohibited Conduct against more than one Respondent, or by more than one Claimant against one or more Respondents, or by one party against the other party, where the allegations of Prohibited Conduct arise out of the same facts or circumstances.

If there are multiple incidents regarding Sexual Misconduct about the same Claimant and Respondent that arise out of the same facts and circumstances and the incidents occurred both in and outside an Employment or Education Program and Activity, the Office of Equity has discretion to bring the entire case under USU Policy [339](#).

If the investigator, in consultation with the Title IX Coordinator or Executive Director, decides to consolidate the claims into one Grievance Process, the parties will be notified, in writing, of the decision.

If claims are consolidated into one Grievance Process, and both parties agree, some subset of the allegations within the Formal Complaints that make up the consolidated claims may be resolved through an Alternative Resolution. Otherwise, the consolidated claims will 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](#) or Policy [305](#) until either a Determination has been made by the Hearing Officer or Panel that Respondent has violated the policy, or an Alternative Resolution agreement has been reached in which the Respondent admits a violation of Policy 305 and Policy 339A.

### **C. Notice of Allegations**

The Office of Equity will provide all parties with a written Notice of Allegations. The parties will be notified by their University email accounts if they are a Student or Employee, and by other reasonable means if they are neither.

The Notice of Allegations will include the following details:

- 1) the identities of the parties involved in the incident (including the Claimant's name, if known);
- 2) a description of the specific conduct allegedly constituting Prohibited Conduct under Policy [339A](#) or Policy [305](#), with a definition of the alleged policy violation(s) and sufficient time to prepare a response before any initial interview; and
- 3) the date and location of the alleged incident, if known.

The Notice of Allegations will also:

- 1) include notice of the Grievance Process, including any Alternative Resolution option;
- 2) outline the Sanction range for the alleged Prohibited Conduct;
- 3) include a statement that the Respondent is presumed not responsible for the alleged Prohibited Conduct and that a Determination about responsibility will be made at the conclusion of the Grievance Process;
- 4) inform the parties that they may have a Support Person and/or a Process Advisor of their choice during the Grievance Process, who may be, but is not required to be, an attorney;
- 5) include a statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint;
- 6) inform the parties of relevant provisions of University policy that prohibit knowingly making false statements or knowingly submitting false information during the Grievance Process; and
- 7) inform the parties they have 7 Days to raise an Actual Conflict of Interest or Demonstrated Bias for the investigator assigned to the case.

#### **D. Respondent Initial Meeting**

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

#### **E. Acceptance of Responsibility**

The Respondent may, at any time in the Grievance Process, elect to resolve the case by accepting responsibility for the alleged Prohibited Conduct. In that case, the Title IX Coordinator or Executive Director will issue a letter, for Respondent's signature, summarizing the policy violations and stating that the Respondent has accepted responsibility and that the matter will be referred to the Sanctioning Authority for a Sanction.

A Respondent's acceptance of responsibility as outlined in this section cannot be withdrawn or appealed.

## **F. Ongoing Notice: New Allegations Arising During the Course of Investigation**

If, during a Formal Investigation, new allegations arise, the Office of Equity will issue an amended Notice of Allegations to both parties.

If a Respondent or Witness raises a Prohibited Conduct and/or Retaliation claim against the party to the case during an interview, the investigator, as a Reporting Employee, will inform the individual of their obligation to report the disclosure and will file an Incident Report within 24 hours at [equity.usu.edu/report](http://equity.usu.edu/report). The Office of Equity will then reach out to the individual as described in section [X](#).

## **G. University-Driven Formal Investigation**

A University-driven Formal Complaint may be resolved via a Formal Investigation under subsection [XII.I](#). However, nothing in that section shall be read to preclude a resolution of the case for an Employee Respondent via settlement if the Claimant does not pursue a Formal Complaint. The University will only enter into a settlement if it will end the Prohibited Conduct and prevent its reoccurrence. The Claimant, if known, will be informed about the resolution of the settlement process if they choose to receive notifications about the resolution of the matter.

## **H. Actual Conflict of Interest and Demonstrated Bias**

Individuals in the Grievance Process, including the Office of Equity Executive Director, Title IX Coordinator, investigators, University-appointed Process Advisors (as it relates to the party they are advising), Hearing Officer, Case Coordinator, Hearing Panel members, Sanctioning Authorities, Appeal Panel, and Alternative Resolution facilitators, must be free from Actual Conflicts of Interest and Demonstrated Bias for or against Claimants and Respondents generally, or toward a specific Claimant or Respondent. Individuals must withdraw themselves from the process if they have an Actual Conflict of Interest or Demonstrated Bias.

Parties will have 7 Days from the date they are notified of individuals participating in the process (e.g., the Title IX Coordinator, investigator(s), Hearing Panel, Sanctioning Authority, Appeal Panel, Alternative Resolution facilitators) to raise a concern of Actual Conflict of Interest or Demonstrated Bias with evidence or information supporting that concern. This must be submitted, in writing, to the Office of Equity's Executive Director. The Office of Equity Executive Director will issue a written decision outlining whether, based on the evidence and information submitted, a reasonable person would believe an Actual Conflict of Interest or Demonstrated Bias exists.

Once a party raises an allegation of an Actual Conflict of Interest or Demonstrated Bias, the Executive Director will determine if such conflict or bias exists. If the Executive Director determines it does, they may remove the individual from their role in the Grievance Process and appoint a replacement. The Executive Director will

simultaneously notify both parties and their Process Advisors, if any, in writing with the name of the replacement.

If an Actual Conflict of Interest or Demonstrated Bias exists for a Sanctioning Authority or Appropriate Administrator, the Executive Director may appoint the Sanctioning Authority's or Appropriate Administrator's direct superior or another Sanctioning Authority or Appropriate Administrator at the same level (e.g., director, department head) to act in that role.

## **I. 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. The investigator will complete its investigation in a reasonably prompt timeframe. The investigator will respect the presumption that the Respondent did not violate Policy [305](#) or Policy [339A](#) and will not make a Determination as to whether the Respondent violated that policy, because the Hearing Officer or Panel makes such Determination.

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

The Office of Equity will issue a Notice of Allegations to the parties according to the requirements in section [XII.C](#). The investigator will allow sufficient time for a Respondent to prepare a response in between the Notice of Allegations and scheduling the Respondent's initial interview

### **2. Party Participation**

The Office of Equity will direct all communications about the Grievance Process to the party, not to a Process Advisor or Support Person. A party seeking a disability-based accommodation may submit a request for accommodation as described in section [XVI](#).

If the Claimant indicates they will not participate and/or does not respond to the Office of Equity's communications, the Title IX Coordinator (for Policy [339A](#)) or the Executive Director (for Policy [305](#)) will evaluate dismissal of the Formal Complaint.

If a Respondent does not participate in the Grievance Process, the Office of Equity will proceed with the investigation without the benefit of the Respondent's response or perspective pertaining to the alleged Prohibited Conduct. The Hearing Officer or Panel may find that the Respondent violated Policy [339A](#) or Policy [305](#) even without the Respondent's participation. A Respondent may choose to participate at any point during the pendency of the investigation and associated proceedings but, absent good cause, may not provide an interview, written statement, or new evidence after access to the Record is provided to the parties. This limitation does not restrict a Respondent from participating in the live hearing by presenting a defense in the form of a live statement or responding to the Record when answering questions.

