

Sanctioning Authorities: USU Sexual Misconduct Policy and Procedures 339 and 339A



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

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Today's Topics

First

- Role of the Sanctioning Authority

Second

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

Third

- USU Sexual Misconduct Procedures 339 and 339A

Fourth

- An overview of sanctioning guidelines

Fifth

- An overview of bias and conflicts of interest



Checking In

In what ways do you feel confident participating in the grievance process as a Sanctioning Authority?

In what ways do you *not* feel confident participating in the grievance process as a Sanctioning Authority?





Part One: Sanctioning Authority Role Overview

Key question: What are the Sanctioning Authority's responsibilities?

Sanctioning Authority's Role

- A University Employee or office that has the authority to determine appropriate Sanctions
 - Sanctions are disciplinary or punitive actions taken against Respondents after they are found by the Hearing Officer/Panel to have violated Sexual Misconduct Policies 339/339A or as part of the sanctions-only process for alternative resolutions
- Sanctioning Authorities do not determine the finding of a policy violation
 - Accept the finding determination and cannot undo the findings (e.g., by applying no sanction)

Goals of the Sanctioning Process

- Stop problematic conduct and reduce the likelihood of future problematic conduct by ensuring appropriate sanction(s) are implemented
- Create personal accountability for employee and student behaviors aimed at preventing problematic conduct
- Educate students and employees to make different choices in the future

USU's Sanctioning Authorities

- **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

Available Resources

- USU Interim [Policies and Procedures 339/339A](#)
- Student Respondents
 - [ATIXA Sanctioning Guidelines](#)
- Employee Respondents
 - [Human Resources Sanctioning Guidelines](#)
 - HR's Employee Relations Specialists (Becca Seamons and Carson Esplin)
 - Available to review sanctioning guidelines, brainstorm, and understand options.

Self-Care and Boundary Setting as a Sanctioning Authority

- Remember this is a challenging process for everyone involved and you should practice self-care as you engage in this process
 - [Employee Assistance Program](#)
- You can set boundaries within the process
 - Take breaks when reviewing materials
 - Remain neutral when/if interacting with the parties
 - Refer the parties to appropriate resources (CAPS, EAP, Office of Equity, Process Advisor)




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



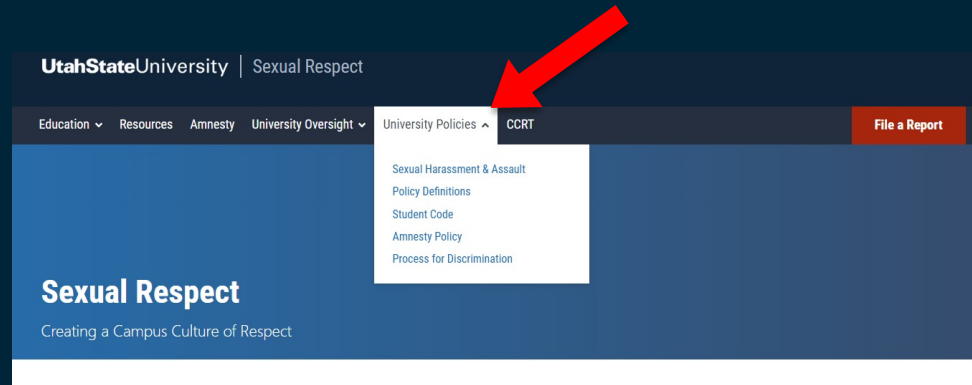
Sexual assault, dating and domestic violence, and stalking are forms of sexual harassment

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)

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

Sexual Misconduct: Sexual Harassment Definitions

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

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 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.

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.
- 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

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.

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?

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
 - If someone is found responsible for violating USU policy, they may face administrative sanctions

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

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 end of a hearing that Respondent has violated the policy

Formal Complaint Overview

- A signed document that shows 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

Grievance Process Components

Alternative Resolution

- A voluntary process in which parties agree to resolve a Formal Complaint without completing an investigation, or at any time the end of the investigation and hearing process

Formal Investigation

- The evidence-gathering process that begins with the filing of the Formal Complaint and ends when the Appeal process is complete

University-driven Formal Investigation

- A formal investigation of Sexual Misconduct allegations undertaken by the University when there is no participating Claimant

