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 polices and procedures.

General Information

Administrative Process: An Office of Equity formal investigation is an administrative process designed to determine whether 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 for the process advisor and/or support person. 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 in 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 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.

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 sexual misconduct 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) 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.

Informal Resolution: Either party may request an informal resolution at any time up to within 3 days of the hearing. If both parties agree to proceed with an informal resolution, the formal investigation will be stopped and the informal 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 complete 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 Report:** Following 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 a Response to the Preliminary Report.

**Final Report:** Following the Response to the Preliminary Report, the investigator will issue the Final 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 the Respondent has violated university 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 investigate 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 Complainant, 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.

**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 with regard to Sexual Harassment may be subject to Sanctions from a warning up to and including suspension (you and I discussed this and I updated it after the DOJ raised concerns about egregious and repeated sexual harassment as before it was a warning up to probation).
• A Student who is found to have violated Policy 339 with regard to Relationship Violence from probation up to and including expulsion, and the Sanction may include a permanent notation on the Student’s transcript.

• A Student who is found to have violated Policy 339 with regard to Stalking may be subject to Sanctions from warning up to and including expulsion, and the Sanction may include a permanent notation on the Student’s transcript.

• A Student who is found to have violated Policy 339 with regard to Sexual Assault (fondling) may be subject to Sanctions from probation up to and including expulsion, and the Sanction may include a permanent notation on the Student’s transcript.

• A Student who is found to have violated Policy 339 with regard to Sexual Assault (rape, sodomy, sexual assault with an object, incest, or statutory rape) may be subject to Sanctions from suspension up to and including expulsion, and the Sanction may include a permanent notation on the Student’s transcript.

Remedies: If the hearing panel determines that Respondent has violated USU policy, remedies for Claimant will be ordered.

Appeal

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

Formal Investigation Timeframes

• Within 3 business days of receipt of the signed Formal Complaint, the Office of Equity will provide the parties a written Notice of Allegations.

• Within 40 business days of the filing of the Formal Complaint, the Office of Equity will give the parties access to the Record.

• Within 10 business days of receiving access to the Record, parties may file a written Response to the Record. This is also the close of the Record. Evidence and witnesses discoverable through reasonable due diligence not submitted before this time shall be inadmissible in the investigation and the hearing.

• Within 10 business days of the end of the Response to the Record period, the investigator will issue the Preliminary Investigation Report to both parties.

• Within 10 business days of the date of the Preliminary Investigation Report, the parties:
  o Shall file:
    ▪ a statement listing the numbered paragraphs in the Preliminary Investigation Report that they agree are true, and the numbered paragraphs that they dispute;

1 These are general timeframes and any of them may be extended based on good cause.
- a list of witnesses and exhibits in the Record they want the Hearing Panel to consider during the hearing;
- a list of questions they propose to ask the other party, witnesses, and investigator in the hearing;
- a notice of intent to include a process advisor of their choosing in the hearing (and the name of that person) or a request for the University to appoint a process advisor on their behalf; and
  - May file a written Response to the Preliminary Investigation Report.

- **Within 10 business days of the deadline for the responses to the Preliminary Investigation Report**, the investigator will issue the Final Investigation Report.
- **Within 1 business day of the Final Investigation Report**, the investigator will notify the hearing officer that a hearing is needed.
- **At least 15 days prior to the hearing**, the hearing officer will appoint a process advisor for any party who does not have one.
- **At least 15 days prior to the hearing**, the hearing officer will provide the parties with a notice of hearing.
- **Within 20 business days of the issuance of the Final Investigation Report**, the hearing will be held.
- **Within 5 business days of the hearing**, the hearing panel will issue a preliminary findings letter outlining the policy violations the hearing panel has found the respondent to have committed, if any.
- **If there is a finding, within 5 business days of the preliminary finding letter**, parties may submit a sanction statement.
- **Within 7 business days of the end of the sanction statement period**, the sanctioning authority shall issue a sanction letter to the hearing panel.
- **Within 10 business days of the preliminary finding letter**, the Title IX Coordinator shall issue a remedies letter to the hearing panel.
- **Within 20 business days of the hearing**, the hearing officer will issue the Determination, Sanction, and Remedies.
- **Within 10 business days of the Determination and Sanction**, the parties may appeal.
- **Within 5 business days of appeal**, the hearing officer shall notify the non-appealing party of the appeal and both parties of the appellate panel assigned.
- **Within 10 business days of being notified of the appeal**, the non-appealing party may file a Response to Appeal.
- **Within 25 business days of the date the appeal is filed**, the appellate panel shall issue an appeal decision.