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

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

The investigator will provide to the 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 Officer or Panel to determine whether, by a Preponderance of the Evidence, the Respondent violated Policy [305](#) or Policy [339A](#).

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

During the Investigation, all parties will have an equal opportunity to be interviewed, submit evidence and information (including inculpatory and exculpatory evidence), and identify Relevant Witnesses, including fact and Expert Witnesses.

### **6. Evidence Gathering**

The investigator's role when investigating a Formal Complaint of Prohibited Conduct is that of neutral fact-gatherer. Their role is to gather and share evidence and information so that the Hearing Officer or Panel can make a Determination and, when the policy is violated, the Sanctioning Authority can apply proportionate Sanctions.

The investigator will conduct a thorough search for Relevant facts and evidence about the allegations in the Formal Complaint. The investigator will request, and the parties can provide, all Relevant evidence and Witnesses. The investigator is not required to interview Witnesses who do not appear to have Relevant or non-duplicative information. The Respondent has 10 Days after the Notice of Allegations is issued to provide a written response to the investigator.

The investigator will give each party a reasonable amount of time to respond to and fulfill requests for evidence. If the request to the parties for Relevant evidence is not met and there is no other way for the investigator to obtain the evidence, the investigator will proceed without the information.

Depending on the allegations raised in the Formal Complaint, 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 Formal Complaint;
- visit Relevant sites or locations;
- interview Witnesses who may have Relevant knowledge about the incident(s);
- request and review law enforcement reports;
- review medical records (when there is written consent);
- if the Respondent is a Student, request information from Student Conduct about 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);
- in cases involving alleged Prohibited Conduct 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 in the Formal Complaint.

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

The investigator may seek information on the Claimant or Respondent's prior or subsequent conduct if Relevant, including but not limited to if such evidence might establish a pattern, knowledge, intent, motive, or absence of mistake or to confirm or refute the statement of the party or Witness.

## **7. The Record**

At the completion of all party and Witness interviews, the Office of Equity will electronically share the Record with each party and their Process Advisor, if any, for inspection and review. The parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the Record response period. It is the party's responsibility to immediately inform the investigator if they cannot access the Record or if they lose access to the Record at any time.

The Office of Equity will not share the Record with Support Persons, although the parties may review the materials in the presence of their Support Person. The evidence and information therein are of a very sensitive nature and parties are prohibited from

disseminating them with individuals not given access under these procedures. As such, to ensure privacy, the Office of Equity will share the Record with the parties in a manner that does not allow the parties to copy, save, or disseminate the underlying evidence. Parties are not precluded under this section from discussing their experiences or from gathering and presenting Relevant evidence. The Office of Equity cannot guarantee that parties will not share the information with individuals who are not part of the Grievance Process. The Office of Equity reserves the right to redact employment records for privacy.

The Record will include all evidence that directly relates to the allegations in the Formal Complaint regardless of whether the investigator considers the evidence to be Relevant. This may also include evidence obtained during an attempted Alternative Resolution. See Section XII.J.8. The Record will not include excluded evidence *unless* the party has given voluntary, written consent.

Excluded evidence includes:

- Questions and evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege.
- Questions and evidence about the party's medical, psychological, and similar records without the party's voluntary, written consent.

Evidence about a Claimant's sexual predisposition or prior sexual behavior is not Relevant and will not be included in the preliminary or final investigation report and will be redacted from the Record, when applicable, by the Hearing Officer, with the exception of the following circumstances:

- Questions and evidence about the Claimant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Claimant; or
- Questions and evidence concern specific incidents of the Claimant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.

Evidence that is not directly related to the allegations in the Formal Complaint that may raise safety concerns (e.g., addresses, Student identification numbers, phone numbers, birthdates) will be appropriately redacted from the Record.

Evidence obtained in the investigation that is excluded or appropriately redacted will be notated in a privilege log. The investigator will include a statement in the Record that explains that information was redacted.

Access to the Record will be removed from all parties, Process Advisors, and Employees or officials involved in the case at the conclusion of the Grievance Process, except for the Office of Equity, who will retain the Record as required by University policy and other applicable federal and state laws.

## **8. Responses to the Record**

The parties will have 10 Days to inspect and review the evidence and submit a written Response to the investigator. The written Response should identify any new or additional evidence that the party believes is related, including inculpatory or exculpatory evidence. Parties may also offer additional Witnesses or request that the investigator ask specific additional questions of the party or a Witness. Absent good cause, this will be the final opportunity for the party to offer evidence or Witnesses.

The investigator will review the response to the Record, if any, and determine whether any additional investigation is warranted. If so, the investigator will proceed with any additional investigation, prepare an addendum to the Record, and offer both parties the opportunity to review and respond to the amended Record. The parties will have 7 Days to offer a written Response to the addendum. The investigator will add all written Responses to the Record within a reasonable time, including attachments, and will share them with the parties and their Process Advisors, if any, simultaneously.

The investigator will consider the parties' written Responses before completing the preliminary investigation report.

## **9. Preliminary Investigation Report**

The investigator will issue a preliminary investigation report within 10 Days of the end of the response to the Record period 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;
- fairly summarize the investigation and outline all the Relevant evidence gathered during the investigation, both inculpatory and exculpatory;
- include a summary of the narratives provided by both parties and any Relevant Witnesses interviewed during the course of the investigation;
- include descriptions of Relevant evidence submitted and received; and,
- include the alleged policy violation(s).

Within 10 Days of the date the investigator issues the preliminary investigation report (referred to as the "end of the investigation report response period"), each participating party may, but is not required to, submit:

- 1) a list of the numbered paragraphs in the preliminary investigation report that the party disputes;
- 2) a written list of Witnesses and exhibits in the Record they want the Hearing Officer or Panel to consider;

- 3) a written list of questions they propose to ask the other party (if another party is participating), Witnesses, and the investigator in the hearing;
- 4) an indication of whether they plan to appear for the hearing;
- 5) 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;
- 6) a written response to the preliminary investigation report; and
- 7) A written request for a hearing.

## **10. Final Investigation Report**

The investigator will consider the parties' written Responses to the preliminary investigation report before completing the final investigation report.

Within 14 Days of the end of the preliminary investigation report response period, the investigator will issue the final investigation report, along with any responses to the preliminary investigation report, to the parties and add it to the Record.

## **11. Hearing Decision-Makers**

The Hearing Officer is the decision-maker at the hearing. The Hearing Officer may be an individual external to the University. Either party may request, in writing, by the end of the Record response period, that the Case Coordinator appoint two Employees to serve as additional decision-makers (the Hearing Officer and, if relevant, the two Employees, are collectively referred to as the "Hearing Panel"). If a party does not request additional Hearing Panel members by the end of the Record response, then absent good cause, they waive the opportunity to have additional Hearing Panel members and the Hearing Officer will be the sole decision-maker.

Neither the Hearing Officer nor a member of the Hearing Panel will also have served as the Title IX Coordinator, investigator, or Process Advisor to any party in the case, nor may the Hearing Officer or members of the Hearing Panel serve on the Appeal Panel in the case. The Hearing Officer and Hearing Panel members must not have an Actual Conflict of Interest or Demonstrated Bias and must receive the training in section [XX](#) and [XXI](#) prior to serving.

The Hearing Officer also is the chair of the Hearing Panel and is responsible for ensuring that hearing rules are followed, that a diligent and complete Determination is issued on a timely basis, and that decisions are delivered within the timeframes outlined in section [XII.I.14–27](#).

