

# **Equity Hearing Council Annual Training, Part 1: Interim USU Sexual Misconduct Policy and Procedures 339 and 339A**



**UtahStateUniversity**

**Office of Equity  
Logan Campus  
Distance Education, Room 400  
435-797-1266**

Updated August 2, 2023

# Today's Topics

## First

- An overview of the Equity Hearing Council

## Second

- An overview of Title IX
- USU Interim Sexual Misconduct Policy 339 and 339A related terms

## Third

- USU Sexual Misconduct Procedures 339 and 339A



# Checking In

In what ways do you feel confident being part of the Equity Hearing Council?

In what ways do you *not* feel confident being part of the Equity Hearing Council?





# Part One: Equity Hearing Council Overview

Key question: What does the Equity Hearing Council do?

# Equity Hearing Council Purpose and Expectations

- The Equity Hearing Council serves as the hearing body for matters arising under the Sexual Misconduct Policy and Procedures
- Council expectations:
  - Council members will serve until they decide to no longer serve
  - All members will be trained annually on the Sexual Misconduct Policy



# Equity Hearing Council Roles

- University-appointed Process Advisor
- Hearing Panel Member
- Appeal Panel Member



# University-appointed Process Advisor Overview

- A USU faculty or staff member appointed by the University to advise and assist a party in the hearing. Among other things, the process advisor questions the other party and witnesses on behalf of the party they are advising



# Hearing Panel Member Overview

- A Hearing Officer and, if requested in writing by one of the parties, two Employees
- Review relevant evidence related to a Formal Complaint of Sexual Misconduct in a hearing and determine whether the Respondent violated the Title IX Sexual Misconduct Policy by a Preponderance of the Evidence



# Hearing Panel Member Responsibilities

- Follow USU interim policy and procedures 339/339A
- Serve free of conflict of interest and bias
- Conduct an unbiased review of the evidence in the Record and focus on what is relevant, credible, etc.
- Attend the live hearing and ask relevant questions of the parties and witnesses
- Determine if it is more likely than not that one party's representation of the facts is more "accurate" than the other's
- Determine whether there is preponderance of evidence that Respondent violated the policy
- Review and determine whether to accept the written Determination

# Hearing Panel Member Responsibility: Factual Findings

- Before making a policy violation determination, Hearing Officer/Panel must decide which party's representation of facts is "accurate"
- Factual determinations can have a direct connection to a policy violation finding, but won't always
  - Example: Hearing Officer/Panel determines that claimant's representation is "accurate," but the conduct doesn't meet the policy violation threshold (such as the "severe, pervasive, and objectively offensive" standard for hostile environment sexual harassment)

# Hearing Panel Member Responsibility: Policy Analysis

- Break down the policy into elements
- Organize the facts by the element to which they relate
- Example:
  - Hostile Environment is defined as
    - *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*



# Appeal Panel Member Overview

- 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

# Self-Care and Boundary Setting as an Equity Hearing Council Member

- Remember this is a challenging process for everyone involved and you should practice self-care as you engage in this process
  - [Employee Assistance Program](#)
  - [Sexual Assault and Anti-Violence Information \(SAAVI\) office](#)
- You can set boundaries within the process
  - Take breaks when preparing for a hearing or appeal review
  - Request a recess during the hearing
- Contact the Office of Equity Case Coordinator with any questions or concerns



## **Part Two: Title IX and USU Policies 339 and 339A**

Key question: What behaviors could be considered sexual misconduct under USU policies?

# Title IX of the Education Amendments of 1972

“No person in the United States shall, on the basis of sex, *be excluded from participation in, be denied the benefits of, or be subjected to discrimination* under any education program or activity receiving Federal financial assistance.”

Title IX prohibits discrimination based on sex



Sexual harassment is a form of discrimination based on sex



Sexual assault, dating and domestic violence, and stalking are forms of sexual harassment

# USU's Obligations Under Title IX

- An institution must respond when it has “actual knowledge” of “sexual harassment” that occurred within the school’s “education program or activity”
  - Actual knowledge: when the University’s Title IX Coordinator or a Reporting Employee has notice of Sexual Misconduct or allegations of Sexual Misconduct
  - Sexual harassment: quid pro quo, hostile environment, sexual assault, dating violence, domestic violence, and stalking
    - Sexual exploitation (Policy 339A)