Alternative Resolution: Sanctions-Only Process, Part 1/2

- If the parties enter into an Alternative Resolution agreement that includes an admission that the Respondent violated Policy 339 or 339A, but do not reach an agreement on Sanctions, the case will proceed to the sanctions-only process
- If the case proceeds 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 approves, the Alternative Resolution agreement
- Information shared by the parties during the Alternative Resolution process can be used by the Sanctioning Authority

Alternative Resolution: Sanctions-Only Process, Part 2/2

- 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 parties may provide a sanction statement to the Sanctioning Authority
- The sanction may be appealed

Formal Investigation Overview

- 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 Overview: Record of Evidence, Part 1/2

- Incident Report
- Formal Complaint
- Notice of Allegations
- Claimant Interview
- Claimant Evidence
- Respondent Interview
- Respondent Evidence
- Other Evidence

Formal Investigation Overview: Record of Evidence, Part 2/2

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 Overview: Final Investigation Report

- All elements of the Preliminary Investigation Report
- Incorporates written responses from Claimant and Respondent 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

Formal Complaints under Policy 339

- The University will not issue a Sanction arising from an allegation of Sexual Misconduct without holding a hearing unless the formal complaint is otherwise resolved through an Alternative Resolution process

Formal Complaints under Policy 339A

- Either party may opt-in to a hearing
- If a party does not opt-in to a hearing under USU Policy 339A, then the party waives their right to a hearing
 - The Hearing Officer/Panel will be appointed and will review the Record
 - The Hearing Officer/Panel will issue a Provisional Determination letter within 21 days of appointment and follow other relevant steps in procedures 339A

Hearing Basics

- The hearing is scheduled no sooner than 10 days but within 60 days of the issuance of the final investigation report
- Parties may provide an opening/closing statement and question one another and witnesses (through their Process Advisors)
- Hearing is recorded

Roles During the Hearing

Hearing Officer

- Calls hearing to order, maintains decorum, and directs hearing panel responsibilities (if relevant)
 - Asks relevant questions
 - Makes relevance determinations for each question asked by process advisors and when they find a question is not relevant, states the reason for their decision on the record

Hearing Panel (if relevant)

- Serves as a decision-maker
- Asks relevant questions

Process Advisor

- Questions the other party and witnesses on their party's behalf

After a Hearing: Responsibility of the Hearing Officer/Panel and Case Coordinator, Part 1

- Within 14 days of the hearing, the Case Coordinator will send the Provisional Determination Letter to the parties, their Process Advisors, the Sanctioning Authority (if there is a finding), and the Title IX Coordinator
- Outlines facts supporting the Determination and the policy violations the Hearing Officer/Panel has found Respondent to have committed, if any
 - Also includes factual findings relevant to aggravating and mitigating factors

Aggravating and Mitigating Factors

- Factors considered by the Sanctioning Authority when determining the appropriate Sanction for a violation
 - Aggravating factors: reasons as to why the Respondent's punishment for a violation ought to be increased
 - Mitigating factors: reasons as to why the Respondent's punishment for a violation ought to be lessened

After a Hearing: Responsibility of the Parties

- If there is a finding of a policy violation, the parties may provide a sanction statement to the Sanctioning Authority
 - Within 7 days of the issuance of the Provisional Determination Letter
 - Statements should address relevant evidence in the Provisional Determination Letter and describe aggravating and mitigating factors that the party feels the Sanctioning Authority should consider for each violation found

After a Hearing: Responsibility of the Sanctioning Authority

- Within 7 days of the end of the Sanction statement period, the Sanctioning Authority will issue a Sanction Letter to the Hearing Officer
- Outlines the Sanction that should be ordered for each of the policy violations the Hearing Officer/Panel has found the Respondent to have committed
 - The Sanction must be proportionate to the policy violation(s), considering the parties' Sanctions statement, if any, and Aggravating and Mitigating Factors

After a Hearing: Responsibility of the Title IX Coordinator

- Claimant may provide a written impact statement to the Title IX Coordinator within 7 days after the Provisional Determination Letter is issued
- Within 15 days of receiving the written Determination from the Hearing Officer/Panel, the Title IX Coordinator will issue a Remedies Letter to the Claimant
 - Outlines the Remedies that will be provided to the Claimant for each of the policy violations the Hearing Officer/Panel has found the Respondent to have committed

After a Hearing: Responsibility of the Hearing Officer/Panel and Case Coordinator, Part 2