## **12. Appointment of a Hearing Officer, Additional Hearing Panel members, and University-appointed Process Advisor**

The Case Coordinator, or their designee, will appoint a Hearing Officer. If requested, the Case Coordinator, or their designee, will appoint two additional Hearing Panel members.

At the issuance of the preliminary investigation report, the Case Coordinator will determine if each party has appointed a Process Advisor for the hearing and, if not, the Case Coordinator will assign the party a University-appointed Process Advisor prior to the hearing.

### **13. Hearing**

Either party may request a hearing. If a party does not request a hearing under these Prohibited Conduct Procedures no later than the issuance of the final investigation report, then the party waives their right to a hearing. If a hearing is not requested, the Hearing Officer (or Hearing Panel, if relevant) will be appointed according to section I.10 and the Hearing Officer or Panel will conduct a review of the Record. The Hearing Officer or Panel will issue a Provisional Determination letter within 21 days of the Hearing Officer or Panel appointment and proceed as outlined under sections I.16-27. If either party requests a hearing under these procedures, then the University will conduct a hearing according to these Prohibited Conduct Procedures.

The Case Coordinator will schedule a hearing to take place no sooner than 10 Days but within 60 Days of issuance of the final investigation report. A hearing will be held even in the absence of either or both parties, and the Hearing Officer or Panel will make a Determination with or without the party's participation. If there is a Preponderance of the Evidence that the Respondent violated Policy [339A](#) or Policy [305](#), Sanctions may be entered with or without the parties' participation. Although the University may endeavor to find a hearing date that will be convenient for all the parties involved, the Case Coordinator, or their designee, has the final authority for determining the date of the hearing.

#### **a. Notice of Hearing**

Within a reasonable time of the investigator issuing the final investigation report, the Case Coordinator will issue a Notice of Hearing to both parties, their Process Advisor(s), their Support Person(s) (if any) and any Witnesses that are attending the hearing. The Notice of Hearing will include the names of the Hearing Officer, Hearing Panel members (if any), Sanctioning Authority, as well as the Relevant Witnesses that have been requested at the hearing.

#### **b. Weapons Prohibited**

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

### **c. Attendance at the Hearing**

The hearing will be closed to the general public and only the following individuals will be allowed into the hearing room (whether in-person or via video conference):

- Hearing Officer or;
- Hearing Panel Members (if relevant);
- Case Coordinator;
- Claimant;
- Claimant's Process Advisor;
- Claimant's Support Person (if relevant);
- Respondent;
- Respondent's Process Advisor;
- Respondent's Support Person (if relevant);
- Office of Equity investigator (will be present only at the time of their testimony);
- Witnesses, including fact and Expert Witnesses (will be present only at the time of their testimony and will not be permitted to hear the testimony of other Witnesses); and,
- Other university officials as may be required.

Hearings may be conducted via videoconferencing. All participants must be able to simultaneously see and hear each other for the entire time during which they are permitted or required to be present, except for recesses.

The University is responsible for providing the videoconference meeting platform (e.g., Zoom) and maintaining a proper internet connection on the University's end. If a party, Witness, or other individual attending the hearing is experiencing housing insecurity or lacks an internet connection, they can submit a request that the University provide them access to a private space with internet connectivity from which they can appear via videoconference. However, 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.

### **d. Process Advisors at the Hearing**

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

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

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

#### **e. Pre-Hearing Process**

The Hearing Officer may hold a pre-hearing conference with the parties and their Process Advisors and/or Support Persons (if applicable) to help prepare the parties for the hearing experience and answer any questions they may have about the hearing. No direct questioning between the parties is permitted at the pre-hearing conference. During the pre-hearing conference, the Hearing Officer may:

- ensure the parties will have Process Advisors available to conduct cross examination and that the Process Advisor is familiar with the hearing process;
- address the anticipated hearing format and answer questions the parties have about the hearing;
- discuss the Witnesses that will attend the hearing and their participation in the hearing;
- determine stipulations as to the evidence in the final investigation report;
- have the parties identify the Record evidence they want to reference and use at the live hearing as exhibits and discuss the admissibility and use of exhibits;
- discuss reasonable time limits for the presentation of evidence;
- discuss issues with Relevant or irrelevant evidence in the Final Investigation Report;
- identify the issues for the hearing and whether there are disputed evidentiary issues or questions to be posed at the hearing including making preliminary rulings on submitted questions; and
- discuss the expected length of the hearing.

#### **f. Recording of Hearing**

The Case Coordinator will create an audio or audiovisual recording, or transcript, of the live hearing and will make it available to the parties and their Process Advisors for inspection and review upon issuance of the Determination. Parties, Witnesses, or others at the hearing are not permitted to record the hearing.

The Sanctioning Authority and Title IX Coordinator may also review the Case Coordinator's recording to implement appropriate Sanctions and Remedies, when there is a finding of a policy violation.

#### **g. Hearing Process**

The hearing process will be as follows:

- The Hearing Officer will open and establish rules and expectations for the hearing.
- The parties will each be given the opportunity to provide opening statements that are no longer than 10 minutes and only reference evidence in the Record.
- The Hearing Officer will ask questions of the Claimant, Respondent, and Witnesses.
- Parties will be given the opportunity for live cross-examination after the Hearing Officer asks questions of the Claimant, then after the Hearing Officer asks questions of the Respondent, and finally after the Hearing Officer asks questions of each Witness(es). During the parties' cross-examination, the Hearing Officer will have the authority to pause cross-examination at any time for the purposes of asking follow-up questions and/or at any time necessary in order to enforce the established rules of decorum.
- The parties may be given the opportunity to provide closing statements that are no longer than 10 minutes.

#### **h. Questioning at Hearing**

The Hearing Officer (or Hearing Panel, if relevant) and each party, through their Process Advisor, are permitted to ask Relevant questions and follow-up questions at the hearing.

All parties will have an equal opportunity to present Relevant evidence and Witnesses, including both fact and Expert Witnesses. Parties may waive the opportunity to present evidence and/or Witnesses.

Questioning of the parties and/or Witnesses will be conducted directly, orally, and in real time by the Hearing Officer, Hearing Panel, and/or the party's Process Advisor, but never by the party personally. The Hearing Officer or Panel has the discretion to exclude irrelevant Witnesses from testifying during the hearing.

Parties are expected to focus their questions on disputed facts and non-duplicative evidence. All Parties, Witnesses, and Process Advisors are expected to conduct themselves with decorum during hearing proceedings. Questions that are repetitive, threatening, or intimidating will not be permitted.

Parties and Witnesses are not required to answer questions posed by either the Hearing Officer or Panel or the party's Process Advisor, and the Hearing Officer or Panel cannot draw an inference about whether the Respondent violated Policy [305](#) or Policy [339A](#) based solely on the party's or Witness's absence from the hearing or their refusal to answer questions. Notwithstanding this limitation, the Hearing Officer or Panel may consider participation in the hearing (or lack of participation) when analyzing the weight and credibility of evidence. Both the Office of Equity and the Hearing Officer or Panel will apply weight and credibility considerations equitably to both parties, when appropriate.

### **i. Relevance Determinations**

Only Relevant questions, including cross-examination, may be asked of a party or Witness. Before a Claimant, Respondent, or Witness answers a question, including cross-examination, the Hearing Officer must first determine whether the question is Relevant and explain any decision to exclude a question as not Relevant on the record.