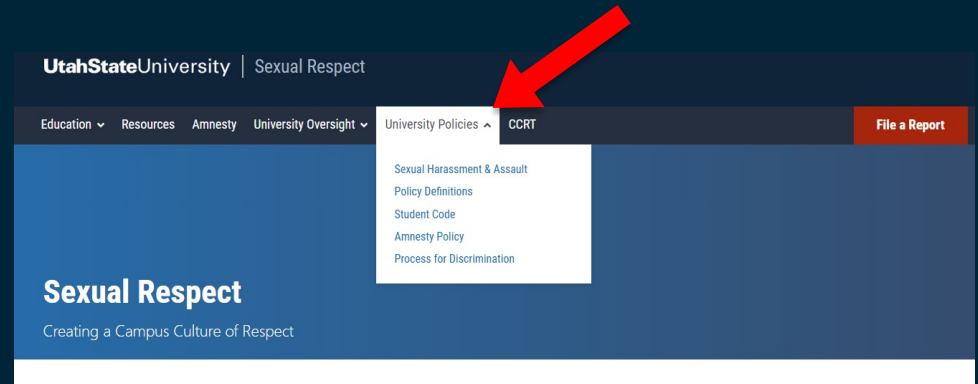


# Employment or Education Program or Activity (Title IX)

- All University operations 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 Sexual Misconduct occurs, including University computers, internet networks, and digital platforms;
  - Off-campus buildings owned or controlled by a student organization officially recognized by the University

# Interim Sexual Misconduct Policies 339 and 339A

- **Sexual Misconduct**
  - Sexual Harassment
  - Sexual Exploitation
  - Sexual Assault
  - Relationship Violence
  - Sex-based Stalking
- **Retaliation**



Full definitions can be found in the Sexual Misconduct Policy and on [sexualrespect.usu.edu](https://sexualrespect.usu.edu)

# Sexual Misconduct: Sexual Harassment Definitions, Part 1

## Hostile Environment

- Unwelcome sex-based conduct
- Determined by a reasonable person to be so severe, pervasive, and objectively offensive
  - Reasonable person: a person of ordinary caution, care, and consideration
- That it effectively denies a person equal access to an Employment or Education Program or Activity
  - Equal access: no educational opportunity is denied on the basis of sex and people are granted “equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities” (Equal Access to Education: Forty Years of Title IX; DOJ, 2012)

# **Sexual Misconduct: Sexual Harassment Definitions, Part 2**

## **Quid Pro Quo**

- An Employee's conditioning
- Of the provision of a University aid, benefit, or service
- On a person's participation in unwelcome sexual conduct

# Sexual Harassment: Verbal Conduct Examples

- Sexual comments, references, or jokes
- Asking personal questions about someone's body or intimate relationships
- Talking about your or someone's sex life
- Repeatedly asking someone out when the answer is "No"
- Referring to someone as hunk, doll, babe, honey
- Whistling or catcalling
- Sending sexual language through technology (text, email, social media)

# **Sexual Harassment: Non-Verbal Conduct Examples**

- Sexual gestures with hands or body movements
- Looking at a person up and down (elevator eyes)
- Paying unwanted sexual attention to someone
- Displaying sexually suggestive visuals
- Suggestively making facial expressions – winking, licking lips, etc.
- Sending sexual images through technology (text, email, social media)

# **Sexual Harassment: Physical Conduct Examples**

- Hanging around, standing too close, brushing up against someone
- Touching a person's clothing, hair, massaging neck/shoulders
- Hugging, kissing, patting or stroking
- Touching or rubbing oneself sexually in view of others

# **Sexual Misconduct: Sexual Exploitation Definition (339A)**

- Taking non-consensual sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the Claimant.



# Sexual Exploitation Examples

- Observing, recording, or photographing nudity or sexual activity of one or more persons without their consent
- Allowing another to observe, record, or photograph nudity or sexual activity of one or more persons without their consent
- Distributing recordings, photographs, or other images of the nudity or sexual activity of one or more persons without their consent
- Aiding someone in committing an act of sexual misconduct, such as forcing someone into non-consensual commercial sexual activity

# Sexual Misconduct: Sexual Assault

## 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

# Sexual Misconduct: Sexual Assault Cont.

## 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 (generally, age 18)

Sexual Assault occurs when at least one party does not Consent to the sexual activity

# USU Definition of 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

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

# Examples of Non-Consensual Behavior

- 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

# Non-Consensual Behavior: Coercion and Force

## 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

## Force

- Includes the use of physical force or threats of force that affect a person's ability to give consent to sexual contact

# Non-Consensual Behavior: Incapacitation, Part 1

- A state in which a person lacks the ability, temporarily or permanently, to give consent because of a disability, drug or alcohol consumption (either 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