- Within 30 days of the hearing, the Case Coordinator will send a written Determination to the parties, Process Advisors, the investigator, the Sanctioning Authority, and the Title IX Coordinator, simultaneously
- If the Hearing Officer/Panel finds the Respondent to have violated the policy, the Hearing Officer/Panel will attach the Sanction Letter to its Determination
- If no Appeal is filed, then the Determination is final on the deadline to Appeal

Appeal Basics, Part 1/2

- Within 10 days of the date the Determination is issued by the Hearing Officer/Panel, either party may appeal the Determination in writing
 - Can also appeal the sanction if participating in the sanctions-only process of an Alternative Resolution
- The non-appealing party can submit a written response to the Appeal within 10 days

Appeal Basics, Part 2/2

- An Appeal is performed “on the record” (there is no hearing) by a 3-person Appeal Panel
 - Scope is limited to the grounds specifically identified in the party’s Appeal
- The Appeal Panel can dismiss the Appeal if it does not meet the grounds for appeal and/or it was not timely filed

Grounds for Appeal of the Determination

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 when the Determination about responsibility or dismissal was made, that could affect the outcome of the matter
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

Potential Outcomes of an Appeal of the Determination

- Affirm the Hearing Officer/Panel's Determination
- Modify the Hearing Officer/Panel's Determination
- Remand the Determination to the Hearing Officer/Panel
- Overturn the Determination if the Determination was based on a procedural error(s) that resulted in prejudice to the appealing party

Responsibility of the Appeal Panel

- Within 30 days of the date the Appeal is filed by the appealing party, the Appeal Panel will send a written Appeal Decision to the Title IX Coordinator, Hearing Officer/Panel, both parties, and their Process Advisors
- Includes the rationale for the Appeal Decision
 - Appeal decision is final and may not be further appealed

After the Appeal Process or If No Appeal is Filed

- If the Respondent has been found to have violated the Sexual Misconduct policy:
 - The Sanctioning Authority helps implement Sanctions
 - The Title IX Coordinator works with the Claimant to implement Remedies

Part Three Summary

- 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
- Sanctioning Authority is responsible for determining an appropriate sanction when there is a finding of a policy violation after a hearing and as part of sanctions-only process for alternative resolutions





Part Four: Sanctioning Guidelines Overview

Key question: How should a Sanctioning Authority determine an appropriate sanction(s)?

Overview of Process for Determining Sanction(s), Part 1/2

1. Review the hearing officer/panel's findings, the final investigation report, provisional determination letter, party sanction statements (if any), and claimant remedies letter (if available)
 - You will not receive the Record because you are not to re-weigh any evidence or second-guess the findings
2. Review which sexual misconduct act(s) were found to have occurred and which policy(ies) were violated
3. Determine the baseline sanction for the specific sexual misconduct act(s) that occurred

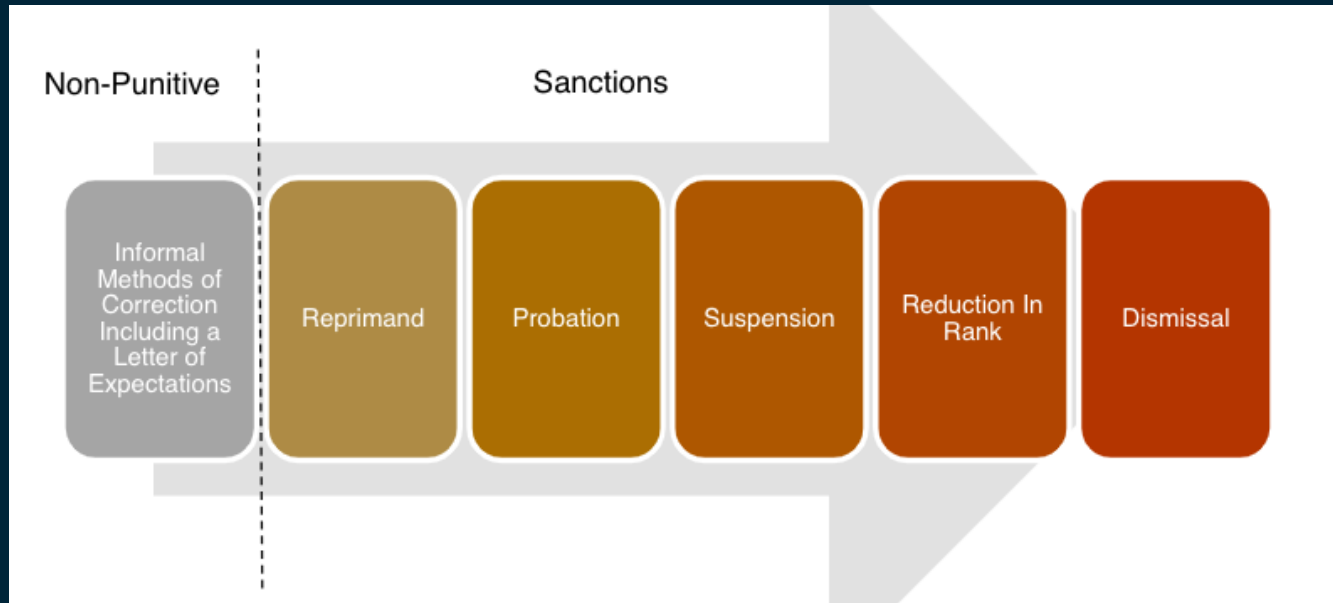
Overview of Process for Determining Sanction(s), Part 2/2