The Hearing Officer may also ask the questioning party's Process Advisor to reframe the question.

The Hearing Officer will determine if questions about excluded evidence or a Claimant's prior sexual behavior, as described in section XII.I.7, are Relevant during the hearing.

The Hearing Officer may exclude duplicative or repetitive questions as not Relevant. Relevance decisions should **not** be based on the sex or gender of the party for whom it is asked or to whom it is asked, or based upon their status as Claimant or Respondent, past status(es) as Claimant or Respondent, or any other protected class covered by federal or state law, such as, but not limited to, race, sexual orientation, religion, or disability.

### **14. Continuances or Granting Extension**

The Hearing Officer may determine that multiple sessions or a continuance is needed to complete a hearing. If so, the Case Coordinator, or their designee, will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

### **15. Hearing Officer/Panel Deliberation**

Following the hearing, the Hearing Officer or Panel will meet without the parties and will objectively evaluate all Relevant evidence to determine whether, by a Preponderance of the Evidence, the Respondent violated Policy [339A](#) or Policy [305](#), as alleged.

### **16. Provisional Determination Letter**

Within 14 Days of the hearing, the Case Coordinator, or their designee, will send the Provisional Determination Letter to the Claimant, Respondent, Process Advisors, Sanctioning Authority (if there is a finding), and the Title IX Coordinator (for Policy [339A](#)) or Executive Director (for Policy [305](#)), outlining the following:

- 1) each alleged incident of Prohibited Conduct;
- 2) a description of the procedural history taken by the University from the receipt of the Formal Complaint through the Determination;
- 3) findings of fact supporting the Determination;
- 4) conclusions about the application of the Prohibited Conduct to the facts;
- 5) Aggravating, Mitigating, and Compounding factors; and

6) a statement of, and rationale for, its decision on each allegation.

## **17. Sanctions**

If the Provisional Determination Letter states that the Hearing Officer or Panel has found the Respondent to have violated Policy [339A](#) or Policy [305](#), the following provisions about Sanctions and Remedies will apply.

If the party submits an Appeal, the Sanction will not be implemented until the Appeal process is complete.

### **a. Overview**

The following Sanctions may be implemented:

A Student who is found to have violated Policy [305](#) or Policy [339A](#) with regard to Prohibited Conduct may be subject to a variety of potential Sanctions, including: a warning, probation, suspension, or expulsion. The Sanction may include a permanent notation on the Student's transcript. See [Student Code section V-3](#).

An Employee who is found to have violated Policy [305](#) or Policy [339A](#) may be subject to Sanctions from a warning up to and including termination/dismissal. See [Policy 311: Setting Expectations and Managing Performance](#), [Policy 407: Academic Due Process: Sanctions and Hearing Procedures](#).

Sanctions may be of greater or lesser severity depending on the case's circumstances and whether the Respondent has previously been found to have violated University policies.

### **b. Sanctions Statement**

Each party may submit a Sanctions statement to the Sanctioning Authority within 7 Days of the date the Provisional Determination Letter is issued, or in instances where an Alternative Resolution involves an admission of a policy violation, the date of the Alternative Resolution agreement (referred to as the "Sanction statement period"). Statements should address Relevant evidence in the Provisional Determination Letter, and describe Mitigating, Aggravating, and Compounding Factors that the party feels the Sanctioning Authority should consider for each violation found.

### **c. Sanction Letter**

Within 7 Days of the end of the Sanction statement period, the Sanctioning Authority, or their designee, will issue a Sanction letter to the Hearing Officer, outlining the Sanction that should be ordered for each of the policy violations the Hearing Officer or Panel has found the Respondent to have committed.

The Sanction must be proportionate to the policy violation(s), taking into account the parties' Sanctions statement, if any, and Mitigating, Aggravating, and Compounding Factors (including whether there are previous Determinations that the Respondent has violated Policy [339](#), Policy [339A](#), or Policy [305](#). A finding that the Respondent violated Policy 339A or Policy 305 may result in a range of Sanctions depending on the violation. However, regardless of the Sanction that is entered, appropriate Remedies are available under the next section.

### **18. Remedies Letter**

The Claimant may provide a written impact statement to the Title IX Coordinator (for Policy [339A](#)) or Executive Director (for Policy [305](#)) about what the Claimant thinks are appropriate within 7 days after the issuance of the Provisional Determination Letter. The Title IX Coordinator or Executive Director will offer to meet with the Claimant to discuss appropriate Remedies.

Within 15 Days of receiving the written Determination from the Hearing Officer, the Title IX Coordinator (for [339A](#)) will issue a Remedies letter to the Claimant for each of the policy violations the Hearing Officer or Panel has found the Respondent to have committed.

Even in the absence of a Determination that the Respondent has violated Policy [339A](#) or Policy [305](#), the Title IX Coordinator or Executive Director has discretion to provide Supportive Measures to either party.

### **19. Final Written Determination Issued**

Within 30 Days of the hearing, the Case Coordinator, or their designee, will issue a written Determination to the parties, Process Advisors, the investigator, the Sanctioning Authority, the Title IX Coordinator (for Policy [339A](#)) and the Executive Director (for Policy [305](#)) simultaneously.

The Hearing Officer or Panel's written Determination will outline:

- 1) each alleged incident of Prohibited Conduct;
- 2) a description of the procedural history taken by the University from the receipt of the Formal Complaint through the Determination;
- 3) findings of fact supporting the Determination;
- 4) conclusions about the application of Policy [339A](#) or Policy [305](#) to the facts;
- 5) a statement of, and rationale for, its decision on each allegation; and
- 6) Sanction(s), if relevant.

If the Hearing Officer or Panel finds the Respondent has violated the policy, the Hearing Officer will attach the Sanction letter to its Determination for both parties.

If no Appeal is filed, then the Determination is final on the deadline to Appeal. If an Appeal is filed, the Determination is final when the Appeal process is complete.

## **20. Sanctions-Only Process**

If the parties enter into an Alternative Resolution agreement that includes an admission that the Respondent violated Policy [339A](#) or Policy [305](#), but do not reach an agreement on Sanctions, the case will proceed under section [XII.I.17](#) except that a Hearing Officer or Panel will not be appointed.

In the Sanctions-only process, within 10 Days of the parties issuing their Sanctions statement, the Sanctioning Authority or their designee will issue a Sanction letter simultaneously to the parties and their Process Advisors.

The Sanction may be Appealed as outlined in section [XII.I.21](#) Appeals.

## **21. Appeals**

Either party may Appeal the dismissal of a Formal Complaint and/or the Determination. A party must file an Appeal with the Case Coordinator in writing within 10 Days of the date of the dismissal of the Formal Complaint and/or Determination.

## **22. Standard for Appeal**

An Appeal is limited to the following grounds:

- 1) procedural irregularity that affected the outcome of the matter;
- 2) new evidence, including Witnesses, that was not reasonably available despite due diligence by the close of the response to the Record period and/or at the time of the Determination about responsibility or dismissal was made, that could affect the outcome of the matter; and/or
- 3) the Title IX Coordinator, investigator(s), or decision-maker(s) had an Actual Conflict of Interest or Demonstrated Bias for or against claimants or respondents generally or the specific Claimant or Respondent that affected the outcome of the matter.

An Appeal will outline the specific grounds for Appeal, the specific outcome requested, and the appealing party's reasons in support of the ground identified.