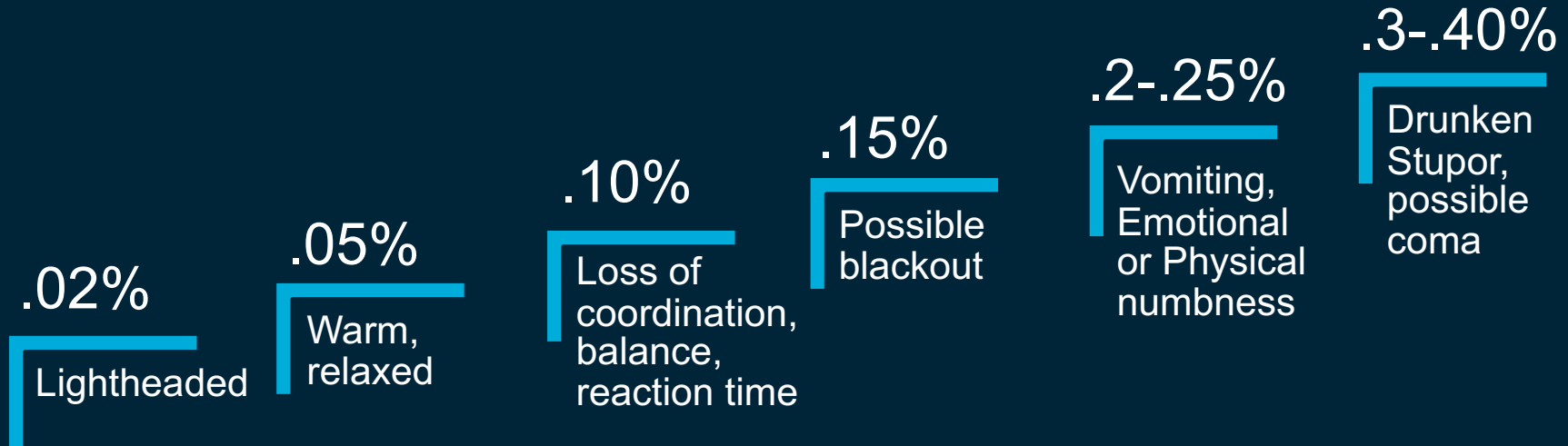
# Non-Consensual Behavior: Incapacitation, Part 2

- 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

# Factors that Affect the Impact of Drugs and Alcohol

- Food consumed before, during, and after
  - Whether food intake was normal or abnormal for the person
- Height and weight
- Medications
- Different sleep patterns
- Illness
- Low hydration
- History of blackouts

# What Happens When BAC Is ...



# Potential Signs of Incapacitation

- Consistently slurred or incomprehensible speech
- Unsteady gait
- Vomiting
- Incontinence
- Bloodshot or unfocused eyes
- Needing assistance to walk/stand
- Outrageous or unusual behavior
- Concern expressed by others about the individual
- Expressed memory loss, disorientation, sleeping, or passed out

# Relevant Information for Assessing Incapacitation

- Timeframe of consumption for Claimant (first drink, last drink, spacing; or first use, last use, spacing of other drugs)
- Number of drinks (or amount of drugs used)
- For each drink/drug:
  - Type (beer, wine, liquor – with specific brand, if possible)
  - Was it mixed with anything? Who mixed it?
  - How was it served? (bar or restaurant will lead to more available information)

