

## INTERIM FORMAL INVESTIGATION INFORMATION

This document outlines [USU Interim Policies and Procedures 339, 339A, 339B](#). For a complete understanding of the process please review the policies and procedures.

### **General Information**

**Administrative Process:** An Office of Equity [formal investigation](#) is an administrative process designed to determine whether or not the Respondent violated USU policy.

**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 from for the [process advisor](#) and/or [support person](#). Each party must use a process advisor in the hearing. If a party does not have a process advisor at the hearing, the university will appoint one to ask questions on the party's behalf at the hearing.

**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 sexual misconduct and a determination will be made by the hearing panel at the conclusion of a hearing.

**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 get [supportive measures](#) while your case is pending. Please contact the Supportive Measures Specialist in the Office of Equity for more information.

**Accommodations:** You may request an accommodation based on a disability or other reasonable grounds by calling or visiting the Office of Equity or by submitting a written request to the Office of Equity Director. Disability accommodations sought by students will be referred to the Disability Resource Center and those sought by employees will be referred to the ADA Coordinator in Human Resources.

**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 Sanctions under the [USU Student Code](#), [USU Policy 311](#) or [407](#).

**Retaliation:** University policy prohibits retaliation against anyone who comes forward with concerns regarding violations of the University's sexual misconduct policy or anyone who testifies, assists, participates, or refuses to participate in any manner in a formal investigation, proceeding, or hearing related to discrimination. Retaliation also includes intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege under USU Policy.

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

**Information Sharing:** Information may be shared with Student Conduct (student) or with a Respondent's superior (employee) on a need-to-know basis as well as other units on campus on a need-to-know basis.

**Earlier Resolution:** Either party may request an [earlier resolution](#) at any time up to three days before the hearing. If both parties agree to proceed with an earlier resolution, the formal investigation will be stopped, and the earlier resolution process will be pursued. If an agreement is not reached, the formal investigation will resume.

**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 formal investigation at that point. If the Office of Equity does not dismiss the formal investigation, 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 information and evidence relevant to whether Respondent violated USU's sexual misconduct policy and to share that information with the parties and a hearing panel.

**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 Record of evidence gathered by the investigator, including documentation and party and witness interview recordings, will be shared electronically with both parties prior to the hearing.

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

**Preliminary Investigation Report:** Following the Response to the Record period, the investigator will issue the Preliminary Investigation Report and share it with the parties.

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**Final Investigation Report:** Following the Response to the Preliminary Investigation Report, the investigator will issue the Final Investigation Report.

## **Hearing**

**Hearing Panel:** Following the investigation by the Office of Equity, 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 determine whether or not the Respondent has violated USU's sexual misconduct policy.

**Hearing:** During the hearing, each party will have an opportunity to ask questions of one another and witnesses through their process advisor. 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. For a case to resolve through a formal investigation, a hearing is required.

The hearing panel will review the allegations and objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a Claimant, Respondent, or witness.

**Standard of Proof:** The hearing panel will decide whether there is a preponderance of evidence that Respondent violated USU's sexual misconduct policy. This means that the hearing panel will decide whether it is more likely than not that the alleged sexual misconduct violation did or did not occur.

**Determination:** The hearing panel will then issue a determination as to whether Respondent violated USU's sexual misconduct policy.

**Sanctions:** If the hearing panel determines that Respondent has violated USU policy, Respondent will be sanctioned as follows:

For employees: An employee who is found to have violated Interim Policy 339, 339A, 339B may be subject to Sanctions from a warning up to and including termination.

For students:

- A Student who is found to have violated Policy 339/339A/339B with regard to Sexual Harassment may be subject to Sanctions from a warning up to and including suspension. With compounding factors, expulsion may be ordered. The Sanction may include a permanent notation on the Student's transcript.
- A Student who is found to have violated Policy 339/339A/339B with regard to Relationship Violence may be subject to Sanctions from a warning up to and including suspension. With compounding factors, expulsion may be ordered. The Sanction may include a permanent notation on the Student's transcript.

- A Student who is found to have violated Policy 339/339A/339B with regard to Stalking may be subject to Sanctions from a warning up to and including suspension. With compounding factors, expulsion may be ordered. The Sanction may include a permanent notation on the Student's transcript.
- A Student who is found to have violated Policy 339/339A/339B with regard to Sexual Assault specifically Fondling may be subject to Sanctions from probation up to and including suspension. With compounding factors, expulsion may be ordered. The Sanction may include a permanent notation on the Student's transcript.
- A Student who is found to have violated Policy 339/339A/339B with regard to Sexual Assault including Rape, Sodomy, Sexual Assault with an Object, Incest, or Statutory Rape may be subject to Sanctions from suspension up to and including expulsion. The Sanction may include a permanent notation on the Student's transcript

**Remedies:** Claimant will receive remedies if the hearing panel determines that Respondent has violated USU policy.

### **Appeal**

**Appeal:** Parties may appeal the determination and/or sanction within 10 business days of the determination being issued on limited grounds.