4. Review the aggravating and mitigating factors present in the case
 - Decide which factor(s) are relevant for determining the sanction(s) and whether they would increase the sanction
5. Review information about past sanctions for similar misconduct
6. Determine the sanction
 - Supervisors make the final decision for staff members
 - Provost's Office makes the final decision for faculty members

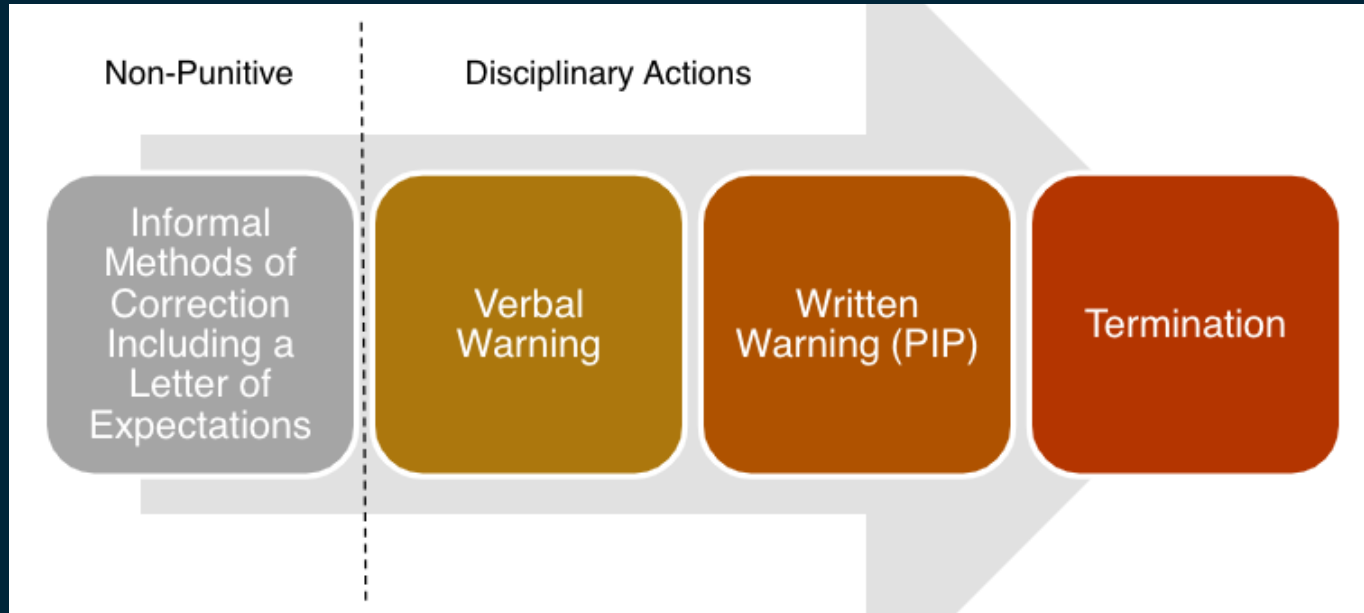
Sanctions for Employee Respondents

- Findings of policy violations are reflected in sanction documents and housed in Respondent's personnel file
- Student employees will be subject to employee sanctions only if violation(s) occurred in the course of their employment