# Sexual Misconduct: Relationship Violence

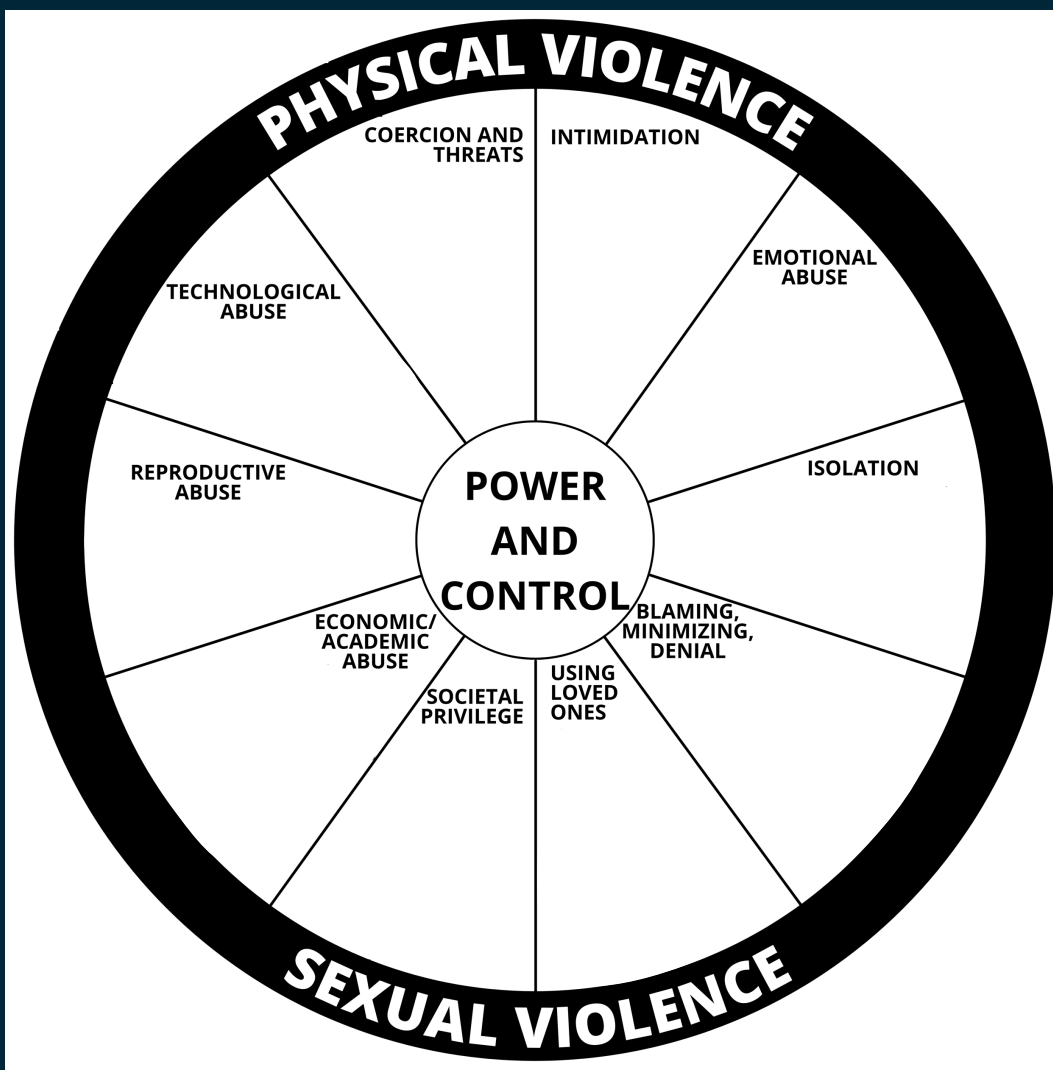
## What is Dating Violence?

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Claimant.
  - Violence includes sexual assault, physical harm, coercion, threats, and force
- The existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship,
  - The nature of the relationship, and
  - The frequency of interaction between the persons involved in the relationship.

# Sexual Misconduct: Relationship Violence Cont.

## What is Domestic Violence?

- Felony or misdemeanor crimes of violence committed against the Claimant by
  - A current or former spouse or intimate partner of the Claimant,
  - A person with whom the Claimant shares a child in common,
  - A person who is cohabitating with or has cohabitated with the Claimant as a spouse or intimate partner,
  - 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
  - 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.





# Sexual Misconduct: Sex-based Stalking Definition

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

# Sex-based Stalking Examples

- Repeated and unwanted phone calls or texts; unwanted contact on social media
- Following or spying
- Showing up somewhere without a legitimate reason to be there
- Contacting friends, family, work, etc. for information
- Posting information or spreading rumors online or by word of mouth
- Using technology to track someone's movements or whereabouts
- Collecting information about patterns, job, classes, friends, etc.
- Monitoring phone calls, emails, social media, etc.

# Learn More via SUNY SCI Training: Severe, Pervasive, and Objectively Offensive Title IX Sexual Harassment

## What is Severe, Pervasive & Objectively Offensive Title IX Sexual Harassment?

START COURSE



This module explores the types of sexually harassing behavior that may constitute severe, pervasive & objectively offensive conduct, rising to the level of requiring institutional action under Title IX as governed by *Davis v. Monroe* and the 2020 Final Rules.

Content creator: Abbey Marr, Esq., Former Assistant Director, Student Conduct Institute  
Created in 2020-2021

- ☰ What is Title IX Sexual Harassment & Why Does It Matter?
- ☰ Conduct That is Likely Not Severe, Pervasive & Objectively Offensive
- ☰ Conduct That Might Be Severe, Pervasive & Objectively Offensive

#### CONCLUSION

- ☰ Conclusion

# Retaliation Definition (Policy 305)

- Taking adverse action, including any action that might deter a reasonable person from engaging in protected activity,
- 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 other procedure
- A causal relationship between an adverse action and good faith reporting or participation is needed to demonstrate that retaliation has occurred.