## **23. Appointing an Appeal Panel**

Upon receipt of the written Appeal, the Case Coordinator will appoint a three-person Appeal Panel. The Appeal Panel members must not have been previously involved in the process. The Case Coordinator will notify the parties in writing who has been appointed as the Appeal Panel members.

## **24. Response to Appeal**

Upon receipt of the written Appeal, the Case Coordinator will notify the other party of the submission and grant the other party access to all submitted documentation. The non-appealing party will have 10 Days from the date of the notification to submit a written response to be considered as part of the Appeal. Additionally, the investigator, Hearing Officer, Hearing Panel, Title IX Coordinator, Sanctioning Authority, or any other individual connected to the Grievance Process may submit a written response to the Appeal Panel if there is an allegation of an Actual Conflict of Interest or Demonstrated Bias in the Appeal. The Office of Equity may file a written response for allegations related to procedural error. Both parties will be informed of the Appeal, granted access to all submitted documentation, and given 10 Days to submit a written response.

## **25. Appeal Decision**

The scope of the Appeal and the Appeal Panel's jurisdiction is limited to the grounds specifically identified in the party's Appeal. The request for Appeal, along with any response from the non-appealing party, will be forwarded to the Appeal Panel for consideration to determine if the request meets the grounds for Appeal. If the request for Appeal does not meet the grounds enumerated above, the Appeal Panel will deny the request. The parties and their Process Advisors will be notified in writing of the denial and the rationale.

If the request meets one or more grounds for Appeal, the Appeal Panel will consider the Appeal. Within 30 Days of the date the final Appeal is filed by the appealing party, the Appeal Panel will issue a written Appeal Decision simultaneously to the Title IX Coordinator, both parties, and the parties' Process Advisors, which will include the rationale for the Appeal decision. The Appeal Decision will specify the finding on each ground for Appeal, any specific instructions for remand or reconsideration, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law. The Appeal Decision is final and may not be further Appealed.

## **26. Implementation of Sanctions**

Upon entry of an Alternative 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](#) or Policy [305](#), the Sanctioning Authority will work with relevant University departments to ensure that Sanctions are implemented effectively and promptly. The University may take immediate action to place an Employee Respondent on Administrative Leave following a Determination that Respondent has violated Policy [339A](#) or Policy [305](#), and such action is not considered a Sanction.

## **27. Implementation of Remedies**

Upon entry of an Alternative Resolution agreement, or at the conclusion of the Appeals process, the Title IX Coordinator (Policy [339A](#)) or Executive Director (Policy [305](#)) will work with the Claimant and relevant University departments to ensure that Remedies are implemented effectively and promptly. After a finding of responsibility has been made against the Respondent through the Grievance Process, or the Respondent has admitted responsibility as part of an Alternative Resolution, Remedies are offered to Claimants as measures to restore or preserve their equal access to their employment and/or education program or activities. Remedies may include individualized services similar to those offered as Supportive Measures, except that they need not be non-disciplinary, non-punitive, and need not avoid burdening the Respondent. Remedies might include, but are not limited to: access to counseling; access to tutoring; academic adjustments; taking a leave of absence; withdrawal without academic penalties; receiving an incomplete grade; housing changes for the Claimant; a no-contact order; reassignment of the Respondent's office, class, housing, or job duties; and requiring the Respondent to complete online rather than in-person courses.

## **28. Abuse of the Grievance Process**

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

- a) failure to comply with the directions of a University official, including but not limited to the Provost, the Vice President for Student Affairs, a Hearing Panel, Hearing Officer, or other relevant individual;
- b) falsification, distortion, or misrepresentation of information before an investigator, Hearing Panel, or Hearing Officer;
- c) disruption or interference with the orderly conduct of a disciplinary/grievance proceeding;
- d) initiation of the Grievance Process knowingly without cause;
- e) providing false or misleading information in the Grievance Process (the sole fact that an allegation was investigated by the Office of Equity, but was not found by a Hearing Officer or Panel to constitute a violation of Policy [339A](#) or Policy [305](#), is not enough for an Incident Report to be deemed false);
- f) attempting to discourage an individual's proper participation in, or use of, the Grievance Process;
- g) attempting to influence the impartiality of a member of a Hearing Panel or a Hearing Officer prior to, or during the course of, the Grievance Process;
- h) harassment (verbal or physical) or intimidation of a member of a Hearing Panel or a Hearing Officer prior to, during, or after the Grievance Process;
- i) failure to comply with the penalty imposed, or other action taken, under the Student Code;
- j) influencing or attempting to influence another person to commit an abuse of the Grievance Process; or
- k) tampering with, influencing, or attempting to influence any Witness or potential Witness in the Grievance Process.

Any member of the Hearing Panel may raise a claim of abuse of the Grievance Process; however, the Hearing Officer shall be responsible for elevating the claim to the Appropriate Administrator. An abuse of the Grievance Process may result in a Sanction under [Policy 311: Setting Expectations and Managing Performance](#), [Policy 407: Academic Due Process: Sanctions and Hearing Procedures](#), or [Student Code Section V-3](#).

## **29. 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](#) or [Policy 305](#), 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.

An Employee who engages in Retaliation is subject to Corrective Action or Sanctions from probation up to and including termination/dismissal of employment. See [Policy 311: Setting Expectations and Managing Performance](#), [Policy 407: Academic Due Process: Sanctions and Hearing Procedures](#).

A Student who engages in Retaliation may be subject to Sanctions from probation up to and including expulsion. The Sanction may include a permanent notation on the Student's transcript. See [Student Code Section V-3](#).

The Office of Equity will process allegations of Retaliation related to Prohibited Conduct as a separate policy violation under [Policy 305](#).

## **J. Alternative Resolutions**

Formal Complaints, except for those involving an Employee Respondent and a Student Claimant, may be resolved via Alternative Resolution. If a Respondent is a Student Employee and the Prohibited Conduct is not alleged to have occurred in the context of the Student Employee's role as an Employee, the Formal Complaint is eligible for resolution via an Alternative Resolution; though the Title IX Coordinator (for [Policy 339A](#)) and Executive Director (for [Policy 305](#)) will retain the discretion to determine whether the Alternative Resolution process is appropriate, even in those situations when the alleged Prohibited Conduct is reported to have occurred in the context of the Respondent's role as a Student or Employee. Factors that the Title IX Coordinator or Executive Director may weigh in considering the appropriateness of the Alternative Resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the Respondent has multiple allegations or findings of Prohibited Conduct, and whether the parties are participating in good faith. The Title IX Coordinator or Executive Directors decision not to proceed with an Alternative Resolution process is not subject to Appeal.

The parties are entitled to a Process Advisor and/or Support Person throughout the Alternative Resolution process.

Consistent with the terms reached as part of an Alternative Resolution, the University may implement Sanctions or proceed with Sanctions as outlined in section [XII.I.17](#).

Any time after a Formal Complaint has been filed and up to 3 Days before a hearing, any party may submit a written request to participate in the Alternative Resolution process. Within 3 Days of the request, the Office of Equity investigator will communicate the request in writing to the other party to determine whether they agree to participate in an Alternative Resolution process as required by subsection [XIII.A.1](#).