General Range of Possible Sanctions: Faculty Members ([USU Policy 407](#))



General Range of Possible Sanctions: Staff Members ([USU Policy 311](#))



Specific Range of Possible Sanctions: Employee Respondents, Part 1/3

- Sexual harassment – hostile environment
 - Faculty: reprimand to termination
 - Staff: verbal warning to termination
- Sexual harassment – quid pro quo
 - Faculty: reprimand to termination
 - Staff: verbal warning to termination
- Sexual exploitation
 - Faculty: reprimand to termination
 - Staff: verbal warning to termination

Adapted from HR's sanctioning guidelines

Specific Range of Possible Sanctions: Employee Respondents, Part 2/3

- Sexual assault – rape and sodomy
 - Faculty and Staff: termination and flagged to not rehire
- Sexual assault – fondling
 - Faculty and Staff: termination and flagged to not rehire
- Sexual assault – with an object
 - Faculty and Staff: termination and flagged to not rehire

Adapted from HR's sanctioning guidelines

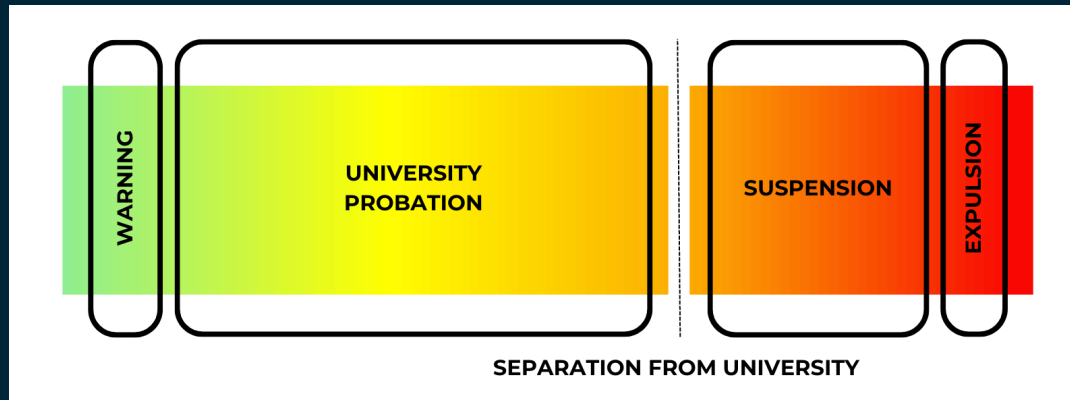
Specific Range of Possible Sanctions: Employee Respondents, Part 3/3

- Sexual assault – incest
 - Faculty and Staff: referral to law enforcement to termination
- Sexual assault – statutory rape
 - Faculty and Staff: termination
- Dating and domestic violence
 - Faculty: reprimand to termination
 - Staff: verbal warning to termination
- Sex-based stalking
 - Faculty: reprimand to termination
 - Staff: verbal warning to termination

Adapted from HR's sanctioning guidelines

General Range of Possible Sanctions: Student Respondents

- Finding is documented in Respondent's education file
 - Could also be a permanent notation on Respondent's transcript (expulsion only)



Student Respondents: Additional Potential Sanctions

- Loss of privileges (e.g., library, gym, inability to hold a leadership position in a student organization)
- No Contact Order
- Residence hall relocation or eviction
- Limited access to institutional property or facilities
- Denial of ability to represent institution in an official capacity
- Service hours, restitution, fines
- Transcript notation

Student Respondents: Additional Potential Requirements*

- Alcohol/drug assessment and/or classes
- Mental health assessment
- Respondent education
- Psychoeducation (e.g., anger management, impulse control)

*Readmission is not guaranteed

- Suspended respondents must comply with all educational and legal requirements before being considered for readmission

Specific Range of Possible Sanctions: Student Respondents, Part 1/3

- Sexual harassment – hostile environment
 - Warning to expulsion
- Sexual exploitation
 - Warning to expulsion
- Sexual assault – rape and sodomy
 - 1-3 years suspension to expulsion

Specific Range of Possible Sanctions: Student Respondents, Part 2/3

- Sexual assault – fondling
 - Warning to 1-2 years suspension
- Sexual assault – with an object
 - 1-3 years suspension to expulsion
- Sexual assault – incest
 - Warning to expulsion