# Retaliation Examples

- **Adverse employment or educational action**
  - Demoting, terminating, firing
  - Denying a promotion or leave, or making adverse pay decisions
  - Giving a lower grade or performance review than deserved
  - Dismissing someone from a class, program, team, workspace
- **Intimidating, threatening, or harassing actions**
  - Threatening dismissal from a program or expulsion from the university
  - Threatening to disclose confidential information or report an individual to authorities (e.g., immigration authorities)
  - Making intentionally false or misleading statements that would dissuade a reasonable person from making a complaint of Sexual Misconduct

# Part Two Summary

- Title IX prohibits discrimination based on sex
- USU must respond when it has “actual knowledge” of “sexual harassment” that occurred within the school’s “education program or activity”
- Sexual harassment, sexual exploitation, sexual assault, relationship violence, and sex-based stalking are all types of sexual misconduct
- USU prohibits sexual misconduct and retaliation





# **Part Three: USU Procedures 339 and 339A**

Key question: What happens after Sexual Misconduct is reported to USU?

# Reporting Options Overview

- Reports can be made to the USU Title IX Coordinator online at [equity.usu.edu/report](https://equity.usu.edu/report)
- Reports can also be made to USUPD and local law enforcement



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Sexual Misconduct ▾ Non-Discrimination Support Resources Policies & Procedures Training ▾ Diversity Awards ▾ Staff Contacts **File a Report**

## [equity.usu.edu/report](https://equity.usu.edu/report)

### Report to the University

The university responds promptly upon learning of any form of possible [discrimination](#) or [sexual misconduct](#). When you file a report, the Office of Equity will contact the person who experienced the sexual misconduct or discrimination to provide information about options through the office, including [supportive measures](#), [resources](#), and a [formal investigation](#).

**Privacy of Information Shared**  
Information shared with the Office of Equity is kept private, but may be shared on a limited basis within the university to provide [supportive measures](#) or to investigate a report. When a [formal investigation](#) is requested, the person who experienced the sexual misconduct or discrimination cannot remain anonymous.

**Amnesty for Student Code Violations**  
USU offers [amnesty](#) for drug and alcohol policy violations of the Student Code when a student reports an incident of sexual misconduct, whether they experienced or witnessed it. Those students who cooperate in a formal investigation of sexual misconduct are also granted amnesty, though they may be encouraged to participate in health education interventions.

#### How to Report

Choose from the options below.

Reports about sexual misconduct and discrimination can be made anonymously. However, anonymous reports do not always contain enough information to pursue an investigation that can lead to disciplinary action. **Reporting employees** are the only individuals who are required to include their name when filing a report about sexual misconduct.

**For Students & Employees** **For Reporting Employees**

#### Report Sexual Misconduct

Report an incident involving an alleged violation of USU Sexual Misconduct Policy 33B, 33B.5, or 33B.6, which include: sexual harassment, relationship violence, sexual assault, and sex-based stalking. You can file a report on your own behalf or on behalf of anyone who may have experienced [sexual misconduct](#).

**Report Now**

#### Report Discrimination

Report an incident of [discrimination](#) or harassment based on protected categories of people including: race, color, religion, sex, national origin, age, disability, veteran status, pregnancy, sexual orientation or gender identity/expression, genetic information or in retaliation. You can file a report on your own behalf or on behalf of anyone who may have experienced discrimination.

**Report Now**



# Who Does What in the Title IX Grievance Process, Part 1

## USU Employees

- Designated Confidential Resources: provide advocacy and therapy services
- Reporting Employees: must report Sexual Misconduct to Title IX Coordinator and share information with claimants about support resources
  - All members of the Equity Hearing Council are Reporting Employees

## Office of Equity and Title IX Coordinator

- Oversee the entire grievance process and ensure a fair and objective process for all parties
- Coordinate supportive measures
- Facilitate alternative resolution process
- Conduct formal investigations