### **1. Participation**

No party will be pressured, coerced, or unduly influenced into participating in the Alternative Resolution process. The University will not require any party to participate in or pursue an Alternative Resolution, including as a term of enrollment or employment. If a party feels they may have been pressured, coerced, or unduly influenced into participating, that person may file an Incident Report with the Office of Equity. The Title IX Coordinator or Executive Director may then involve the Appropriate Administrator under [Policy 311: Setting Expectations and Managing Performance](#), [Policy 407: Academic Due Process: Sanctions and Hearing Procedures](#), or [Student Code Section V-3](#).

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

### **2. Timeframes**

Alternative Resolution agreements should be finalized within 40 Days of the date of the filing of the Formal Complaint; either party may, however, request a Formal Investigation at any point during this time. If an Alternative Resolution agreement is not reached within that timeframe, the case will proceed to a Formal Investigation, unless the University has dismissed the Formal Complaint.

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

Within 5 Days of a request to participate in the Alternative Resolution process, the Office of Equity will issue simultaneously to both parties information outlining the rights of the participants, requirements of the Alternative Resolution process, and any consequences that could result from participation in the process (e.g., Sanctions or related records that will be created, maintained, or may be shared), including that any agreement reached through the process is binding.

#### **4. Agreement to Participate in Alternative Resolution Process**

Both parties must agree, in writing, within 10 Days of the Notice of Rights and Requirements, that they will voluntarily participate in the Alternative Resolution process. If either party does not agree, the Formal Investigation will resume or, if the investigation is complete, the hearing will be scheduled.

#### **5. Facilitators**

The Office of Equity will appoint a facilitator to assist the parties in trying to reach an Alternative Resolution. An Alternative 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, so long as they have received the mandatory training under section [XXI](#).

To facilitate an Alternative Resolution, the facilitator must be free from Actual Conflicts of Interest and/or Demonstrated Bias and must remain impartial throughout the process.

#### **6. Alternative Resolution Agreement**

The Title IX Coordinator (for Policy [339A](#)) or Executive Director (for Policy [305](#)) or their designee must sign and approve the Alternative Resolution agreement. Once signed by both parties and approved by the appropriate Office of Equity administrator, an Alternative Resolution agreement is binding.

Following any Alternative Resolution agreement that includes an admission of a policy violation, the Alternative Resolution facilitator will notify the Sanctioning Authority and the Title IX Coordinator.

The facilitator, or another designated Employee within the Office of Equity, will be responsible for monitoring compliance with the terms of the agreement.

If a Claimant or Respondent fails to follow through with terms that were reached in the agreement, the Office of Equity may file a report against the non-compliant party with the appropriate disciplinary authority (e.g., for a student the Office of Student Conduct) for failure to follow a directive from a University official. Additionally, the Claimant will be given the opportunity to proceed with a Formal Investigation as detailed by these procedures.

#### **7. Access to Alternative Resolution Documents**

If an Alternative Resolution agreement is reached, the Office of Equity will electronically share with each party and their Process Advisor, if any, within 7 Days the following documents:

- notice of allegations;

- signed agreement to participate in the Alternative Resolution; and
- signed Alternative Resolution agreement

If the case is proceeding only to Sanctions following an Alternative Resolution agreement, the Office of Equity will electronically share the documents with the Sanctioning Authority no later than 7 Days after both parties sign, and the Title IX Coordinator (for Policy [339A](#)) or Executive Director (for Policy [305](#)) approves, the Alternative Resolution agreement.

When the terms of the agreement have been met and the process is complete, the parties' access to the documents will be removed.

## **8. Withdrawal**

Any party may withdraw from the Alternative Resolution process at any time before an agreement has been signed by both parties, after which time the party may no longer withdraw. If a party withdraws from the Alternative Resolution process, the Formal Investigation will resume or, if the investigation is complete, the hearing will be scheduled. Additionally, the Title IX Coordinator (for Policy [339A](#)) or Executive Director (for Policy [305](#)) may withdraw permission, in writing, for the Alternative Resolution process if, for example, there are credible concerns about coercion to participate in the process.

Should the parties withdraw from the Alternative Resolution process, information disclosed or obtained for purposes of the Alternative Resolution process may be incorporated into the Formal Investigation, hearing, and Sanction process, provided that this information is disclosed and reviewed by the parties under these procedures.

## **9. Remedies**

Following an Alternative Resolution agreement by the parties, the Title IX Coordinator (for Policy [339A](#)) or Executive Director (for Policy [305](#)) and the Claimant may work towards and reach an agreement about the Remedies the University will provide to the Claimant. Such discussions and any ultimate agreement between the Claimant and the University about Remedies will not be shared with the Respondent, unless the terms of the Remedies involve the Respondent. If a term involves the Respondent, then the Respondent will be notified about that specific Remedy. Remedies will be designed to restore or preserve the Claimant's equal access to the Employment or Education Program or Activity.

## **10. Privacy**

Once parties have agreed to participate in the Alternative Resolution process, the facilitator will notify them of privacy requirements.

The Alternative Resolution agreement signed by both parties is private but may be shared with the Title IX Coordinator and other Employees who need to know in order to implement relevant Sanctions and Remedies.

Statements made in the Alternative Resolution process may necessitate a safety assessment and/or be used in a Formal Investigation.

### **XIII. GOOD CAUSE EXEMPTIONS AND EXCEPTIONS**

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

Reasonable extensions will 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 7 Days of the request for extension, the Executive Director will simultaneously notify both parties of the decision. If good cause is found, the Executive Director will also outline the expected resolution timeframe.

### **XIV. PARTY DECORUM**

Parties, Witnesses, Process Advisors, and Support Persons must maintain decorum and respect while participating in the Grievance Process and may be removed from any meeting or proceeding upon warning if they are being disruptive or using abusive or threatening language.

### **XV. TIMELY WARNINGS**

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

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

### **XVI. ACCOMODATIONS**

A party seeking a reasonable accommodation to any part of this Grievance Process based on a disability 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. Such a

request must be made reasonably in advance of an interview, required response, or hearing if the party is seeking an accommodation with regard to that part of the Grievance Process. The Office of Equity will refer the request to the Disability Resource Center when the person requesting the accommodation is a Student and the ADA Coordinator when the person requesting the accommodation is an Employee.

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

No accommodations will be made for either party to remove the live questioning requirements of a hearing. However, reasonable accommodations may be made to ensure full access to the hearing.

## **XVII. INFORMATION SHARING**

The Office of Equity and any other Reporting Employee(s) with whom a Claimant has shared information about an incident of Prohibited Conduct 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 state and federal law, USU's policies, and these procedures, or as otherwise needed to ensure the safety of campus and campus community members and in its efforts to prevent incidents of Prohibited Conduct.

The Office of Equity will keep private the identity of any Claimant, Respondent, Witness, or individual who reports Prohibited Conduct, except as allowed and/or required by law, University policy or procedures, or to carry out the purposes of USU Policy [305](#) or [339A](#) and these procedures, including conducting an investigation or hearing.

### **A. Sharing Information with Law Enforcement**

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

Additionally, when the Office of Equity receives an Incident Report alleging a Clery Reportable Crime, the Office of Equity will share information with USU police so they can evaluate the information for a timely warning.

### **B. Clery Act Reporting**

As required by the Clery Act, the University collects and shares statistics about certain offenses in its annual security report and provides this information to the campus community and the U.S. Department of Education. See Policy [533](#): Public Safety, Response, and Reporting.

## **XVIII. 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 when evidence is shared as outlined in these procedures. Non-participating parties and Witnesses will not have access to records, nor will the public, except where required by law.