Specific Range of Possible Sanctions: Student Respondents, Part 3/3

- Sexual assault – statutory rape
 - Warning to expulsion
- Dating and domestic violence
 - Probation to expulsion
- Sex-based stalking
 - Warning to expulsion

General Sanctioning Considerations: Aggravating Factors

Aggravating

- Factors that tend to render a violation more egregious and increase a sanction
- What counts as an aggravating factor can depend on the specific misconduct
- Examples: severity and egregiousness of behaviors, refusing to accept responsibility or acknowledge impact of misconduct, blaming Claimant, cumulative violations, and/or prior misconduct history

General Sanctioning Considerations: Mitigating Factors

Mitigating

- Factors that tend to render a violation less severe and consequently may decrease the sanction
- What counts as a mitigating factor can depend on the specific misconduct
- Examples: acknowledge wrongdoing and impact of conduct on the claimant, restitution, proactive engagement in restorative actions


Practice Determining Appropriate Sanctions

The Hearing Panel/Officer determines that Terry (respondent) repeatedly used unwelcome sexual innuendos when talking to his coworkers and is responsible for a sexual harassment (hostile environment) policy violation. The panel identified that:


- Terry has a prior finding of sexual misconduct (hostile environment) within the last year.
- Terry has expressed remorse over his actions and has accepted responsibility for what happened.
- Multiple claimants are involved in this case, all of whom accuse Terry of sexual misconduct (hostile environment). Terry was found responsible for each of the claimant's accusations.

Practice Activity Discussion Questions

What is the sanction starting point and range for Terry as a student? Faculty member? Staff member?



What are potential aggravating factors identified in the fact pattern? What are other potential examples of aggravating factors?



What are potential mitigating factors identified in the fact pattern? What are other potential examples of mitigating factors?

Part Four Summary

- The range of possible sanctions for a policy violation starts at different points for employees and students and is based on the type of sexual misconduct that occurred
- Sanctioning Authorities should consider aggravating and mitigating factors when determining appropriate sanction(s)
- Sanctioning Authorities should use the 2023 ATIXA Sanctioning Guidelines (student respondents) and the Human Resources Sanctioning Guidelines (employee respondents) when determining appropriate sanction(s)





Part Five: Bias and Conflicts of Interest Overview

Key question: How should Sanctioning Authorities avoid bias and conflicts of interest?

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 or
 - 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

Responding to Conflicts of Interest Check by Case Coordinator, Part 1/2

- Always identify whether you
 - Have
 - Personal or professional ties to the Respondent,
 - Personal or professional ties to the Claimant, or
 - Prior knowledge of the case
 - That could affect your ability to be a Sanctioning Authority with objectivity
 - Will be able to
 - Disregard each party's status as Claimant or Respondent, and
 - Render impartial judgment based on the evidence presented

Responding to Conflicts of Interest Check by Case Coordinator, Part 2/2

- If your answer is “yes” to question 1 and/or “no” to question 2, you should:
 - Be honest about it
 - Admit that you cannot be a Sanctioning Authority impartially

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

Avoiding Bias, Part 1/3

- Do not let a party's race, gender, religion, national origin, disability, etc. influence your beliefs about the case, the evidence, their credibility, or the appropriate sanction
 - A party's account should not be more or less believed because of their identities
- Focus on what the evidence (including the parties' and witnesses' statements) tells you
 - Do not focus on what you believe should happen in a situation like this or what you know to have occurred in other similar situations

Avoiding Bias, Part 2/3

- Questions to ask yourself:
 - Have I reached this conclusion or decision based on the evidence, or based on something else?
 - Would I have come to this same conclusion if the Claimant or Respondent had different identities (e.g., race, gender)?
 - Am I making this decision because of bias towards the Claimant or the Respondent, or because of bias towards claimants or respondents in general?

Avoiding Bias, Part 3/3

- If you are concerned that your decision/the sanction(s) is based on something other than the evidence:
 - Go back and look again
 - Ask for input from appropriate colleagues (e.g., Human Resources, Provost's Office, Dean or unit leadership, Title IX Coordinator, Office of Equity Executive Director)

Part Five Summary

- An 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, or is otherwise unable to participate with objectivity because of personal or professional relationships with other individuals involved in the process
- Demonstrated bias is unfair prejudice in favor of or against one group compared with another
- Sanctioning Authorities can avoid bias by focusing on what the evidence tells them



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
- A Sanctioning Authority is a University Employee or office that has the authority to determine appropriate Sanctions