# Who Does What in the Title IX Grievance Process, Part 2

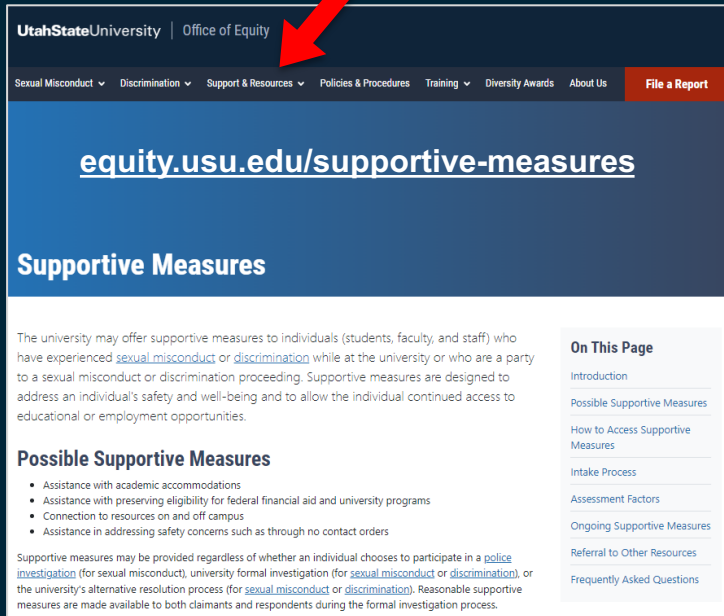
## USUPD and Local Law Enforcement

- Respond to safety threats and concerns
- Conduct criminal investigations
- Enforce no trespass orders and stalking injunctions

# Criminal Process Overview

- A criminal process, which may be coordinated by USU Police or local law enforcement, determines whether a crime has occurred
  - If someone wishes to seek criminal penalties for sexual misconduct that is also a crime or other forms of assistance from law enforcement, they can report to the police
  - Criminal justice procedures use “beyond a reasonable doubt” as the standard of evidence
    - Higher standard than used in USU’s Grievance Process
  - Can be pursued simultaneously with USU’s Grievance Process

# Supportive Measures Overview



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Sexual Misconduct ▾ Discrimination ▾ Support & Resources ▾ Policies & Procedures Training ▾ Diversity Awards About Us [File a Report](#)

[equity.usu.edu/supportive-measures](https://equity.usu.edu/supportive-measures)

## Supportive Measures

The university may offer supportive measures to individuals (students, faculty, and staff) who have experienced [sexual misconduct](#) or [discrimination](#) while at the university or who are a party to a sexual misconduct or discrimination proceeding. Supportive measures are designed to address an individual's safety and well-being and to allow the individual continued access to educational or employment opportunities.

### Possible Supportive Measures

- Assistance with academic accommodations
- Assistance with preserving eligibility for federal financial aid and university programs
- Connection to resources on and off campus
- Assistance in addressing safety concerns such as through no contact orders

Supportive measures may be provided regardless of whether an individual chooses to participate in a [police investigation](#) (for sexual misconduct), university formal investigation (for [sexual misconduct](#) or [discrimination](#)), or the university's alternative resolution process (for [sexual misconduct](#) or [discrimination](#)). Reasonable supportive measures are made available to both claimants and respondents during the formal investigation process.

#### On This Page

- Introduction
- Possible Supportive Measures
- How to Access Supportive Measures
- Intake Process
- Assessment Factors
- Ongoing Supportive Measures
- Referral to Other Resources
- Frequently Asked Questions

- Allows an individual continued access to educational or employment opportunities
- Available for:
  - USU students, faculty, or staff who experienced sexual misconduct or discrimination
  - Individuals involved in Office of Equity proceedings
- Addresses an individual's safety and well-being, including referral to on- or off-campus resources

# Supportive Measures Implementation

- Available regardless of whether the claimant signs a formal complaint
- Available to a respondent
- Office of Equity Supportive Measures Specialist works with the individual to offer supportive measures
  - Supportive Measures Specialist communicates the requests on behalf of the individual to faculty and/or staff and will only share information on a need-to-know basis

Anna Voorhees  
(she/her)



Emma Walford  
(she/her)



Katie Freeman  
(she/her)



# Examples of Potential Supportive Measures

Academic Requests	Financial Aid Requests	USU Employment Requests
<ul style="list-style-type: none"><li>• Extension on an assignment, quiz, or test</li><li>• Excuse class absence(s)</li><li>• Receive an “I” for the course</li><li>• Receive a “W” for the course</li></ul>	<ul style="list-style-type: none"><li>• Appeal for maintenance of FAFSA funding</li><li>• Refund for “W” courses</li></ul>	<ul style="list-style-type: none"><li>• Excuse job absence(s)</li><li>• Reassign job or shift(s)</li><li>• Temporary remote work</li></ul>
	Safety Requests	Housing or Parking Requests
	<ul style="list-style-type: none"><li>• Mutual no contact order</li></ul>	<ul style="list-style-type: none"><li>• Reassign housing</li><li>• Reassign parking</li></ul>