### **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, the party or Witness may request and be given access to their own education or personnel records.

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

## **XIX. HEARING PANEL, APPEAL PANEL, AND UNIVERSITY-APPOINTED PROCESS ADVISOR POOL AND TRAINING**

### **A. Annual Training**

The Hearing Officer, Hearing Panel, Appeal Panel members and University-Appointed Process Advisors will be trained annually in-person (or via videoconferencing) on Policy [305](#) and Policy [339A](#) including the definitions and relevant procedures herein, Actual Conflicts of Interest and Demonstrated 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 individual may serve in these roles until they have completed their annual training.

#### **1. Assignments**

The Case Coordinator will assign the Hearing Officer based on availability. For cases in which the Respondent is a faculty member, the Hearing Panel (if relevant) will include two faculty members. The investigator will assign University-appointed Process Advisors based on availability. The Case Coordinator will assign the Appeal Panel members based on availability.

## **XX. ANNUAL TRAINING FOR ALL PARTICIPANTS IN THE GRIEVANCE PROCESS**

The Title IX Coordinator, Office of Equity staff who participate in the Grievance Process, Sanctioning Authorities, and Alternative Resolution facilitators will be trained annually in-person (or via videoconferencing) in accordance with Policy [339A](#) or Policy [305](#) and these Prohibited Conduct Procedures.

As relevant to their role, participants will be trained on Policy [339A](#) and Policy [305](#) 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, Alternative Resolution facilitation including restorative justice, and best practices for conducting trauma-informed hearings and evaluating the evidence and information presented in hearings. These training materials will be posted online at [equity.usu.edu](http://equity.usu.edu).

## **XXI. RECORD RETENTION**

The Office of Equity will create or obtain and maintain records of any reports made or actions taken under Policy [339A](#) or Policy [305](#), including Supportive Measures, for at least 7 years from the date of the action, consistent with the appropriate University retention schedule developed under state law.

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

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

## **XXII. DEFINITIONS**

**Actual 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 Policy [305](#) or [339A](#), or where a person is otherwise unable to participate with objectivity because of personal or professional relationships with other individuals involved in the process or associated with those involved. That an individual with a role in the process works for the University alone is not enough, without more, to establish an Actual Conflict of Interest.

**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 the Sexual Assault and Anti-Violence Office's ("SAAVI") director, and has completed at least 40 hours of training in counseling and assisting victims who have experienced Prohibited Conduct.

**Alternative Resolution.** A voluntary process in which parties agree to resolve a Formal Complaint without completing an investigation, or at any time prior to the conclusion of the investigation and hearing process. An Alternative Resolution agreement may be facilitated through arbitration, mediation, restorative justice, or another appropriate method that is agreed upon by the parties and the Title IX Coordinator or Executive Director. Such an agreement may not include Sanctions or other disciplinary measures unless the Respondent agrees to such Sanctions or disciplinary measures.

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

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

**Appeal Panel.** A three-person panel with individuals who are not the investigator, Title IX Coordinator or Hearing Panel members, assigned by the Case Coordinator to review and decide an Appeal of a Determination or 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 Respondent's Department Head, in consultation with Human Resources. For a staff Respondent, the Appropriate Administrator is the Respondent's Supervisor and Human Resources.

**Campus Security Authority.** As defined by Policy [533](#): Public Safety, Response, and Reporting, a Campus Security Authority is 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 USU 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 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, as outlined in USU Policy [533](#), the official is not considered a Campus Security Authority when acting as a Pastoral or professional counselor.

**Case Coordinator.** An Office of Equity employee authorized to assist with facilitating the Grievance Process.

**Claimant.** A person who is alleged to have experienced conduct that could constitute Prohibited Conduct. 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.

**Consent.** Consent is an affirmative agreement to do the same thing at the same time in the same way. An affirmative agreement includes an informed, freely and actively given, mutually understandable exchange of unmistakable words or actions, which indicate an affirmative willingness to participate in mutually agreed upon sexual activity. Consent can be withdrawn or modified at any time, as long as such withdrawal or modification 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. There is no Consent when there is Force, Coercion, or Incapacitation.

Examples of Consensual behavior may include, but are not limited to:

- Verbal statements of “yes” or “okay”
- Head nodding
- Asking someone to engage in the sexual activity

Examples of non-Consensual behavior may include, but are not limited to:

- Verbal statements of “no” or “I don’t want to”
- Verbal statements of “I don’t know” or “maybe”
- Pushing someone away
- Resisting contact
- Shrugging or other uncertain body language
- Not actively participating in the sexual activity
- No response or silence
- Disengaging from previous Consensual behavior
- Force, Coercion, or Incapacitation

**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 on Employees include an oral reprimand, written warning, Administrative Leave with or without pay, and dismissal from employment.

**Days.** Means calendar days, unless otherwise specified.

**Demonstrated Bias.** Unfair prejudice in favor of or against one group compared with another, including 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 the 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 Demonstrated Bias.

**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 law enforcement unless they receive express written permission to do so from the Claimant.

**Determination.** The Hearing Officer's written decision as outlined in XII (I)(19) following a hearing outlining whether the Respondent violated University policy by a Preponderance of the Evidence.

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

**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.** All operations of the University in the United States including buildings, locations, events, and University computers, internet networks, and remote learning platforms; off-campus settings in which the University has substantial control over both the Respondent and the context in which the Prohibited Conduct occurs, including University computers and internet networks and digital platforms; off-campus buildings owned or controlled by a student organization officially recognized by the University.

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

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

**Formal Complaint.** A signed document that indicates the University will proceed with a Formal Investigation of Prohibited Conduct or an Alternative Resolution. A Formal Complaint may be signed by the Claimant or, for University-driven Formal

Investigations, by the Title IX Coordinator (for Policy [339A](#)) or Executive Director (for Policy [305](#)). The Formal Complaint signed by the Claimant must: (1) state the Respondent's name (if known); (2) state Prohibited Conduct that would be covered by the related policy; (3) request an Alternative Resolution or Formal Investigation; and (4) cannot be anonymous. In the event that the Title IX Coordinator or Executive Director signs the Formal Complaint, the University is not acting as the Claimant, does not have the rights of a Claimant, and will not otherwise be treated as a party to the investigation.

**Formal Investigation.** The evidence-gathering process that begins with the filing of the Formal Complaint by a Claimant or Title IX Coordinator or Executive Director and ends when the Appeal process is complete. This process includes interviewing parties and Witnesses, and gathering other Relevant evidence, exculpatory and inculpatory. When there is a live hearing, a Hearing Officer or Panel determines, by a Preponderance of the Evidence gathered during the Formal Investigation, whether there is a policy violation. The parties can Appeal a finding and decision based on evidence gathered during the Formal Investigation under limited circumstances.

**Grievance Process.** The process undertaken by the Office of Equity from the filing of a Formal Complaint through to the resolution of any Appeals. The Grievance Process may include a Claimant- or University-driven Formal Investigation and Hearing, or an Alternative Resolution.

**Hearing Officer.** A person who is the chair and decision-maker for the hearing.

**Hearing Panel.** A Hearing Officer and, if requested in writing by one of the parties, two Employees. The University assigns Hearing Panel members to review a Formal Complaint of Prohibited Conduct in a hearing and determine whether the Respondent violated Policy [339A](#) or Policy [305](#) by a Preponderance of the Evidence.

