

FORMAL INVESTIGATION INFORMATION

This document outlines [USU Policy 305](#). For a complete understanding of the process, please review the policy.

General Information

Administrative Process: An Office of Equity formal investigation is an administrative grievance process designed to determine whether the Respondent violated USU Policy 305.

Timing and Good Cause Delays: Discrimination investigations generally take several months, depending on the complexity of the case, including the number of allegations, the span of time covered by the allegations, and the number of parties/witnesses. Good cause for delay may be found for a number of reasons including: the case involves multiple claimants or respondents, numerous claims, allegations that extend over a number of months or years, or particularly complicated analyses. When good cause for delay is found, the length of the delay will be dependent upon the particular facts and circumstances of the case. Once an investigation is complete, the hearing (if the case is appealed) and sanction process can also take an additional several months. Thus, from the formal complaint to resolution, a discrimination formal investigation can take **a year or longer** for complete resolution.

The Policy 305 grievance process is an adjudicatory process that requires extensive procedures defined by state and federal law. Parties may access supportive measures designed to address any potential ongoing harm, including No Contact arrangements, scheduling and location changes, and other steps, and to assist with earlier resolutions. The formal grievance timelines do not reflect these efforts, which are generally more immediately available. Additionally, the Office promptly refers concerns that are outside the Office's jurisdiction to other University offices that are able to address the concerns.

Process Advisors and Support Persons: Both parties may use a process advisor and/or a support person to assist them throughout the formal investigation process. The party must sign a release of information for the process advisor and/or support person.

Participation: You are not required to participate in the Office of Equity process, but there is a risk involved if you choose not to participate. If you are a Claimant and you choose not to participate, you may lose your opportunity to be interviewed and to present evidence. If you are a Respondent and you choose not to participate, the hearing panel may only be able to evaluate statements and information provided by the Claimant and other witnesses without the benefit of your input.

Presumption of Not Responsible: The Respondent is presumed not responsible for the alleged discrimination and a determination will be made by the investigator in the Final Investigation Report.

Supportive Measures: If your employment or education has been affected as a result of the

incident underlying the formal complaint or the Office of Equity process, you may be able to receive supportive measures while your case is pending. Please contact the Supportive Measures Specialist in the Office of Equity for more information.

False Information: A person who knowingly provides false information related to sexual misconduct will be referred to the appropriate administrator for appropriate action, including possible Corrective Action or Sanctions under the [USU Student Code](#) or [USU Policy 311](#) or [407](#).

Retaliation: University policy prohibits retaliation by students and employees, regardless of whether they are parties. Retaliation includes intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege under USU's discrimination policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a formal investigation, proceeding, or hearing related to sexual misconduct.

A student who engages in retaliation may be subject to discipline up to and including suspension or expulsion. An employee who engages in retaliation may be subject to discipline up to and including termination.

Conflicts of Interest/Bias: If you have a concern at any point in the process that anyone involved in your case in the Office of Equity or the hearing or appeals stage has a conflict of interest or bias, please email the Equity Executive Director at alison.adams-perlac@usu.edu.

Information Sharing: Information may be shared with Student Conduct (student), with a Respondent's superior (employee), the Provost (faculty), or other relevant campus units as needed to complete the grievance process and address compliance with Policy 305 and other relevant university policy.

Earlier Resolution: Either party may request an earlier resolution at any time. Upon agreement of the parties, the formal investigation will be stopped and the earlier resolution process will proceed. The formal investigation will begin/resume if either both parties do not agree to participate in an earlier resolution or the parties do not reach an agreement.

Withdrawal of a Formal Complaint: The Claimant may request to withdraw their formal complaint at any time. The Office of Equity may, but need not, dismiss the case at that point. If the Office of Equity does not dismiss the case and determines to proceed without Claimant's involvement, it will notify both parties.

Investigation

Investigator: The Office of Equity investigator serves as a neutral-fact gatherer whose role is to gather relevant information and evidence relevant and to determine whether Respondent violated USU's discrimination policy and to share that information with the parties and, if the investigation report is appealed, with

Interviews: The investigator will interview both parties and any witnesses who have relevant,

non-duplicative information. The interviews will be recorded.

Please bring all evidence and documentation to the interview that is relevant to the allegations being investigated. Materials should be in an unaltered form. This should include contact information for any individuals who might have relevant information who may serve as a witness in the investigation.