# Grievance Process Overview

- Grievance Process is an administrative process
  - Determines whether, by a “preponderance of the evidence,” a USU student, staff, or faculty member has violated Interim USU Policy 339 or 339A
    - Preponderance of the evidence: a policy violation is more likely than not to have occurred
  - When there is a finding of responsibility, determines and assigns appropriate sanctions for the sexual misconduct violation

# Grievance Process Terms: Parties

## Claimant

- A person who is alleged to have experienced conduct that could constitute Sexual Misconduct

## Respondent

- An individual who is alleged to have committed Sexual Misconduct



# Who Does What in the Title IX Grievance Process, Part 3

## Support Person

- Any person that the Claimant or Respondent would like to have provide them emotional support during the Grievance Process
- Are expected to adhere to the rules for Support Persons and maintain decorum and respect while participating in the Grievance Process

# Who Does What in the Title IX Grievance Process, Part 4

## Process Advisor

- Any person chosen by a Claimant or Respondent to advise and assist them in any part of the Grievance Process
- A 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
- Will advise and assist the party in the hearing, including in conducting questioning of another party and witnesses on behalf of their party

# Presumption of Not Responsible

The University will presume that the Respondent is not responsible for violating Policy 339/339A until either

- The parties reach an Alternative Resolution agreement in which the Respondent admits a violation or
- The Hearing Officer/Panel reaches a Determination at the conclusion of a hearing that Respondent has violated the policy

# Grievance Process Components, Part 1

## Alternative Resolution

- A voluntary process in which parties agree to resolve a Formal Complaint without completing an investigation
- An Alternative Resolution agreement may be facilitated through arbitration, mediation, restorative justice, or another appropriate method that the parties and Title IX Coordinator agree on
- Such an agreement may not include sanctions or other disciplinary measures unless the respondent agrees to such sanctions or disciplinary measures

# Grievance Process Components, Part 2

## Formal Investigation

- The evidence-gathering process that begins with the filing of the Formal Complaint by a claimant and ends when the Appeal process is complete
- This process includes interviewing parties and witnesses, and gathering other relevant evidence, exculpatory and inculpatory

## University-driven Formal Investigation

- A formal investigation of Sexual Misconduct allegations undertaken by the University when there is no participating Claimant
- Title IX Coordinator signs a Formal Complaint to initiate, but the Title IX Coordinator nor the University serves as a claimant

# Grievance Process Jurisdiction, Part 1

1. Initiated by a person participating in, or attempting to participate in, an Employment or Education Program or Activity at the time of the filing of a Formal Complaint;  
*or*
2. A Formal Complaint signed by the Title IX Coordinator

# Grievance Process Jurisdiction, Part 2

3. Include allegations of Sexual Misconduct; *and*
4. Committed by an Employee, Student, or third party; *and*
5. **USU Policy 339 (Title IX)** – In an Employment or Education Program or Activity in the United States; *or*  
  
**USU Policy 339A (Non-Title IX Sexual Misconduct)** – Outside an Employment or Education Program or Activity, outside the United States, or inside an Employment or Education Program or Activity (sexual exploitation)

# USU Policy 339 Jurisdiction: Employment or Education Program or Activity

- All University operations 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 Sexual Misconduct 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



# USU Policy 339A Jurisdiction

- 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
- 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

# Formal Investigation Element 1: Formal Complaint

- A signed document that indicates the University will proceed with a Formal Investigation of Sexual Misconduct or an Alternative Resolution
- To initiate the grievance process, the Claimant or Title IX Coordinator must complete and sign the formal complaint

# Formal Complaint Policy 339 and Policy 339A Forms

UtahStateUniversity

## Formal Complaint of Violation of Utah State University's Sexual Misconduct Interim USU Policy 339

Please complete this formal complaint if you experienced [sexual misconduct](#) in an Employment or Education Program or Activity and want to proceed with an [Alternative Resolution](#) or [Formal Investigation](#) with the Office of Equity. Once you complete this form, an investigator will reach out to you to discuss next steps. For more information about the process, please review Interim USU Policy and Procedures [339](#). As a reminder, you can have a [support person and/or process advisor](#) as part of this process.