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

It is not an excuse that the party initiating sexual contact was intoxicated and therefore did not realize the other person's incapacity. 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 Prohibited Conduct filed online, via email, by phone, by mail, or in-person to the Office of Equity, Title IX Coordinator or Executive Director, or a Reporting Employee.

**Mitigating, Aggravating, and Compounding Factors.** Factors determined by the Hearing Officer or Panel and considered by the Sanctioning Authority when determining the appropriate Sanction for a violation of Policy [339A](#) or Policy [305](#). 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 Policy [339](#), Policy [339A](#), Policy [305](#), or other, similar policies.

**Notice of Allegations.** A written instrument notifying both parties that a Formal Complaint of Prohibited Conduct 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.

**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.

**Preponderance of the Evidence.** The standard of proof that is used to determine whether a Student or Employee Respondent violated Policy [339A](#) or Policy [305](#). Preponderance of the Evidence means that, based on the evidence, it is more likely than not that the Respondent committed a policy violation.

**Process Advisor.** Any person, including an attorney, chosen by a Claimant or Respondent to advise and assist the selecting party in any part of the Grievance Process, including any meeting with the Office of Equity, the Formal Investigation and/or hearing, the Alternative Resolution process. 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 the Grievance Process.

**Prohibited Conduct.** Discrimination based on race, color, religion, sex, gender identity or expression, sexual orientation, national origin, age (40 and older), disability, genetic information, or status as a protected veteran ("Protected Characteristics") and Sexual Misconduct defined as conduct on the basis of sex that meets the definition of

Relationship Violence, Sexual Harassment, Sexual Exploitation, Sexual Assault, and Sex-based Stalking. Collectively, this behavior is defined as Prohibited Conduct.

**Provisional Determination Letter.** A provisional letter issued by the Hearing Officer to the Claimant, Respondent, Process Advisors, Sanctioning Authority, Executive Director, and Title IX Coordinator following a hearing outlining whether the Respondent violated University policy by a Preponderance of the Evidence.

**Record.** Consists of all Relevant inculpatory and exculpatory evidence gathered by the University, including evidence gathered during the course of a Formal Investigation, which is directly related to the Formal Complaint, whether obtained from the 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 nature of the relationship, and (c) the frequency of interaction between the persons involved in the relationship.
- **Domestic Violence.** Domestic Violence includes felony or misdemeanor crimes of violence committed against the Claimant 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 the Sexual Misconduct 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. The Hearing Officer or Panel may consider information on the Claimant or Respondent's prior or subsequent conduct to be Relevant to establish a pattern, knowledge, intent, motive, or absence of mistake.

**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 Prohibited Conduct at issue, and/or to prevent its recurrence. Remedies may include the same individualized services as Supportive Measures, except that they need not be non-disciplinary, non-punitive, or avoid burdening the Respondent.

**Reporting Employee.** An employee who is required to report all information they receive about incidents of Prohibited Conduct to the Title IX Coordinator or Executive Director. See the Reporting Employee Policy [340](#).

**Respondent.** An individual who is alleged to have committed Prohibited Conduct.

**Retaliation.** Intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege under Policy [339A](#) or Policy [305](#), or because the individual has made a report or complaint, testified, assisted, participated, or refused to participate in any manner in a Formal Investigation, Alternative Resolution, or hearing under Policy [339A](#) or Policy [305](#).

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

**Safety Risk Panel.** A Panel including the Title IX Coordinator, or their designee, the Appropriate Administrator, a representative from USU Police, and other necessary individuals convened to complete a panel safety risk assessment.

**Sanction.** Disciplinary or punitive action taken against a Respondent after they are found by the Hearing Officer or Panel to have violated Policy [305](#) or Policy [339A](#).

**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, in consultation with the Dean and Human Resources. For staff Respondents, the Sanctioning Authority is the Respondent's Supervisor in consultation with Human Resources.

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

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

**Sexual Assault.** Includes any sexual act or attempted sexual act, including Rape,

Sodomy, Sexual Assault with An Object, or Fondling, directed against another person without their Consent. This includes instances where the person is incapable of giving Consent because of their age or Incapacitation. Sexual Assault also includes unlawful sexual acts, such as Incest and Statutory Rape.

- **Rape.** Sexual intercourse with another person without their Consent.
- **Sodomy.** Oral or anal sexual intercourse with another person without their Consent.
- **Sexual Assault with An Object.** The use of an object or instrument to unlawfully 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.** Taking non-consensual sexual advantage of another for one's own advantage or benefit, or to the benefit or advantage anyone other than the Claimant. Examples include, but are not limited to:

- observing, recording, or photographing nudity or sexual activity of one or more persons without their Consent in a location where there is a reasonable expectation of privacy;
- allowing another to observe, record, or photograph nudity or sexual activity of one or more persons without their Consent where there is a reasonable expectation of privacy; or
- distributing recordings, photographs, or other images of the nudity or sexual activity of one or more persons without their Consent.

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

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

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

- Relationship Violence;
- Sex-based Stalking;

- Sexual Assault;
- Sexual Exploitation; and
- Sexual Harassment.

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

**Support Person.** Claimants and Respondents may each have one Support Person of their choice attend Office of Equity meetings, interviews, and hearings, to provide emotional support. A Support Person may be a parent, legal guardian, friend, faculty member, USUSA Student Advocate, attorney, or any other person that the Claimant or Respondent would like to be present for emotional support.

**Supportive Measures.** Short-term, 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 Prohibited Conduct. 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, supplementary education about Sexual Misconduct, 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 USU Policy [339](#): Title IX Sexual Misconduct in an Employment or Education Program or Activity, USU Policy [339A](#): Non-Title IX Sexual Misconduct, and with federal Title IX law and regulations more generally. As set forth in the Sexual Misconduct policies, the Title IX Coordinator is responsible for ensuring the University's prompt response to Incident Reports of alleged Sexual Misconduct, coordinating effective implementation of Supportive Measures, informing Claimants of their option to file a Formal Complaint, and informing the parties of their rights and obligations under the Grievance Process. The Title IX Coordinator works in the Office of Equity.

**University-driven Formal Investigation.** A Formal Investigation of allegations of Sexual Misconduct undertaken by the University when there is no participating

Claimant. While the Title IX Coordinator (for Policy [339/339A](#)) or Executive Director (for Policy [305](#)) signs a Formal Complaint to initiate a University-driven Formal Investigation, neither the Title IX Coordinator, Executive Director, nor the University serves as a Claimant in such circumstances.

**Witness.** An individual who has Relevant information about Prohibited Conduct allegations.

## XXIII. RESOURCES

### Notice of Non-Discrimination

In its programs and activities, including in admissions and employment, Utah State University does not discriminate or tolerate [discrimination](#), including harassment, based 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.

Utah State University is an equal opportunity employer and does not discriminate or tolerate discrimination including harassment in employment including in hiring, promotion, transfer, or termination 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 or any other federal, state, or local law.

Utah State University does not discriminate in its housing offerings and will treat all persons fairly and equally without regard to race, color, religion, sex, familial status, disability, national origin, source of income, sexual orientation, or gender identity. Additionally, the University endeavors to provide reasonable accommodations when necessary and to ensure equal access to qualified persons with disabilities.

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/Interim Title IX Coordinator**

Matthew Pinner

[matthew.pinner@usu.edu](mailto:matthew.pinner@usu.edu)

Distance Education Room 401

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)