You should be prepared to answer questions the investigator will have for you at the interview and plan to be available for the interview for at least one hour. Breaks are permitted.

Evidence and Witnesses: Both parties can present evidence and witnesses that are relevant to the allegations in the formal complaint. The investigator will also seek other relevant evidence not provided by the parties.

Record Sharing and Party Responses

Record Sharing: The complete Record of evidence gathered by the investigator, including documentation and party and witness interview recordings, will be shared electronically with both parties and their process advisors, prior to the hearing. The Office of Equity will not share the Record with Support Persons, although the parties are permitted to do so. The evidence and information in the Record are of a very sensitive nature and parties are discouraged from disseminating them with individuals not given access under Policy 305. As such, to ensure confidentiality, the Office of Equity will take steps to share the Record with the parties in a manner that does not allow the parties to copy, save, or disseminate the evidence. Parties are not precluded under Policy 305 from discussing their experiences or from gathering and presenting relevant evidence and the Office of Equity cannot guarantee that parties will not share the information with individuals who are not part of the Grievance Process.

Response to the Record: Both parties will have 10 business days to file responses to the Record.

Preliminary (Draft) Report: Within 10 business days of the close of the response to the Record period, the investigator will issue the Preliminary Report and share it with the parties.

Response to the Preliminary Report: Both parties will have 10 business days to file responses to the Preliminary Report.

Final Investigation Report: Within 10 business days of responses to the Preliminary Report, the investigator will issue the Final Investigation Report.

Appeal

Appeal: Within 10 business days of issuance of the Final Investigation Report, the non-prevailing party may file an appeal outlining the specific issues, facts, or circumstances they are appealing. (If the decision is split, a party may file an appeal on the issue(s) on which they did not prevail.)

Hearing Panel: Upon appeal, a hearing will be held with a three-person hearing panel comprised of USU employees appointed by the university and specially trained. Hearing panel members are neutral fact-finders whose role is to make a decision on the appeal.

Hearing: During the hearing, each party will have an opportunity to ask questions of one another and witnesses through the hearing panel. Although the parties need not be in the same room with each other, they must be able to see and hear each other during the hearing. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

Standards of Review: The hearing panel will make a determination based on the following standards of review:

For challenge to the findings: *The Office of Equity finding should only be modified if the panel concludes that no reasonable fact-finder could support the finding based on the record available to the panel.*

For procedural challenge: *The Office of Equity finding should only be modified if the panel concludes that procedural error(s) so significantly impacted the investigation as to substantially prejudice the outcome of the Office of Equity investigation.*

Determination: Within 45 days of the appeal being filed, the hearing panel will then issue a determination outlining its decision to the President.

President's Decision: The President will review the recommendations of the AAAC and may accept or modify them. The decision of the President is final.

Sanctions: If the hearing panel determines that Respondent has violated USU policy and that decision is accepted by the President, Respondent may be sanctioned under Policy 311 (employees), Policy 407 (faculty), and the Student Code (students).

For employees: An employee who is found to have violated Policy 305 may be subject to sanctions from a warning up to and including termination.

For students: A Student who is found to have violated Policy 305 may be subject to sanctions from a warning up to and including expulsion.

Remedies: If the hearing panel determines that Respondent has violated USU policy, it may order appropriate remedies for Claimant.

Discrimination Timeframes¹

- The investigation will be completed and the Record will be shared **within 60 calendar days of the Formal Complaint.**

¹ These are general timeframes and may be extended based on good cause as noted above.

- **Within 10 business days of the Record being shared**, parties may submit responses to the Record.
- **Within 10 business days of the close of the Response to the Record period**, the investigator will issue the Preliminary Report and share it with the parties.
- **Within 10 business days of the Preliminary Report**, parties may submit responses to the Preliminary Report.
- **Within 10 business days of responses to the Preliminary Report**, the investigator will issue the Final Investigation Report.
- **Within 10 business days of the Final Investigation Report**, the non-prevailing party may appeal.
- **Within 45 days of the appeal**, the hearing panel will issue a determination.
- **Following hearing panel decision**, President will enter a decision.
- **Following President's decision or if there is no appeal**, sanctions may be entered if there is a policy violation.