[Enable additional features by logging in.](#)

### Information

My Name (Required)

I am currently a: (Required)

- Student
- Employee
- Program Participant
- Other

UtahStateUniversity

## Formal Complaint of Violation of Utah State University's Sexual Misconduct Interim USU Policy 339A

Please complete this formal complaint if you experienced [sexual misconduct](#) off-campus but the incident is creating adverse effects on-campus and you want to proceed with an [Alternative Resolution](#) or [Formal Investigation](#) with the Office of Equity. Once you complete this form, an investigator will reach out to you in order to discuss next steps. For more information about the process, please review Interim USU Policy and Procedures [339A](#). As a reminder, you can have a [support person and/or process advisor](#) as part of this process.

[Enable additional features by logging in.](#)

### Information

My Name (Required)

I am currently a: (Required)

- Student
- Employee
- Program Participant
- Other

# Formal Investigation Element 2: Evidence Collection, Part 1

- The University, through an investigator, has the burden to gather sufficient evidence for the hearing officer/panel to determine whether, by a preponderance of the evidence, the respondent violated policy
- 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



Steve  
Rammell  
(he/him)



Kristen  
Beck  
(she/her)



Dan  
Biddulph  
(he/him)



Jen  
Damelio  
(she/her)

# Formal Investigation Element 2: Evidence Collection, Part 2

- Both parties have an equal opportunity to present witnesses and other inculpatory and exculpatory evidence
  - Inculpatory: evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish responsibility
  - Exculpatory: evidence that shows, or tends to show, a person's lack of responsibility

# Formal Investigation Element 3: Record of Evidence, Part 1

## Incident Report

- A report of alleged sexual misconduct filed to the Office of Equity, Title IX Coordinator, or a reporting employee

## Formal Complaint

- A signed document that indicates the University will proceed with a formal investigation of sexual misconduct or an alternative resolution

## Notice of Allegations

- A written instrument notifying both parties that a formal complaint of sexual misconduct has been filed and outlining the allegations

# **Formal Investigation Element 3: Record of Evidence, Part 2**

## **Claimant Interview**

- A recorded interview between the Claimant and the Office of Equity investigator

## **Claimant Evidence**

- Evidence provided by the Claimant to support the allegations raised in the formal complaint

## **Respondent Interview**

- A recorded interview between the Respondent and the Office of Equity investigator

# **Formal Investigation Element 3: Record of Evidence, Part 3**

## **Respondent Evidence**

- Evidence provided by the Respondent related to the allegations raised in the formal complaint

## **Other Evidence**

- Evidence obtained from parties other than the Claimant or Respondent



# Formal Investigation Element 3: Record of Evidence, Part 4

## Preliminary Investigation Report

- Procedural history of the case from the Formal Complaint to the Preliminary Investigation Report
- Summary of the investigation and all relevant evidence gathered
- Summary of the narratives provided by both parties and any relevant witnesses
- Descriptions of relevant evidence submitted and received
- Alleged policy violation(s)

# **Formal Investigation Element 3: Record of Evidence, Part 5**

## **Response(s) to the Preliminary Investigation Report**

- The Claimant and Respondent may file a written response within 10 days

## **Response(s) to the Record**

- The Claimant and Respondent may file a written response within 10 days

# Formal Investigation Element 4: Final Investigation Report

- All elements of the Preliminary Investigation Report
- Incorporates written responses to the Record and Preliminary Investigation Report
- Range of possible sanctions for each alleged violation

Does not reach a determination about whether Respondent violated USU policy

# **Training Part 2 Preview: Who Does What in the Title IX Grievance Process, Part 5**

- **Hearing Officer/Panel**
  - Facilitate live hearings for formal investigations
  - Decide whether a policy violation occurred
- **Office of Student Conduct & Community Standards**
  - Determine sanctions for student respondents
- **Supervisors, with Human Resources**
  - Determine sanctions for staff respondents
- **Provost's Office, with Dean and Human Resources**
  - Determine sanctions for faculty respondents

# Part Three Summary

- Supportive 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
- USU's Grievance Process is an administrative process that determines whether, by a "preponderance of the evidence," a USU student, staff, or faculty member has violated Interim USU Policy 339 or 339A
- The Grievance Process includes Alternative Resolutions, Formal Investigations, and University-driven Formal Investigations
- The Formal Investigation process begins with the filing of a Formal Complaint and ends when the Appeal process is complete



# Presentation Summary

- USU must respond when it has “actual knowledge” of “sexual harassment” that occurred within the school’s “education program or activity”
- Sexual harassment, sexual exploitation, sexual assault, relationship violence, and sex-based stalking are all types of sexual misconduct
- USU’s Grievance Process is an administrative process that determines whether, by a “preponderance of the evidence,” a USU student, staff, or faculty member has violated Interim USU Policy 339 or 339A

